

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5418/MUM/2018
Assessment Year: 2012-13**

IDFC Projects Ltd.,
3rd floor, Naman Chambers,
C-32, G Block Bandra Kurla
Complex, Bandra East,
Mumbai-400051.

PAN No. AABCI7941N

Appellant

Vs. The Assistant Commissioner of
Income (HQ) (Judl.) to the CIT-
14, Room No. 404, 4th floor,
Aayakar Bhavan,
Mumbai-400020.

Respondent

Assessee by	:	None
Revenue by	:	Mr. V. Sreekar, DR
Date of Hearing	:	29/10/2020
Date of pronouncement	:	12/11/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-22, Mumbai [in short 'CIT(A)'] and arises out of assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 29.10.2020, neither the assessee nor its authorized representative appeared before the Tribunal on the above date. As there is non-compliance by the assessee, we are proceeding to dispose off

this appeal, after examining the documents available on record and after hearing the Ld. Departmental Representative (DR).

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

1.1. The learned CIT (A) erred in disallowing a sum of Rs.8,21,987/- merely on the basis that corresponding income has not been offered to tax in any earlier year.

1.2 The learned CIT(A) erred in not granting deduction under Section 28 of the Act and without considering the explanations of the Appellant.

1.3. The learned CIT (A) erred in not granting deduction under Section 37(1) of the Act by holding the expenditure on write off of investment as a capital expenditure and the write off of medical expenses for employees as not being incurred for the purpose of business.

2.1 The learned CIT(A) erred in disallowing the claim of bonus to the extent of 20% of the total amount merely on the basis that it was not justified and without considering the explanations of the Appellant.

2.2 The learned CIT(A) erred in holding that the payment of bonus to these persons is not on account of terms of employment.

2.3 The learned CIT(A) erred in disallowing the claim of bonus on the basis that the Appellant's financials show no increase in revenue to justify payment of bonus

2.4 Contrary to the facts, the learned CIT (A) erred in concluding that the decision to authorize the employees to handle the process of exit was taken only in March 2012 and payment of bonus cannot be ascribed to services rendered for exiting the process.

3. The learned CIT (A) erred in dismissing the ground for initiation of penalty proceedings under Section 271(1)(c) of the Act on the above disallowances by treating the same as premature.

3. Briefly stated, the facts of the case are that the assessee is a public limited company engaged in the business to develop, execute and manage infrastructure projects. It filed its return of income for the assessment year (AY) 2012-13 on 28.09.2012 declaring total income at Rs. Nil and current year loss of Rs.5,10,98,379/-.

As per the profit and loss account, the assessee had claimed an amount of Rs.8,21,997/- as bad debt written off under the head "Other Expenses". During the course of assessment proceedings, the assessee filed before the AO the following details :

Write off of Investment in Jetpur Somnath Highways Ltd. on account of winding up	Rs.7,40,000/-
Irrecoverable medical Expenses written off	Rs.81,997/-
	Rs.8,21,997/-

However, the AO was not convinced with the above submission of the assessee on the ground that it had never offered this as income in any of the earlier assessment years. Therefore, the AO disallowed the above amount of Rs.8,21,997/-.

3.1 In appeal, the Ld. CIT(A) affirmed the above disallowance on the ground that (i) in respect of write off of investment of Rs.7,40,000/- in Jetpur Somnath Highways Ltd., on account of winding of, the said amount is not eligible for write off as bad debts as per provisions of section 36(2) of the Act, as the same has not been accounted for as its income in any of the earlier years, (ii) the investment in shares of Jetpur Somnath Highways Ltd. is a capital expenditure, as the same is shown in the balance sheet as an

investment and therefore, the write off is a capital loss, (iii) medical expenses of Rs.81,997/- incurred on behalf of the employees would be inadmissible and more so as there is nothing on record to indicate that such expenses have been treated as perquisite in the hands of the employees.

3.2 Before us, the Ld. DR relies on the order passed by the CIT(A) and submits that the disallowance of Rs.8,21,997/- made by the AO be affirmed.

3.3 We have heard the Ld. DR and perused the relevant materials on record. We find that the assessee was awarded a project by the National Highways Authority of India ('NHAI') to design, engineer, procure, construct, maintain, manage, operate and collect toll on Jetpur Somnath section of National Highway on Design, Build, Finance, Operate and Transfer (DBFOT) basis. The project was required to be executed through a special purpose vehicle ('SPV'). The assessee decided to conduct the project through an existing non-operational company of the Group (M/s IDFC Capital Co Ltd which was renamed as JSHL) and designated the same as the SPV required for undertaking the project. The assessee owned 74% of the share capital of the SPV for which it had paid Rs.7,40,000/-. However, the NHAI rejected the application to designate JSHL as the SPV. As a result, the SPV was wound up and since no consideration was received by the assessee on account of winding up of the SPV, the entire investment in JSHL was written off. In the instant case, the write off is nothing but write off of an expenditure on an abandoned project ; the project in question had inextricable link with the assessee's existing business and hence, the expenditure is allowable as revenue expenditure u/s 37(1) of the Act.

On the basis of the above reasons, we delete the disallowance of Rs.8,21,997/- made by the AO.

4. As per the profit and loss account, the assessee has claimed an amount of Rs.1,10,44,874/- as bonus expenses out of total employees salary of Rs.3,15,23,963/-. During the course of assessment proceedings, the assessee furnished details of it before the AO. However, the AO observing that only break-up of salary expenses has been given and no justification was offered, made an ad-hoc disallowance of Rs.22,08,975/- (20% of Rs.1,10,44,874/-).

4.1 In appeal, the assessee submitted before the Ld. CIT(A) that the payment of bonus was commensurate with the qualification and experience of individual employees. However, the Ld. CIT(A) was not convinced with the above explanation of the assessee and confirmed the ad-hoc disallowance of Rs.22,08,975/- made by the AO.

4.2 Before us, the Ld. DR relies on the order of the Ld. CIT(A) and contends that the disallowance of Rs.22,08,975/- made by the AO be affirmed.

4.3 We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the assessee had set up a Special Purpose Vehicle (SPV) i.e. Dheeru Powergen Ltd. to implement 1050 MW (3x350 MW) coal based thermal power plant at District Korbar, in the State of Chhattisgarh. That in spite of all the efforts put in by the assessee, the project could not take off because of many limitations. Finally, the assessee decided in its Board Meeting held on March 7, 2012 to exit the non-coal business. In such a situation, there is merit in the contentions of the assessee before the Ld. CIT(A) that "Mr. Pradeep Singh(Group head of public sector initiatives) having experience of

34 years was authorized to handle the process identifying a buyer to exit from Dheeru Powergen Limited and also to discuss, negotiate and finalize the drafts of the agreement. That in financial year 2012-13, the team was successful in negotiating the deal with a buyer for purchase of Dheeru Powergen Ltd. at an upfront consideration of Rs. 15 crore. That the payment of bonus was commensurate with the efforts rendered by the team over a period of time in order to exit the Project.”

Considering the above, we delete the ad-hoc disallowance of Rs.22,08,975/- made by the AO.

4.4 As the penalty u/s 271(1)(c) has been initiated only, the 3rd ground of appeal is premature.

5. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 12/11/2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 12/11/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai