

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 6265/Del/2019
(Assessment Year: 2016-17)

Shrimp Improvement Systems India (P) Ltd, C/o. Lall & Company, CA31, Sirifort Road, New Delhi (Appellant)	Vs. DCIT, Circle-23(1), New Delhi	(Respondent)
---	---	--------------

PAN: AARCS3006L

Assessee by :	Shri Rajesh Malhotra, CA Ms. Shivangi Kumar, Adv
Revenue by:	Shri Anuj Garg, Sr. DR
Date of Hearing	12/10/2023
Date of pronouncement	20/10/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 6265/Del/2019 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-8, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10224/18-19 dated 11.06.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.12.2018 by the Assessing Officer, DCIT, Circle-23(1), New Delhi (hereinafter referred to as 'Id. AO').
2. The only issue is to be decided in this appeal is as to whether the Id CIT(A) was justified in confirming the disallowance of Rs. 1,00,89,351/- as capital expenditure in facts and circumstances of the case.
3. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in the business of

production of aquaculture products and fisheries. The return of income for AY 2016-17 was filed on 22.11.2016 declaring loss of Rs. 2,94,54,533/-. The Id AO on perusal of the profit and loss account of the assessee, found that assessee had claimed a sum of Rs. 1,00,89,351/- on account of due diligence expenses under the head "exceptional items". The assessee submitted that it being in the business of aquaculture and fisheries had invested in Samudra Hatcheries Pvt Ltd which is also in the same business of aquaculture and fisheries. This investment made in Sadudra Hatcheries Pvt. Ltd was to increase the production and supply of 'shrimps' in local market and hence, increase the market share as well as the profit of the group. The assessee had engaged a private consultant to conduct due diligence for the acquisition of this company. The professional had submitted its due diligence report and accordingly, the assessee had made payment of Rs. 1,00,89,351/- to the said professional towards due diligence fees for rendering assistance for acquisition of Samudra Hatcheries Pvt. Ltd. This sum was claimed as revenue expenditure by the assessee u/s 37 of the Act. The Id AO observed that since this expenditure has been incurred for acquisition of another company, the same would be capital in nature and accordingly disallowed the same in the same assessment. This action of the Id AO was upheld by the Id CIT(A).

4. We find that this issue is no longer res integra in view of the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Onmobile Global Ltd reported in 129 taxmann.com 254 wherein, it was held that the expenditure incurred by the assessee for conducting due diligence of a company which was eventually acquired by the company to be allowable as revenue expenditure. The relevant operative portion of the said decision is reproduced herein:-

"12. The assessee has claimed an amount of Rs. 6,68,98,726/- as expenditure incurred as legal and professional charges in its profit and loss account. Out of the aforesaid amount, the Assessing Officer has disallowed an amount of Rs. 2,20,40,131/- that is the amount incurred

on account of legal and professional charges incurred in connection with acquisition of the Company in France and legal and professional charges to file patent application for a sum of Rs. 24,08,000/-. The Assessing Officer has held the same to be in the nature of capital expenditure. The Tribunal, by following the decision of its co-ordinate Benches, has held that expenditure incurred by the assessee for conducting due diligence in report of a company which was to be acquired by the assessee is revenue in nature and has treated the same to be deductible expenditure under section 37(1) of the Act. The aforesaid finding of the Tribunal is based on meticulous appreciation of material on record and does not call for any interference. In the result, the fourth substantial question of law is also answered against the revenue and in favour of the assessee."

5. Further, we find that the Hon'ble Rajasthan High Court in the case of PCIT Vs. Vaibhav Global Ltd reported in 132 taxmann.com 506 had also held under similar circumstances, the expenses incurred thereon to be revenue expenditure u/s 37 of the Act. The Id DR placed on record that a decision of admission of Special Leave Petition of the revenue by the Hon'ble Supreme Court in the case of PCIT Vs. Vaibhav Global reported in 143 taxmann.com 211, which is against the decision Hon'ble Rajasthan High Court referred supra. But as on date, we find that the decision of the Hon'ble Rajasthan High Court has not been stayed by the Hon'ble Supreme Court and hence, that would apply as a binding precedent for the Tribunal. Respectfully following the decision of the Hon'ble Karnataka and Rajasthan High Court referred (supra), we direct the Id AO to grant deduction on account of due diligence fees paid to the professional in the sum of Rs. 1,00,89,351/-. Accordingly, the ground raised by the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20/10/2023.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:20/10/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi