

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4200/MUM/2023
(Assessment Year: 2017-18)**

**Bharat Flooring and Tiles (Mumbai)
Pvt. Ltd.,**

C/o Kalyaniwalla & Mistry LLP,
Chartered Accountants, Esplanade
House, 29, Hazarimal Somani Marg,
Fort, Mumbai - 400001
[PAN: AAACB6388F]

..... **Appellant**

**Assistant Commissioner of Income-
Tax – 2(1)(1), Mumbai,**
Aayakar Bhavan, Maharishi Karve Road,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Mehli M. Golvala
For the Respondent/Department : Shri Ashok Kumar Ambastha

Date

Conclusion of hearing : 22.04.2024
Pronouncement of order : 15.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 27/09/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 19/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised the following grounds of appeal:

- "1. Both the lower authorities erred in disallowing the consultancy fees paid of Rs. 20,68,500/- by the Appellant by holding it to be capital in nature.*
 - 2. Both the lower authorities erred in disallowing travel and hotel expenses of Rs. 4,59,871/- by holding it to be capital in nature.*
 - 3. Both the lower authorities failed to appreciate that it is settled law that the test of enduring benefit breaks down if the expenditure is in the revenue field."*
3. The relevant facts in brief are that the Appellant, a company engaged in the business of decorative/customized cement tiles, filed return of income for the Assessment Year 2017-2018 on 23/10/2017 declaring income of INR 1,77,01,460/-. The case of the Appellant was selected for scrutiny. During the assessment proceedings, vide show cause notice dated 11/12/2019, the Appellant was asked to furnish the details of fee paid to Mr. Pradeep Chander [*hereinafter referred to as 'the **Consultant**'*] and substantiate the deduction claimed by the Appellant for the expense incurred in relation to his engagement during the relevant previous year. In response, the Appellant filed reply letter, dated 16/12/2019, whereby it was explained that the Consultant was an un-related party who has been engaged as a management consultant for providing business strategy consultancy services to the Appellant. The Appellant also placed on assessment record the copy of invoices raised by the Consultant. However, the Assessing Officer was not convinced. The Assessing Officer noted that the scope of work of the Consultant included services which were strategic in nature which gave benefit to the Appellant over medium to long term. The Assessing Officer disallowed the professional fees paid to the Consultant by holding the same to be capital in nature. Similarly, the Assessing Officer also disallowed other expenses

related to travelling/conveyance of the Consultant. Thus, vide Assessment Order, dated 19/12/2012, the Assessing Officer computed the assessment under Section 143(3) of the Act at assessed income of INR 2,02,29,830/- after disallowing deduction for business consultancy charges of INR 20,68,500/- and other travelling & conveyance expenses aggregating to INR 4,59,871/-.

4. Being aggrieved, the Appellant carried the issue in appeal before the CIT(A). Before the CIT(A), the Appellant filed written submission and contended that the expenditure under consideration were incurred to bring about operational efficiencies. The same were in the nature of normal business expenses allowable as deduction under Section 37 of the Act. The aforesaid submission did not find favour with the CIT(A). Vide order dated 27/09/2023, concurring with the Assessing Officer, the CIT(A) confirmed the disallowance of INR 25,28,371/- made by the Assessing Officer holding the expenses to be capital in nature. However, the CIT(A) directed the Assessing Officer to grant the benefit of depreciation/amortization on the aforesaid expenses since the Assessing Officer had, in paragraph 4.6 of the Assessment Order, concluded that the expenditure disallowed as being capital in nature had to be amortized, however, while computing the total income the benefit of amortization was not granted.
5. Not being satisfied with the above benefit of amortization/depreciation granted by the CIT(A), the Appellant is now in appeal before the Tribunal asserting the claim of deduction of INR 25,28,371/- as revenue expenditure.
6. The Learned Authorised Representative for the Appellant

appearing before us reiterated the submission made before the authorities below and relied upon the submissions filed before the CIT(A) [*placed at pages 40 to 50 of the paper-book*]. Per contra the Learned Departmental Representative relied upon the order passed by the Assessing Officer & the CIT(A), and contended that the expenditure under consideration was capital in nature as the same was incurred for building brand and strategy (including strategy for setting up manufacturing facility) which had resulted in enduring benefit to the Appellant. The Learned Departmental Representative also impressed upon the facts that the Appellant had not furnished copy of the agreement. In rejoinder, the Learned Authorized Representative for the Appellant relied upon judicial precedents forming part of legal paper-book and submitted that all the relevant invoices were placed before the Assessing Officer and the Assessing Officer had not doubted their veracity. Further, even in the subsequent years similar expenses were incurred by the Appellant for bringing about operational efficiency.

7. We have considered the rival submissions and perused the material on record. There is no dispute regarding the scope of services provided by the Consultant. The bone of contention is the nature of services. According to the authorities below the above services were strategic in nature and provided benefit of enduring nature to the Appellant as the same were taken for the purpose of development of brand/strategy/asset. We note the aforesaid conclusion is premised upon the scope of services as mentioned in the Reply Letter, dated 16/12/2019 filed by the Appellant during the assessment proceedings. On examining the same the Assessing Officer had concluded that services provided included (a) creating image; (b) developing business model; (c) creating a culture; (d) professionalize the organization; and (e)

providing a roadmap to senior management. According to the Assessing Officer and the CIT(A), the services provided by the Consultant were strategic in nature and gave benefits to the Appellant over medium to long term. It was contended on behalf of the Revenue that the services were providing enduring benefit to Appellant as the same were useful for establishing Appellant's product brand over the years. On the other hand, the contention of the Appellant is that the services were in the nature of business consultancy services which were required on recurring basis by the Appellant for its business. No asset/brand was created on incurring of the expenditure under consideration.

8. Having considered the above rival submissions, we find merit in the contention advanced in behalf of the Appellant.

8.1. It is admitted position that the scope of services of the Consultant was as under:

- To help the Appellant-company create an image of a designer tile maker ideally suited for heritage properties, high end bungalows and "penthouse" flats in condos.
- Develop a sustainable business model and generate resources from within to fund all growth initiatives.
- Create a culture which is process and data driven, yet creative, within the organization which enables young employees to perform well beyond their conventional capabilities.
- Professionalize the organization progressively to ensure that the assessee company and its products remain relevant even after years of existence as a cement tile manufacture.
- Make annual budgets and plans related to detailed marketing, sales and production.
- Provide a roadmap to the senior managers and train them on how to execute their plans.

- Monitor progress every month and provide leadership when needed.
- Spend three days every month in Mumbai (since he is based in Gurgaon, Delhi) to meet the management team one-on-one to ensure no hitches in operations.
- Remain available on e-mail and phone for consultation 24/7.

8.2. On perusal of the above scope/description of services, we find the services have been defined broadly and are in the nature of regular business consultancy services. The authorities below have failed to bring on record any facts from which can be established or inferred that any brand/asset was created on incurring of the expenditure under consideration. Their conclusions, which are based upon the premise that the services had medium or long term impact on the business of the Appellant, are not supported by any facts/material on record. To the contrary, the material on record (including the description of services) supports the claim of the Appellant that the benefit accruing to the Appellant from the aforesaid services would be in relation to operational efficiencies. Therefore, we are not inclined to accept the finding returned by the AO and the CIT(A) that the services under consideration resulted in benefit of enduring nature to the Appellant.

8.3. We note that during the Assessment proceedings, the Appellant had placed on record relevant invoices and details. The veracity of expenses under consideration was not doubted during the assessment proceedings and the Assessing Officer had, in paragraph 4.6. of the assessment order recorded that expenses under consideration should be amortized. The CIT(A) had also directed that benefit of amortization be granted to the Appellant and the Revenue has not challenged the directions given by the

CIT(A) before the Tribunal. Thus, Appellants claim for deduction of INR 25,28,371/- as revenue expenses cannot be rejected merely because the Appellant had failed to produce the agreement.

- 8.4. Thus, keeping in view the overall facts and circumstances we hold that expenditure of INR 25,28,371/-, being consultancy and other charges incurred in relation to engagement of the Consultant, were in the nature of revenue expenses incurred by the Appellant on recurring basis for maintaining operational efficiencies. Our view draws support from the judgment of the Hon'ble Delhi High Court in the case of Indo Rama Synthetics India Limited Vs. CIT: 177 ITR 377 (SC) cited on behalf of the Appellant during the course of hearing. Accordingly, we overturn the decision of Assessing Officer and CIT(A) on this issue and direct the Assessing Officer to allow deduction for business consultancy charges of INR 20,68,500/- and travel/other expenses of INR 4,59,871/- as claimed by the Appellant under Section 37(1) of the Act. Thus, Ground No. 1 to 2 raised by the Appellant are allowed, while ground number 3 is disposed off as being infructuous.
9. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 15.07.2024.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 15.07.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai