

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.4975/Del./2018
(ASSESSMENT YEAR : 2013-14)**

Fiitjee Edusoft Ltd.,
(merged with Fiitjee Ltd.),
29-A, Kalu Sarai, Sarvapriya Vihar,
New Delhi – 110 006.

vs. ACIT, Central Circle 6,
New Delhi.

(PAN : AAACF8148D)

**ITA No.5266/Del./2018
(ASSESSMENT YEAR : 2013-14)**

ACIT, Central Circle 6,
New Delhi.

vs. Fiitjee Edusoft Ltd.,
(merged with Fiitjee Ltd.),
29-A, Kalu Sarai, Sarvapriya Vihar,
New Delhi – 110 006.

(PAN : AAACF8148D)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Anil Bajaj, CA
REVENUE BY : Shri Gurpreet Shah Singh, Sr. DR**

Date of Hearing : 12.01.2023
Date of Order : .01.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are cross appeals by the assessee and Revenue arising out of the order of Id. CIT (Appeals)-XXV, New Delhi dated 11.05.2018 pertaining to the Assessment Year 2013-14.

2. The grounds of appeal taken by the assessee read as under :-

“1. The Learned CIT(A) ('Ld. CIT(A)') and the Learned Assessing Officer ('Ld. AO') erred in law and in facts in disallowing an amount of Rs. 2,61,76,161 (Rupees Two Crores Sixty Seven Lacs Seventeen Thousand Five Hundred Seventeen only) as revenue expenditure under section 37 of the Income Tax Act, 1961 ('the Act').

2. The Ld. CIT(A) failed to appreciate that these are revenue business expenditure such as employee costs and finance charges etc. incurred for the continuous running of the business and thus cannot be said to be of capital in nature so as to warrant their disallowance under Section 37 of the Act.

3. Without prejudice to Ground 0.1, the Ld. CIT(A) has erred in facts and in law in not passing a speaking order directing the Ld. AO to allow depreciation at the specified rate of 25% as per the provisions of Section 32 of the Act.

That the grounds of the appeal as herein are without prejudice to each other.”

3. The grounds of appeal taken by the Revenue read as under :-

“1. The order of Lei. CIT(A) is not correct in law and facts.

2. The Ld CIT(A) has erred in not upholding the AO's action of making disallowance of Rs.2,61,76,161/- u/s 37 of the I.T. Act.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in treating disallowed expenses of Rs.2,61,76,161/- as capital items (IPRs) and

allowing the depreciation on capital expenses (IPRs) amounting to Rs.65,44,040/- which was never claimed by the assessee.”

4. In the assessment order, AO noted that assessee company is engaged in the business of conducting coaching classes, test preparation classes, mock tests and providing course material for engineering examination. AO noted that during the year, assessee company incurred various expenses but no income was earned from the business activities. Further, AO noted that perusal of the balance sheet revealed that assessee has written off the entire component/expenditure incurred in the earlier years from capital work-in-progress which is forming part of fixed assets during the year under consideration. AO asked the assessee in these circumstances why the expenses for current year be not disallowed as no business activities were taken during the year as well as previous year. AO was not satisfied with the assessee's explanation. He held that assessee company has not done any business and there was no nexus between earning of the income and expenditure. Further AO held that assessee needs to incur certain expenditure to retain its status as a company, hence expenditure relating to audit fees, insurance and other administrative & office expenses totaling Rs.4,68,907/- was allowed by the AO and rest of the expenditure of Rs.2,61,76,161/- was disallowed.
5. Against this order, assessee appeal before the Id. CIT (A). Ld. CIT(A) was of the opinion that the project abandoned by the assessee has

provided intellectual property right as know-how and he held that the earlier expenditure written off should be allowed as capital expenditure and depreciation should be allowed. Further he held that the action of AO not disallowing the same as revenue expenditure is upheld. The short order of Id. CIT (A) may be gainfully referred as under :-

“a. I have considered the facts of the case, the basis of the disallowance made by the Assessing Officer and the arguments of Ld. AR during appellate proceeding. The appellant was accorded sufficient opportunity of being heard in the matter.

b. During the year, the appellant incurred certain expenditure towards developing a new line of business by way of development of digitalized education system. The digital and remote educational process is entirely a new line to create sustainable mode of dissemination to avail a distinct advantage in the field of coaching which is undergoing paradigm changes. It was contended by the ARs that the company wanted to take forward its project of developing an e-learning system of education thus facilitating learning on E platform using on-line tools/methodologies of learning for students. Such media included the medium of video learning to capture a wide base of own students as also other students. It was submitted by the Ld ARs by filing written submissions that though some progress was made on. development of software but, the appellant entity found the method was no cost effective in so far as the returns were not sufficient. Basis the cost benefit analysis, it was seen that the costs exceeded the benefits and the project was found commercially unviable at that stage. The appellant though submitted that the project was shelved, but it is prudent that the project rendered a solid learning and created a strong basis for the appellant to re-launch the project in any time in future. The appellant has created a set of intellectual knowhow in this arena of e learning which is futuristic and is bound to be the norm in the times to come. Thus, the expenses so incurred have generated substantial IPRs for the appellant entity. These would not fall in the category of Revenue Item in view of the discussion supra. The AO is directed to allow the

expenses as Capital item and allow depreciation as per law. The action of the AO in disallowing the same as revenue items is upheld. The jurisprudence cited by the appellant is on entirely different facts where no business was carried out or the revenues were depleting. This area is a specific action that has resulted in sustainable benefit and created a knowledge base to be exploited later. The expenses must be capitalized, in all fairness. The AO shall give effect to the order as supra.”

6. Against this order, assessee and Revenue are in cross appeals before us. We have heard both the parties and perused the records.

7. Ld. Counsel for the assessee submitted that the expenditure incurred by the assessee was capitalized earlier. During this year, some progress was also made in the same area which was development of software but later in the year, it was realized that cost of promoting the programme and to make this popular in the students community as a whole was far exceeding the benefits, thus making it commercially unviable and as per the advice of the management, the project stands abandoned. Hence, the capital work-in-progress which was opening balance on April 1, 2012 was written off through P&L account as “prior period expenses/balances written off”. Further, ld. Counsel for the assessee claimed that during the year under consideration, administrative and other operating expenses, employee benefit expenses and finance charges were aggregating to Rs.2,66,89,953/-. That the said expenses had to be incurred by the assessee for statutory necessity and commercial expediency. Hence, ld. Counsel for the assessee claimed that this

expenditure is revenue in nature and these are to be allowed. He further submitted that there is no finding of the AO that any particular expenditure was not related to assessee's business. Thereafter, ld. Counsel for the assessee referred to plethora of case laws in this regard as under:-

1. CIT vs E-funds International India (2007) 162 Taxmann 1 Delhi High Court
2. ITO vs Mokul Finance (P) Ltd. (2009) 29 SOT 11 Delhi Tribunal
3. CIT vs Ganga Properties Ltd. (1992) 62 Taxmann 286 Calcutta High Court
4. L.Ve. Vairavan Chettiar vs CIT (1969) 72 ITR 114 Madras High Court
5. ITO vs Patel Corp. P Ltd. [2017] 86 taxmann.com 82 Mumbai Tribunal
6. Akarsh Printers Ltd., Kolkata vs Department Of Income Tax I.T.A.No.2279 (Kol) of 2007 Kolkata Tribunal
7. Pr. Commissioner of Income Tax-8 vs. M/s. Rediff.Com India Ltd. 2021 (10) TMI 174 Bombay High Court
8. CIT, Cochin vs. South India Corporation Ltd. [2020] 121 taxmann.com 84 HIGH Court of Kerala
9. Chemplast Sanmar Ltd. vs. ACIT (2018) 97 taxmann.com 347 High Court of Madras
10. Adadyn Technologies (P.) Ltd. vs. ACIT [2018] 97 taxmann.com 347 ITAT Bangalore
11. Mahindra & Mahindra Ltd. vs. ACIT [2020] 118 taxmann.com 409 Mumbai - Trib

8. We find that as per assessee's own admission, the assessee was capitalizing the expenditure in the assessee's line of business and put in the balance sheet as capital work-in-progress. As per assessee's own admission, the management found that the project was not commercially viable and has to be abandoned. In this view of the matter, the opening balance was written off as prior period expenses and not claimed as expenses in the computation of income. However, the part of the same expenses incurred during the year has been treated by the assessee as relating to same business and assessee wants this expenditure to be allowed as revenue expenditure. We find that assessee is taking contradictory stand. As per assessee's own admission, similar expenses incurred in earlier year are written off as abandoned project. Similar expenditure in the current year assessee wants to be treated as revenue expenditure. It is settled law that any party cannot be allowed to approbate and reprobate i.e. accept and reject part of the same nature. In the same year, assessee wants to adopt two system of accounting In the present case, AO has allowed those expenditure which as per AO is necessary for the purpose of managing the status of the company. While the assessee on the other hand claimed that the entire expenditure was meant to preserve the status of the company and was statutory necessity and commercial expediency. In our considered opinion, those part of the

expenditure incurred during the year which are identical to the earlier year, which have been written off by the assessee as abandoned cannot be allowed as revenue expenditure during the year. Hence, we deem it appropriate to remit the issue to the file of AO. AO shall examine the nature of expenditure during the year and those of the expenditure which are of similar nature which have been written off as abandoned for earlier period cannot be allowed as revenue expenditure. Needless to add, assessee shall be provided an opportunity of being heard.

9. Since we have already remitted the issue to the file of AO in assessee's appeal, the Revenue's appeal becomes infructuous and the same is dismissed as infructuous.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes and the Revenue's appeal is dismissed as infructuous.

Order pronounced in the open court on this 23rd day of January, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 23rd day of January, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XXV, New Delhi.
- 5.CIT(ITAT), New Delhi.

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