

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

Before Shri Shamim Yahya, Accountant Member
& Shri Ravish Sood, Judicial Member

ITA No.1746/MUM/2019
Assessment Year: 2010-11

M/s Infra Dredge Services Pvt. Ltd. Flat No.1101, Mount Everest Bldg., B-Wing, Bhakti Park, Wadala (East), Mumbai 400 037. PAN AABCI9189A (Appellant)	Vs.	The DCIT Circle (2)(2)(1), Mumbai (Respondent)
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Appellant By : None
Respondent By : Shri Uodal Raj Singh

Date of Hearing : 08.10.2020	Date of Pronouncement : 14.10.2020
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ORDER

Per Shamim Yahya, Accountant Member

This is an appeal by the assessee directed against order of learned CIT(A)-5, Mumbai, dated 11.02.2019, pertaining to assessment year 2010-11.

2. The Grounds of appeal raised by the assessee read as under:

"1. The Ld. CIT(A) erred in confirming the order of Ld. AO in treating revenue expenditure of Rs. 29,61,040/- as Capital in nature;

2. The Ld. CIT(A) erred in upholding the disallowance made by Ld. AO of expenditure on account of Stamp duty and mortgage charges of Rs. 21,31,120/- and Rs. 8,30,920/- respectively on the ground that these are nonrecurring expenditure made towards acquisition of assets and hence capital in nature;

3. The Ld. CIT(A) erred in not appreciating the fact that during the year there were no additions made in the capacity of Fixed Assets/ lease assets."

3. The solitary issue in this appeal relates disallowance of revenue expenditure incurred on stamp duty amounting to Rs 21,31,120/- and mortgage charge amounting to Rs 8,30,920/- for obtaining loan. The Assessing Officer held it as capital expenditure as the loan was for acquiring capital asset.
4. Upon assessee's appeal, learned CIT(A) confirmed the disallowance observing as under:

"7.4.1 I have considered the submissions of the appellant and perused the materials available on records. The appellant has requested to delete the impugned disallowance of Rs. 21,31,120/- (actually Rs. 21,30,120/-) being Stamp Duty and Rs. 8,30,920/- being Mortgage charges, which have been held as capital expenditure by the Ld AO, The appellant's main contentions are that the said expenses have been incurred for the purposes of acquiring business funds and hence the same is incurred wholly and exclusively 'for the purposes of business. The appellant has also submitted that such charges are revenue in nature and no enduring benefit has arisen from the same. In support of its claim the appellant has placed reliance on various judicial pronouncements as detailed above. The contentions- of the appellant have been considered carefully. From the submissions of the appellant it is observed that it is an admitted fact that during the year the appellant has availed certain credit facilities from the bank for the purpose of acquisition of "Two Dry Docking of Trailer Suction Hooper Dredgers" amounting to Rs. 56.50 crores for which deed of hypothecation and registered mortgage deed were executed between the appellant and SBI on 22.03.2010 and for the same Stamp duty was paid at Rs. 21,30,120/- and the Mortgage charges was paid at Rs, 8,30,920/-. From the same it is evident that said expenditures have been incurred for 'acquisition of new assets namely "Two Dry Docking of Trailer Suction Hooper Dredgers". Further, from perusal of above referred mortgage deed it is observed that therein it has been mentioned that "Whereas the Borrowers have applied to the Mortgagees for the grant of Term Loan/Credit facilities to the extent of Rs. 56.50 crores (Rupees Fifty six Crores Fifty lacs Only) for the purposes of acquisition and maintenance of dredgers." From the above, it is evident that the expenses under consideration were incurred for acquisition of assets and it is not the case of the appellant that the said Dredgers were stock in trade in its hand and hence the same is ought to be treated as capital in nature. The reliance placed by the appellant on various judicial pronouncements, as detailed above, is misplaced as the facts adjudicated therein were different and further therein the issue of expenses related to acquisition of capital assets was not considered. In view of the facts and circumstances of the case, I am of the considered

opinion that no fault can be¹ found with the action of the Ld. AO in treating the expenses under consideration as capital in nature. Hence, the impugned disallowances of Rs. 21, 30,120/- being stamp-duty charges and Rs. 8,30,920/-being mortgage charges are CONFIRMED”.

5. Aggrieved, the assessee is in appeal before us.
6. We have heard the learned DR and perused the material on record. We find that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of India Cements Ltd. vs. CIT 60 ITR 52. In this case the assessee obtained certain loan which was secured by a charge on the fixed assets of the company. It incurred expenditure like legal fees, registration fees, stamps etc. and claimed that it was a business expenditure. Revenue disallowed the same on the ground that the impugned expenditure was incurred in obtaining capital. On appeal, revenue contended that even if it was revenue expenditure, it was not laid out wholly and exclusively for the purpose of business. The Hon'ble Apex Court held that the loan obtained was not an asset or advantage of an enduring nature; that the expenditure was made for securing the use of money for a certain period and that it was irrelevant to consider the object with which the loan was obtained. Consequently, in the circumstances of the case, the expenditure was not in the nature of capital expenditure and was laid out or expended wholly and exclusively for the purpose of the assessee's business.”
7. Since the facts of the present case are identical to that of India Cements Ltd. (supra), we are of the view that the action of the authorities below in holding the expenditure as capital in nature is not sustainable. Hence, we set aside the order of the authorities below and decide the issue in favour of the assessee.

8. In the result, the appeal is allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on Oct, 2020.

**Sd/-
(Ravish Sood)
JUDICIAL MEMBER**

Mumbai, Dated : 14th October, 2020.
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**Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER**

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A),
4. The CIT
5. The DR, 'C' Bench

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai