

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

ITA No. 8756/Del/2019
(Assessment Year: 2016-17)

SSP Pvt. Ltd, C/o. RRA Taxindia, D-28, South Extn. Part-I, New Delhi (Appellant) PAN: AA ECS1415J	Vs. ACIT, Circle-2(1), Faridabad (Respondent)
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Assessee by :	Shri Somil Agarwal, Adv
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	16/10/2023
Date of pronouncement	23/10/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.8756/Del/2019 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-Faridabad [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.10197/2018-19, dated 11.09.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 08.12.2018 by the Assessing Officer, ACIT, Circle-II, Faridabad (hereinafter referred to as 'Id. AO').

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance made on account of advocate fees of Rs 2,01,000/- for preparation of share purchase agreement in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the business activities in manufacturing of engineering goods. During the year under consideration, the assessee paid fees to advocate of Rs 2,01,000/- for drafting share purchase agreement related to business towards acquisition of 100% shares of Prosoya Inc. Canada. It was submitted by the assessee that the said acquisition was made for furtherance of business of the assessee as the said company is also in the same line of business with that of the assessee company herein. This fact is not in dispute before us. The Id. AO however held that since the share purchase agreement is meant for purchase of shares of some company in Canada, the professional fee paid to advocate would be capital in nature and accordingly not allowable as deduction. The Id. CIT(A) observed that the assessee had paid the advocate fees in order to acquire a new source of business income and accordingly upheld the action of the Id. AO. Before us, the Id. AR vehemently pleaded that the Id. CIT(A) grossly erred in stating that the assessee had acquired a new source of business income, as the acquired company was also in the same line of business with that of the assessee company. We find the fact that acquired company is also in the same line of business of the assessee company is not disputed by the revenue before us. Hence we are in agreement with the Id. AR that the said acquisition of shares of Prosoya Inc. Canada is only for furtherance of existing business of the assessee and improving the profitability of the assessee company. Hence the professional fees paid to advocate for drafting the share purchase agreement to facilitate the aforesaid acquisition cannot be held as capital in nature and would be squarely allowable as revenue expenditure. We find that the Id. DR before us placed reliance on the decision of Hon'ble Supreme Court in the case of Punjab State Industrial Development Corpn Ltd vs CIT reported in 225 ITR 792 (SC). We find that this decision was rendered in the

context of allowability of ROC fees paid for enhancement of authorized capital of a company which was held as capital in nature. This decision in our considered opinion is factually distinguishable. In any event, the issue in dispute is squarely covered by the decision of Bangalore Tribunal in the case of Manipal Health Group dated 27.6.2018 which in turn relied on the decision of Hon'ble Delhi High Court in the case of CIT vs Priya Village Road Shows Ltd reported in 332 ITR 594(Del). The Hon'ble Delhi High Court had held that if an expenditure is incurred for preparation of feasibility report of a new project which is in respect of same business which is already carried on by the assessee, even if it is for expansion of business, namely, to start a new unit which is same as earlier business, and there is unity of control and common fund, then such expenditure is to be treated as revenue expenditure. In such a case, whether a new business/asset comes into existence or not would become a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature. However, if the new asset comes into existence which is of enduring benefit, then such expenditure would be of capital nature. The assessee in the instant case before us had merely acquired the shares of Canadian company which is in the same line of business and for facilitating this acquisition, share purchase agreement was drafted by the advocate, to whom fee is paid by the assessee. Hence this advocate fee would be squarely allowable as revenue expenditure. Accordingly, the Ground Nos. 2 and 3 raised by the assessee are allowed.

4. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of Rs 81,632/- (51020+30612) out of two expenses incurred under the head Advertisement & Publicity.

5. We have heard the rival submissions and perused the materials available on record. The Id. AO called for the details of Advertisement and Publicity expenses claimed as deduction by the assessee during the course of assessment proceedings, which were duly furnished by the assessee. On perusal of the details filed, the Id. AO observed that the Advertisement and Publicity expenses incurred on 20.7.2015 and 30.9.2015 for Rs 51,020/- and Rs 30,612/- respectively were not supported by any bill / vouchers. The assessee responded that these expenses were incurred towards sponsorship of seminar organized by Indian Dairy Association and enclosed the correspondences exchanged in this regard before the Id. AO. The Id. AO however proceeded to disallow the sum of Rs 81,632/- as not supported by any bill / voucher. Before the Id. CIT(A), the assessee submitted the ledger account and internal journal vouchers together with the correspondences from Indian Dairy Association asking the assessee to sponsor certain amounts. The Id. CIT(A) however did not heed to those evidences and upheld the action of the Id. AO.

6. We find from the evidences available in Pages 53 to 56 of the Paper Book, that assessee had indeed made payment of Rs 51,020/- to Indian Dairy Association Gujarat State Chapter for organizing seminar on 'Latest Trends in Evaporation and Drying Technology' at Madhuban Resort, Anand-Sojitra Road, Vallabh Vidyanagar, Gujarat on 28th August 2015. It is not in dispute that the assessee is also engaged in the dairy business and that it had meet its business obligations by participating in the said seminar and for knowing the latest updates and practices in the prevailing industry. This payment of Rs 51,020/- is duly approved by the Managing Director of the assessee company which is evident from the endorsement note made by Managing Director. Similarly a sum of Rs 31,020/- is incurred by the assessee to honor Mr V H Shah(a dignatory) as requested by

Chairman of Indian Dairy Association, with Shawl, coconut, framed citation , silver engraved momento etc. Hence these expenses , in our considered opinion, are wholly and exclusively meant for the purpose of business of the assessee. Accordingly, the Ground Nos. 4 & 5 raised by the assessee are allowed.

7. The Ground Nos. 1, 6 & 7 raised by the assessee were stated to be not pressed by the Id. AR at the time of hearing before us as relief for the same had been granted by the Id. AO in the order passed u/s 154 of the Act dated 5.7.2021. Accordingly, Ground Nos. 1,6 & 7 are dismissed as not pressed.

8. The Ground Nos. 8,9 & 10 raised by the assessee are general in nature and does not require any specific adjudication.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 23/10/2023.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/10/2023
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi