



M/s Nuclear Healthcare Limited
ITA No.661/Mum/2018
Assessment Year: 2012-13

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

माननीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.661/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s Nuclear Healthcare Limited D-37/3, TTC Industrial Area, MIDC Turbhe, Navi Mumbai 400 703	बनाम/ Vs.	ACIT 16(3) Aaykar Bhavan, MK Road, Churchgate, Mumbai 400 020
PAN/GIR No. AADCN-5392-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Dinkle Hariya – Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19/08/2020
घोषणा की तारीख / Date of Pronouncement	:	05/10/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-7, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT-7/IT-55/2015-16 dated 14/11/2017 on following grounds of appeal: -



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ITA No.661/Mum/2018
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GROUND NO.1

- 1.1 The learned ACIT erred in disallowing a sum of Rs.28,14,500/- on account of lease rent.
- 1.2 The Appellant contend that the same is a revenue expenditure incurred during the year and ought to be allowed as expense.

GROUND NO.2

- 2.1 The learned ACIT erred in disallowing sum of Rs.43,69,322/- claimed as expenditure but in books treated as deferred revenue expenditure.
- 2.2 The learned ACIT failed to appreciate that the expense is incurred after the business is set up and based on various decided cases, the expense incurred after the business is set up ought to be allowed.
- 2.3 The Appellant prays that the disallowance ought to be deleted and expense be allowed as claimed.

As evident the assessee is aggrieved by disallowance of lease rent of Rs.28.14 Lacs and another disallowance of Rs.43.69 Lacs which was claimed by the assessee in its computation of income, though treated as deferred revenue expenditure in the books of accounts.

2. We have carefully heard the arguments advanced by both the sides. We have also perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The material on record would show that an assessment was framed against the assessee for the year under consideration u/s 143(3) on 23/03/2015 wherein the returned loss of Rs.172.17 Lacs was reduced to Rs.100.33 Lacs after disallowance of Rs.28.14 Lacs representing lease rent paid by the assessee and another disallowance of Rs.43.69 Lacs which was claimed as revenue expenditure in the computation of income. The assessee being resident corporate assessee is stated to be engaged in the business of providing healthcare services.



Disallowance of Lease Rent

4.1 During assessment proceedings, it transpired that the assessee claimed deduction of Rs.28.14 Lacs, being lease rental premium paid for leasehold land situated at D-37/3, TTC, MIDC Area, Turbhe, Mumbai. The said sum was stated to be paid to MIDC towards differential premium of Rs.27 Lacs and transfer fees of Rs.1.14 Lacs. However, it was noted by Ld. AO that the expenditure pertained to financial year 2010-11 and further, as per the MIDC order, the liability to pay the premium was on the first transferee i.e. Dynamic Reality Private Limited and not on the assessee. Therefore, the deduction of the same was denied to the assessee.

Disallowance of deferred revenue expenditure

4.2 The second disallowance of Rs.43.69 Lacs was related with revenue expenditure claimed by the assessee in its computation of income, though the same was claimed as deferred revenue expenditure in the books of accounts. In support, the assessee explained that the commercial operations were started only during the financial year under consideration. The expenditure of earlier years as well current year was debited as pre-operative expenditure and the same were treated as deferred revenue expenditure in the books of accounts. Nevertheless, the deduction in full was claimed in the computation of income in terms of Sec.37(1) of the Act. However, Ld. AO opined that most of the expenditure was incurred before the commencement of the business. These expenses could be capitalized by the assessee but the same has not been done and full deduction has been claimed. The Income Tax Act



M/s Nuclear Healthcare Limited
ITA No.661/Mum/2018
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would not have the concept of deferred revenue expenditure and the expenditure thus claimed do not stand the principle of matching. Therefore, the said expenditure was also disallowed.

Both the disallowance, upon confirmation by Ld. CIT(A), are under challenge before us.

Our Adjudication

5.1 We have carefully considered the documents placed before us in support of the grounds of appeal. Upon perusal of documents, we find that M/s Thyrocare Technologies Limited (Thyrocare), as a assignee entered into a memorandum of understanding (MOU) on 28/01/2011 with M/s Dynamic Realty Private Limited wherein M/s Thyrocare agreed to acquire and purchase certain leasehold property situated at D-37/3, TTC, MIDC Area, Turbhe, Mumbai for a consideration of Rs.43 Crores payable in manner as specified therein. As per clause-16 of the MOU, all out of pocket expenses including stamp duty charges, registration charges and transfer charges payable to MIDC were to be paid by the assignee alone.

5.2 However, subsequently vide letter dated 08/03/2011 to assignor & confirming party, M/s Thyrocare expressed intention to buy the premises in the name of its associate entity i.e. the assessee. On 09/03/2011, a payment of Rs.28.14 Lacs has been made to MIDC vide receipt no. 251856, a copy of which is on record. The said payment comprises-off of Rs.27 Lacs as differential premium and balance amount of Rs.1.14 Lacs as processing fees. The receipt is in the name of M/s Dynamic Realty Private Limited. The said payment has been made pursuant to MIDC



M/s Nuclear Healthcare Limited
ITA No.661/Mum/2018
Assessment Year: 2012-13

letter no.1805 dated 10/03/2011, a copy of which is on record wherein M/s Dynamic Realty Private Limited has been directed to pay the aforesaid payment as condition of transfer and assignment. The said letter also acknowledges the receipt of the payment from M/s Dynamic Realty Private Limited. Finally, the deed of assignment has been executed in assessee's favor on 18/05/2011. Accordingly, the purchase of said premises has duly been reflected as fixed assets in assessee's books and depreciation, as admissible, has been claimed against the same.

5.3 By enumeration of chronology of events as above, it is quite clear that the said premise was acquired by the assessee itself and as per the terms of MOU, out of pocket expenses including stamp duty charges, registration charges and transfer charges payable to MIDC were to be borne by the assessee alone. Having held so, we are of the considered opinion that the payment of Rs.28.14 Lacs representing differential lease premium and processing fees was incurred in the process of acquisition of a fixed asset and the same constitute part and parcel of the acquisition process. Therefore, the same could not be considered to be revenue expenditure incurred in the course of business but the said amount was to be capitalized along with acquisition cost of Land & Building. Consequentially, the assessee would be entitled for depreciation against the same. Accordingly, on the facts and circumstances, Ld. AO is directed to verify that the payment of Rs.28.14 Lacs has actually been made by the assessee. If so, the said amount would be allowed to be capitalized and the assessee would be eligible



M/s Nuclear Healthcare Limited
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for depreciation against the same. For the said limited purpose and to enable re-computation of assessee's income, the matter stand restored back to the file of Ld.AO. The ground stand partly allowed to that extent.

6.1 Coming to the issue of deferred revenue expenditure, upon perusal of ledger extract of misc. expenditure (asset) as placed on record, we find that the assessee has opening balance of Rs.8.88 Lacs in the said account. The opening balance constitute company formation expenses, share issue expenses and pre-operative expenses. Against this opening balance, the assessee has claimed separate deduction u/s 35D @20% as amortization of preliminary expenses which comes to Rs.1,77,600/-. The same has been claimed as well as allowed to the assessee.

6.2 The assessee has incurred fresh expenditure under the same 3 heads which are on account of stamp duty, advertising / marketing expenses, bank charges, business promotion, office, printing & stationery, professional charges, registration charges, repairs, securities, travelling etc. which are stated to be pre-operative expenses up-to the commencement of commercial operations of the company. Further, the assessee has allocated pre-operative expenses at year end which are estimated @80% with reference to pre-operative period.

6.3 Thus, it could be seen that the assessee itself has allocated pre-operative expenditure in the books of accounts and a part of the same is written-off in its books of accounts. However, while computing the income, it has claimed full deduction of fresh expenditure incurred during the year as against the fact that it has claimed deduction @20% on opening balance of similar expenditure. Therefore, there was



M/s Nuclear Healthcare Limited
ITA No.661/Mum/2018
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inconsistency in the manner of claiming the expenditure. The nature of expenditure remaining the same, the deduction would be allowable as per Sec. 35D only. The rule of consistency would debar the assessee to make claim in different manner. Therefore, we are of the considered opinion that the deduction of the fresh expenditure incurred during the year was allowable in terms of Sec.35D only. We order so. The Ld. AO is directed to re-compute the income of the assessee after granting deduction Sec. 35D @20%. This ground stands partly allowed.

7. The appeal stands partly allowed in terms of our above order.

Order pronounced on 05th October, 2020.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/10/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.