

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 7502/Del/2019 : Asstt. Year : 2013-14

Fontus Water Pvt. Ltd., A-1/152, IGNOU Road, Neb Sarai, New Delhi-110068	Vs.	ACIT, Circle-9(2), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAACF5565A		

Assessee by : None

Revenue by : Sh. Vivek K. UPadhyay, Sr. DR

Date of Hearing: 13.03.2024

Date of Pronouncement: 15.03.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-34, New Delhi dated 26.06.2019.

2. Following grounds have been raised by the assessee:

"(1) That the order of the Learned CIT (Appeals), New Delhi is arbitrary, biased and bad in law and in facts and circumstances of the case in so far as it confirms the additions made by the Assessing Officer.

(2) That the Learned CIT (Appeals) has grossly erred both in law and facts of the case in confirming an addition of Rs.1,21,45,016/- made by the Assessing Officer by disallowing the claim of reimbursement of expenditure on obtaining of due diligence report of the company of Rs.1,10,54,000/- incurred by the strategic Foreign Equity Partner which made investment in the share capital of the appellant company to enable it to augment its working capital and to run its business smoothly and efficiently by holding the expenditure to be of capital nature ignoring that the expenditure deserved to be allowed as revenue expenditure.

(3) That the Learned CIT (Appeals) has grossly erred both in law and facts of the case in confirming the disallowance of legal expenses of Rs. 10,91,016/- incurred for vetting of agreements proposed to be executed with the Foreign Equity Partner by holding the expenditure to be of capital nature on erroneous understanding of the facts of the case.

(4) That the Learned CIT (Appeals) has grossly erred in confirming the addition of Rs. 1,10,54,000/- made by the AO on incorrect appreciation of the facts of the case and in further holding that the appellant company could not be allowed the claim of payment without submission of invoice raised by M/s KPMG in favour of strategic partner M/s Aqua Moon Holding. Ignoring that the appellant company had reimbursed the amount of professional fees to M/s Aqua Moon Holding for payment made by it to M/s. KPMG.

(5) That the Learned CIT (Appeals) has grossly erred in confirming the action of the AO in treating the amount of Rs. 10,91,016/- paid to M/s DSK Legal for vetting of the agreement and discussion with the investee company to be of capital nature and in sustaining the addition made by the AO."

3. Nobody attended the hearings held on 30.06.2022, 13.10.2022, 17.01.2023, 17.04.2023, 12.06.2023, 17.07.2023, 03.10.2023, 20.12.2023 and even today.

4. We have perused the facts on record.

5. The assessee has inducted equity and preference capital by a private equity fund based in Singapore namely Aqua Nova Holdings. The total amount of investment was USD 70 lacs (Rs.39.12 Crore). The assessee has incurred legal and professional charges in connection above induction of capital of Rs. 1,21,45,016/-. The Assessing Officer has treated the expenses capital in nature and added it to the taxable income of the assessee. Before the Id. CIT(A), the assessee has submitted that expense to USD 2 lacs (Rs.1,10,91,016/-) was reimbursed

to the investor company and investor company incurred the expense for getting the due diligence and documentation done. In support of its contention, the assessee has enclosed the copy of agreement with the investor company. Thus, it is contended by the assessee that expenses were incurred for business purposes and it was it was reimbursement the expenses on account of mutual agreement between the parties.

6. During the course of proceedings before the Id. CIT(A), the assessee was asked to furnish the due diligence report and bill raised by the company who has furnished the due diligence report. The assessee has furnished the due diligence report submitted by KPMG in respect of assessee company now known as Earth Water Pvt. Ltd. but failed to furnish the bill raised by the KPMG on the investor company Aqua Nova Holdings.

7. Since, the assessee has not furnished the documentary evidence in support of expenses incurred on due diligence as per the agreement, the expenses claimed by the assessee on account of due diligence under the head legal and professional expenses were confirmed by the Id. CIT(A).

8. Further, the assessee has made payment of Rs. 10,91,016/- to DSK Legal for legal and professional expenses. It was submitted by the assessee before the Id. CIT(A) that expenses are incurred in connection with vetting of the agreements and discussion with the investee company. This expense was investor specific and not a pre-share issue expense. Thus, the assessee has claimed it as revenue expenditure. The AO has treated the expenses as capital in nature and disallowed the same as it was incurred in connection

with the induction of the capital in the company by foreign private equity fund. Further, the assessee has claimed that same may be allowed as per the provision of section 35D and may be allowed equally in each of the five successive years as the nature of legal charges for drafting of agreement between the assessee and investor for the purpose of conduct of business of the assessee.

9. The Id. CIT(A) held that the assessee has not incurred the expenses for the purposes as specified in section 35D(2), thus assessee is not entitled to amortize the expenses in five successive previous years and expenses are related to induction of the capital in the company, therefore they are capital in nature and held that the AO is justified treating the same as capital in nature.

10. In the absence of any material contra, we find no reason to differ with the adjudication of the Id. CIT(A).

11. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 15/03/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 15/03/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR