

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND SHRI
ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.9327/Del/2019
Assessment Year: 2016-17

Bigway Marketing Private Limited, 4872, Chandni Chowk, Delhi - 1100 06	Vs.	ACIT, Circle-5(1), New Delhi
PAN :AACCB5303L		
(Appellant)		(Respondent)

Assessee by	Shri GN Gupta, ITP & Shri Prashant Swain, CA
Department by	Shri Kanv Bali & Manu Chourasia, Senior DRs

Date of hearing	08.03.2023
Date of pronouncement	04.06.2024

ORDER

PER ANUBHAV SHARMA: JUDICIAL MEMBER:

This appeal has been preferred by the Assessee against the order dated 12.09.2019 of learned Commissioner of Income-

Tax(Appeals)-2, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 10212/18-19 arising out of an appeal before it against the order 12.12.2018 passed under Section 143(3) of Income-Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-5(1), New Delhi (hereinafter referred as the Ld. AO).

2. The return of assessee was selected for scrutiny assessment. Learned Assessing Officer had examined legal and professional expenses paid by the assessee for acquisition of shares of M/s. Marche Retail Private Ltd. and learned Assessing Officer disallowed the same observing that the assessee has shown income from trading and shares and securities and rental income, however, the objects of the company do not show such activities as business objects. Thus, expenses incurred for professional services for purchase of shares of another company was disallowed and learned Commissioner (Appeals) has sustained the same.

2.1 Learned Assessing Officer had disallowed a sum of Rs.76,95,243 being interest on loan against three properties as learned Assessing Officer was of the view that the said house property was

rented and appellant is showing rental income from this building, thus, the interest on loan upon the same is not allowable as business deduction. Learned Commissioner (Appeals) has sustained the same with relevant findings in paras 6.5 and 6.7 as follows:

“6.6 The appellant submitted that the loan was not for purchase of property but business loan against mortgage of the property. The Assessing Officer asked for documents of loan to prove the claim but it was not produced. Hence, the addition was made.

6.7 It is seen that A.O had clearly asked for documents of loan but it was not produced. Even during appellate proceeding, no such document was furnished to support the claim of loan against mortgage of property. In view of this, I'm not inclined to interfere with the assessment order. This ground is ruled against the appellant.”

3. Thus, the assessee is in appeal raising following grounds of appeal:

1. That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the action of the AO disallowing professional fee of Rs.25,30,847/- incurred for market research and allied expenses for acquisition of M/s. Marche Retail Pvt. Ltd.

2.1 That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the action of the A.O in disallowing interest expenses of Rs.76,95,243/- on loan against property.

2.2 That without prejudice to the generality of grounds of appeal no.2.1 above, the disallowance of Rs.76,95,243/- is arbitrary and highly expensive.

4. Heard and perused the record.

4.1 In regard to ground no.1, it comes up that the case of assessee is that it had decided to purchase 4,000 shares of M/s. Marche Retail Pvt. Ltd. which was also engaged in running of chain of gourmet food retail source and had business interest similar to assessee. Thus, for the purpose of conducting due diligence and feasibility of acquisition, valuation report of this company was got prepared from M/s. Grand Thornton India LLP whose appointee S.K. Bindal & Co., CA prepared the report. A survey was also got conducted from M/s. Accenture for Entry Strategy Development Services and on account of the same, the expenditure of Rs.25,30,847 was made.

4.2 It appears that the learned tax authorities have failed to appreciate the nature of expenditure under the head 'legal and professional expenses' which were made as a preliminary step to make a conclusive decision as to perspective investment in the said company, should be made or not. In the present case, the actual action on the part of assessee was to purchase 2700 shares but to arrive at a decision, if any, expenditure is made, same would be revenue expenditure. Learned Assessing Officer had fallen in error to hold that

these legal and professional expenses have been solely undertaken to solicit help for acquiring capital assets and to treat it as capital expenditure. The reliance placed by learned AR on the judgment of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Om Prakash Behl (132 ITR 342 PH) is relevant wherein Hon'ble High Court has reasserted the settled proposition of law that, *“we are of the opinion that, with a view to find out as to whether the claim in question is permissible under the provisions of Section 37 of the Act, we have to take the facts as they are. It is not open in law to investigate the motive of the assessee. We are concerned with the actual action on the part of the assessee and not the action which the assessee should have taken under the circumstances. It is not permissible in law, as the Tribunal has done, to bring in suppositions and then to find out whether the claim is allowable or not”*.

4.3 Further, Hon'ble Karnataka High Court in the case of CIT vs. Karnataka State Industrial & Investment Development Corporation – 163 Income Tax Return 657 (Kar.) held that expenditure in preparation of the object and feasibility report is revenue expenditure. Similar is the view of Hon'ble Gujarat High Court in Principal CIT vs.

V. Sintex Industrial Ltd. – 403 Income Tax Return 418 (Guj.). Thus, we are inclined to allow this ground.

5. Ground Nos. 2.1 & 2.2 are taken up together and are based on common set of facts and law. It comes up that the case of assessee is that Rs.14,75,00,000 was taken by mortgaging his moveable property identified as A-20, Sector 60, Noida. The assessee claims that this amount was used for the purpose of investment in shares.

6. Learned AR has placed on record Memorandum of Association (MOA) and Article of Association (AOA) at page nos. 1-22 of the paper book to submit that investment in all kinds of securities is one of the objects for which company was incorporated. Learned Commissioner (Appeals) has sustained the addition primarily for the reason that there were lack of evidences. As before us, in PB-3, assessee had filed certain evidences of following nature; which were before learned CIT(Appeals) also.

SL. No.	PARTICULARS	PAGE NO.
1	Copy of Bank statement of IDBI Term Loan A/c No.0136675100014748	159
2	Copy of Bank statement of IDBI Term Loan A/c No.0136675100015358	160
3	Copy of Bank statement of IDBI Current A/c No.0136102000014915 in which term Loan is	161-168

	received	
4.	Ledgers of Stockbrokers, M/s. Star Finvest Pvt. Ltd. & M/s. Keynhote Capital Ltd.	169-171
5.	Ledger of Daksha Ashok Rajgarhia India Ltd.	172
6.	Details of money of Rs.50 lakh or more, deposited in/withdrawn from, IDBI Current Account No.0136102000014915	173

7. As we examine these evidences, there is no doubt that loan against property was primarily used for investment in the shares through intermediaries. Learned Assessing Officer contrary to the observations to lack of evidences, as made by learned Commissioner (Appeals) mentioned in the assessment order that copy of loan documents, and interest paid ledger was perused at the time of assessment.

8. We are of the considered view that learned tax authorities had fallen in error in not taking into account the fact that investment of securities was one of the objects of the incorporation of the company. The rental income during the year was 3.09 crores, and the income from trading in securities was Rs.100.36 crores. The loan taken against the mortgaged properties was used for the business purposes of the assessee for the purpose of trading securities. The same was

allowable expense in the P & L account. Learned tax authorities had fallen in error and disallowed the same so ground no.2.1 is allowed in favour of the assessee and ground no.2.2 thus becomes infructuous.

9. In the result, the appeal of assessee is allowed. Impugned additions are deleted.

Order pronounced in the open court on 04 /06/2024.

Sd/-
(G.S. PANNU)
VICE-PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 04th June, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi