

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No. 2940/Mum/2011
(Assessment Year: 2007-08)

Pinebridge Investments Capital India Private Limited (formerly known as AIG Capital India Private Limited) 1101, TowerB, Peninsaula Business Park, G.K. Marg, Lower Parel, Mumbai-13	Vs	ITO, Range 6(1)(4) Mumbai
PAN : ASAFCA7262A		
(Appellant)		(Respondent)

Appellant by	Shri Nitesh Joshi
Respondent by	Shri Ganesh Bare

Date of hearing : 14-07-2016
Date of pronouncement : 27 -07-2016

ORDER

Per ASHWANI TANEJA, AM

This appeal has been filed by the assessee against the order of Commissioner of Income-tax (Appeals) [hereinafter called CIT(A)] dt 12-01-2011 passed against the assessment order of the AO u/s 143(3) DT 3-12-2009 for A.Y. 2007-08 on the following grounds:

“The following grounds of appeal are without prejudice and independent of the other.

On the facts and circumstances of the case, PineBridge Investments Capital India Private Limited (Formerly known as AIG Capital India Private Limited) [hereinafter referred to as the Appellant] craves to prefer an appeal against the order passed by the Commissioner of Income-tax (Appeals) - 14, Mumbai [hereinafter referred to as the learned CIT (A)], under section 250 of the Income-tax Act, 1961 (Act) in respect of the order passed by the Income-tax officer - 6(1)(4), Mumbai (the AO) under section 143(3) of the Act, on the following ground:

The learned CIT(A) erred in confirming the action of the AO in disallowing the consultancy charges paid to Amarchand & Mangaldas & Suresh A Shroff & Co (AMS) amounting to Rs 10,201,400.”

2. During the course of hearing, arguments were made by Shri Nitesh Josh, on behalf of the assessee and by Shri Ganesh Bare on behalf of the revenue.
3. The only effective ground in this case is with regard to disallowance of a sum of Rs.1,02,01,400 being the consultancy charges paid to the legal advisor firm, M/s Amarchand Mangaldas Suresh A Shroff Company on the ground that the said amount was not incurred for the purpose of business as the same was incurred prior to commencement of business of the assessee.
4. The brief facts as culled out from the orders of the lower authorities are that the assessee company was incorporated during the year under consideration on 25-04-2006. The assessee company is an investment holding company of AIG group and is registered with Reserve Bank of India (RBI) as Non Banking Financial Company (NBFC). The principal business of the assessee company was to carry out business of asset management, consumer finance, leasing and financing and in trusteeship of Mutual Funds, offshore funds, pension funds, etc. The AO discussed this issue at para 4 on page 2 - 5 of the Assessment Order. During the course of assessment, the AO observed that during the year, the assessee has received only interest income on fixed deposits placed with Citibank N.A, Mumbai, against which the assessee has claimed various expenditure aggregating to Rs.204,86,458/-, which includes

an amount of Rs.1,25,80,076/- paid towards consultancy charges to a law firm namely M/s. Amarchand Mangaldas & Suresh A. Shroff & Co. During the course of assessment, the AO asked the assessee as to why such consultancy charges should not be disallowed since consultancy charges paid have not resulted into interest income. The AO further asked the assessee to explain the nexus between the interest income and that of consultancy charges paid. In response to the same, the assessee made its submissions. It was clarified that an amount of Rs. 1,25,80,078/- was paid to M/s, Amarchand Mangaldas & Suresh A. Shroff & Co. out of which the assessee itself has disallowed an amount of Rs.23,78,676/-, as these expenditure has been incurred prior to incorporation and balance amount of Rs.1,02,01,400/- only has been claimed as expenditure. The submission of the Assessee Company could not satisfy the AO and therefore AO disallowed the consultancy charges claimed as expenditure of Rs.1,02,01 400.

5. Being aggrieved, assessee filed appeal before Ld. CIT(A) and made detailed submissions. The arguments made by the assessee before the Ld. CIT(A) as discussed by Ld.CIT(A) in his order are reproduced below:

“It has claimed that the appellant is a registered NBFC with RBI and its activity includes Asset Management, Consumer Finance, Leasing and Financing, Trusteeship for Mutual Funds, Offshore Fund and Pension Fund, etc. It was claimed that during the course of such NBFC activity, it has placed certain Fixed Deposit with Citibank on which it has received interest income which has been offered for tax under the head 'Business Income'. It has further submitted details of legal and professional fees paid and submitted that the above fees have been paid to Advocate firm M/s. Amarchand Mangaldas & Suresh A. Shroff & Co. (AMS) for due diligence carried out for investment purposes. Since the appellant company is engaged in the business of making investment, such fees paid is 'for the purpose of business', therefore, the same needs to be allowed u/s 37(1) of the I.T. Act, 1961. The appellant claimed that as per provisions of section 37(1), such

expenditure incurred is allowable as this expenditure is neither a capital expenditure nor an expenditure of personal in nature. The appellant further claimed that such expenditure has been incurred wholly and exclusively 'for the purpose of business', therefore the same needs to be allowed. The appellant has also relied upon the following case laws:

- (a) DCIT vs. Venkateswar Investment & Finance P. Ltd. 277 ITR 20 (Cal), ITAT.
- (b) CIT Vs. Amalgamations Pvt Ltd (1997)226 ITR 188 (SC)
- (c) CIT Vs. Malayalam Plantations Ltd (1987)188 ITR 63 (SC)
- (d) CIT Vs. Jagannath Kishonlal 41 ITR 360 (SC).
- (e) CIT Vs. Panipat Woolen & General Mills 103 ITR 66.
- (f) Madhavprasad Jatia Vs. CIT 118 ITR 200 (SC), and
- (g) S.A. Builders Ltd Vs. CIT 288 ITR 1(SC)."

6. Ld. CIT(A) considered the submission of the assessee, but he was not satisfied and did not find force in the arguments of the assessee. It was held by the Ld.CIT(A) that the impugned expenses have been incurred by the assessee for making investment in shares which is shown as "investment" in the balance sheet, therefore, such expenditure incurred is for making investment; hence, cannot be allowed as business expenditure. It was also held by the Ld.CIT(A) that business of the assessee company, as an NBFC is to promote, acquire or invest by way of capital or debt in securities of body corporate, trust or societies. In the present case, the assessee has not made any investment in capital or debt in securities of body corporate, trust or societies, but rather, has parked its surplus funds available in Banks on which it has received interest income. Under these circumstances, it was held that the said expenses cannot be said to be incurred for the purpose of business and, therefore, disallowance made by the Assessing Officer was confirmed.

6. Being aggrieved, assessee filed appeal before the Tribunal. During the course of hearing Ld. Counsel drew our attention on the balance-sheet of the

assessee company for the year under concern showing that assessee had 'set-up' its business during the year under consideration. Law in this regard is well settled that expenses incurred in carrying out the business activities after the business is 'set-up', are allowable as business expenditure. Our attention was drawn on the notes to the computation sheet filed along with the return of income wherein it is clearly mentioned that assessee was ready to commence its business on October 11, 2006, being the date on which assessee company received NBFC registration certificate from RBI and therefore, all the expenses incurred prior to this date were voluntarily disallowed and all other expenses incurred subsequent to this date were claimed as business expenses. It is further submitted that these expenses have been incurred in the normal course of business and, therefore, allowable as revenue expenses.

7. Per contra, the Id. DR submitted that expenses can be incurred only after making investment and not prior to that and therefore, these were rightly disallowed by the lower authorities.

8. We have gone through the orders of lower authorities and submissions made before us by both the sides. The adjudication of the issue involved before us involves following dimensions:

- (i) In the case of a company, expenses under the head "Income from business" can be allowed from which stage?
- (ii) When that stage was achieved in the case of Assessee Company? i.e. when the business was 'commenced' and when it was 'set-up'?
- (iii) What kind of expenses can be allowed as revenue expenses in the case of a financial company in the course of its business? and
- (iv) Whether expenses under consideration in the form of legal fee

paid to a law firm needs to be capitalised or allowed as revenue expense, under the law?

9. We have pondered over all these issues. As far as first dimension is concerned, i.e. from what stage the expense can be treated as allowable in the case of a company, we shall make first of all, reference to section 3 of the Income-tax Act, 1961, which defines "previous year", as under:

"3. For the purposes of this Act, "previous year means the financial year immediately preceding the assessment year:

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year."

10. It may be noted from the perusal of the proviso to 'section 3' that in the case of newly set up business, the previous year shall be the period beginning with the date of setting up of the business or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year. Thus, we need to find out when the business of the assessee company can be said to be 'set-up'. The business may be commenced subsequently, but for the purpose of allowing the expenses, it has to be seen that when the business can be said to be 'set-up'. It is noted from the 'Notes to the Computation Sheet' attached with the return of income that assessee had clearly given its date of setting up of business as 11th October, 2006 being the date on which the assessee company received NBFC registration certificate from RBI. We agree with the assessee company's contention that on this date, the assessee was legally and commercially competent to do its business. In our view the expression "setting up" means, as defined in the Oxford

English Dictionary, "to place on foot" or "to establish", and in contradistinction to "commence". The distinction is this that when a business is established and is ready to be commenced then it can be said that business is 'set up'. But before it is ready to commence business, it is not set up. In other words, for setting up of business, what is required is readiness for commencement of business and actual commencement of business would not be necessary. In this regard, we can also take further guidance from following judgements:-

Western India Vegetable Products Ltd v CIT(A) (26 ITR 151)(BOM)

CIT Bombay v Ralliwolf Ltd (121 ITR 262) (BOM)

CIT(A) V Saurashtra Cement and Chemical Industries Limited (91 ITR 170)(Guj)

10.1. We shall also like to make reference to the judgment of the Mumbai Bench of the Tribunal in the case of DHL Express (I) Ltd vs ACIT 154 TTJ 108 (Mum) wherein it was held that setting up of business is distinct from commencement of business. The business can be 'set-up' when the company is ready to discharge the function for which it is incorporated. It was also held that expenditure incurred after the setting up of business is deductible as revenue expenditure. It is also brought to our notice that one of the objects for which the company was incorporated was to make investment in other companies, and the assessee company had received funds in the form of share capital or other sources before 11-10-2006 and it had started making due diligence for potential investee companies immediately after getting NBFC registration certificate on 11-10-2006, then it can be said that assessee company was ready to commence its business and thus its business was set-up on 11-10-2006. Thus, we find that in principle, the expenses incurred after 11-10-2006 having been incurred after setting up of business are deductible as revenue expenditure.

11. The next issue to be examined here is about the nature of expenses under question. It is noted that a sum of Rs. 4,21,400 and Rs.1,60,000 (aggregating to Rs.2,01,400) were stated to have been incurred on account of reimbursement of

expenses for purchase of stamp paper. During the course of hearing it was stated by the Ld. Counsel that no details are available about the nature and purposes of these expenses. Under these circumstances, we find that these expenses are not allowable and, therefore, these are disallowed.

11.1. With regard to the remaining expenses of Rs. One crore, it is noted that this amount has been paid to the aforesaid law firm on account of provision for legal and professional services rendered for the purpose of diligence of the investments to be made by the assessee company into the share capital of other companies. The lower authorities have held that these expenses are not incurred for the purpose of business of the assessee and, therefore, not allowable. In this regard, we do not agree with the reasoning given by the Ld. CIT(A). The admitted facts on record, as was noted by the Ld. CIT(A) are that assessee company is a registered NBFC company with RBI and its activity includes whole spectrum of activities pertaining to advisory, investment and funding. Under these circumstances, it is clear that expenses incurred on account of due diligence of a proposed investment is clearly made as part of the business activities of the assessee and, therefore, the impugned expenses are expenses incurred in the ordinary course of its business. The other reasoning given by the Ld. CIT(A) was that no investment was made during the year under consideration and funds were parked in the bank. On this aspect also, we differ with the reasoning given by the Ld. CIT(A). Though, clear facts are not before us with respect to the making of investment in this year or next year, but even if investments were not made during the year under consideration, it cannot be said that these expenses were not incurred for the purpose of business. It is well settled law that results of the business activities or fruits of efforts to a business organisation may yield in the concerned year or in subsequent years or never. But that would not mean that the expenses incurred would not be expenses incurred during the course of business. Thus, we find that approach of the lower authorities in disallowing these

expenses was contrary to law and facts. Thus, disallowance is confirmed to the extent of Rs.2,01,400 and the balance disallowance of Rs.1 crore is hereby deleted. The grounds raised by the assessee are partly allowed.

12. As a result, this appeal may be treated as partly allowed.

Order pronounced in the court on this _27th ___ day of July, 2016.

Sd/-	Sd/-
(AMIT SHUKLA)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 27 July, 2016

Pk/-

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, A-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES