

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 571/Mum/2023

(Assessment Year: 2011-12)

ACIT-(1)(1)(1)
533/ 579A,
Aaykar Bhavan, MK Road,
Mumbai-400 020

M/s Alok Kumar Agrawal,
Insolvency Resolution
Professional of M/s Cox &
Kings
Vs. 605, Suncity Business Tower,
Gold Course Road, Sector-54,
Gurugram, Haryana-400 020

(Appellant)

(Respondent)

PAN No. AAACC1921B

Assessee by : None
Revenue by : Shri Dhiraj Kumar, DR

Date of hearing: 19.07.2023
Date of pronouncement : 31.07.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.571/Mum/2023 is filed by the Asst. Commissioner of Income Tax 1(1)(1), Mumbai (the learned Assessing Officer) against the assessment order passed under Section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (the Act) dated 30th January, 2016, in case of Cox & Kings Ltd, now under the Insolvency Resolution Process and therefore, represented by IRP, wherein the return of income of the assessee filed on 30th November, 2011 at a total income of ₹86,23,89,109/- is assessed at ₹97,95,23,830/-.



02. There are only two disputes in this appeal.
03. First dispute is with respect to the video shooting **expenses of ₹3,33,41,372/-**, claimed by the assessee as revenue expenditure in the computation of income but capitalized into the books of accounts and shown in the balance sheet. The learned Assessing Officer made the addition of the same in the draft assessment order dated 9th March, 2015. On objections before the learned Dispute Resolution Panel, the learned Assessing Officer was directed to delete the addition. Therefore, no addition was made in the final assessment order, but the learned Assessing Officer is aggrieved with the direction of learned Dispute Resolution Panel and therefore, the learned Assessing Officer filed an appeal before us.
04. The second issue is with respect to the expenditure incurred on issue of nonconvertible debenture. The expenditure so incurred was debited by the assessee to the share premium account. However while filing the return of income, the assessee claimed as a deductible expenditure under section 37 (1) of the act. The learned dispute resolution panel directed the learned assessing officer treating that the disallowance should be restricted only to the extent of nonconvertible debenture money raised used for capital expenditure. The balance expenditure was directed to be allowed as deduction to the assessee despite above accounting treatment. Therefore, the learned AO restricting the addition as per the direction



of the learned dispute resolution panel but in appeal before us against that direction.

05. Brief facts of the case shows that assessee is a company engaged in the business of travel agent, tour operator and forex dealer. Assessee incurred video shooting expenses of ₹3,33,41,372/-, the sum was claimed as deductible expenditure, however, in the books of account the above sum has been capitalized under the head intangible assets following Accounting Standard (AS)-26. The learned Assessing Officer questioned the dual standard adopted by the assessee, wherein in the books of account the expenses are capitalized whereas in the computation of total income, it was treated as revenue expenditure. The learned Assessing Officer disallowed the same and held it to be capital expenditure. The learned Assessing Officer was of the view that revenue expenditure or capital expenditure is not defined under the Income Tax Act. It is a matter of common understanding under certain principles that there cannot be an item of expenditure which is accounted for as capital expenditure in books of accounts and treated as revenue expenditure in the Income Tax Act. He was of the view that the same principles apply under the Income Tax Act, as well as the Companies Act to treat the expenditure as capital or revenue. Accordingly, he disallowed the same. The assessee approached the learned Dispute Resolution Panel, the learned Dispute Resolution Panel vide paragraph no.6 has held that the issue is covered in favour of the assessee by the decision of the Hon'ble



Bombay HC in case of CIT vs. Geoffrey Manners & Co. Ltd. [2009] 180 Taxman 87 (Bombay) dated 09-02-2009. The learned Dispute Resolution Panel also given a finding that the assessee has incurred video shooting expenses for making advertisement films for its business of tours and travels. The learned Dispute Resolution Panel further held that in case of CIT vs. Proctor & Gamble 229 taxman 383, Hon'ble Bombay High Court has taken a similar view and therefore, following both these orders, the learned Assessing Officer was directed not to make the disallowance. The learned Assessing Officer is aggrieved.

06. The learned Dispute Resolution Panel vehemently supported the order of the learned Assessing Officer.
07. None appeared on behalf of IRP and therefore, issue is decided on the merits of the case.
08. We have carefully considered the contentions of the learned Assessing Officer. We find that the assessee has incurred the video shooting expenditure of various tourist locations for the business purposes. Undoubtedly, the assessee has capitalized the same in its books of account following the AS-26 on intangible assets. However, the learned Dispute Resolution Panel following the decision of the Hon'ble High Court has held that the expenditure is allowable to the assessee. This shows that in the books of account the expenditure have been wrongly capitalized by the assessee. Though we fully agree with the learned assessing officer that the guiding principles classifying the expenditure as revenue or as a capital expenditure cannot



be different for the books of account of the assessee and to claim as deduction in the income tax return. The video shooting expenditure does not give any enduring benefit to the assessee. Therefore, the above expenditure may be wrongly capitalized in the books of account. However for the income tax purposes, the learned dispute resolution panel after considering the facts of the case held that the same is revenue expenditure. The learned departmental representative could not show that how the video shooting expenditure with respect to the two central business of the assessee can be considered as capital expenditure. Therefore we do not find any infirmity in the order of the learned Dispute Resolution Panel. Accordingly, ground nos.1 and 2 of the appeal of the learned Assessing Officer are dismissed.

09. The third ground of the appeal is with respect to the direction of the learned Dispute Resolution Panel on account of disallowance of certain expenditure incurred by the assessee on the issue of non-convertible debentures.
010. The brief facts of the case shows that the learned Assessing Officer has disallowed expenditure incurred of **₹4,09,94,700/-** for issue of non-convertible debentures (NCD). The assessee has incurred this expenditure but has debited the same to the account of the share premium account. The said premium credit account was reduced to the amount of the expenditure incurred on issue of nonconvertible debentures. Apparently assessee has not debited a to the profit and loss account. However assessee



claimed the same as allowable expenditure. The claim of the assessee is that NCDs were issued for meeting working capital requirement and therefore, it is not the fact that the use of the nonconvertible debentures fund was made for the purchase of fixed Assets. The claim of the assessee is that the amount of expenditure incurred by the assessee for issue of NCD and despite debited to the share premium account should be allowed as deduction under Section 37(1) of the Act is the funds raised by the assessee by issue of nonconvertible debentures is used for the working capital and therefore takes the character of expenditure incurred for raising of the funds for the working capital and hence allowable as deduction under section 37 (1) of the act. The learned Assessing Officer once again for the similar reason as given for disallowance of video shooting expenditure held that the claim of the assessee is different in the books of account and in the computation of total income. At one time, place in the books of account, the claim of the assessee is that it is a capital expenditure whereas in the income tax return it is claiming as revenue expenditure. Therefore, the above sum was disallowed. The learned Dispute Resolution Panel vide paragraph no.8 has held that assessee has utilized the proceeds of non-convertible debentures partly for the purpose of the fixed assets and partly for repayment of debenture. The learned Dispute Resolution Panel gave a **categorical finding that debentures of ₹70 crores have been repaid out of ₹300 crores proceeds of NCDs.** The learned Dispute Resolution Panel further noted that

assessee has capital working in progress of ₹36 crores whereas the investment in fixed assets out of the proceeds of NCDs is ₹40 crores and therefore, the learned Dispute Resolution Panel categorically noted that as the part of the debentures proceeds are invested in fixed assets which have not yet been put to use, this expenditure proportionately should be capitalized in proportion to used in those assets. Therefore, the learned Assessing Officer was directed to limit the disallowance. The learned Dispute Resolution Panel further held that there is no difference between the nature of interest expenditure on loan and expenses incurred for obtaining the loan. Against this direction the learned Assessing Officer restricted the **disallowance only to ₹56,62,228/-** against the original **disallowance made of ₹4,09,94,700/-**.

011. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer.
012. We have carefully considered the rival contentions and find that there is no infirmity in the order of the learned Dispute Resolution Panel. The learned Dispute Resolution Panel has categorically held that expenditures incurred on issue of non-convertible debentures are similar to the expenditure incurred as interest on non-convertible debentures. The learned Dispute Resolution Panel has further restricted disallowances of such expenditure to the extent of proportionate amount invested in fixed assets which have not been put to use during the year. The learned Assessing Officer could not show any infirmity in



the order of the learned Dispute Resolution Panel. Further, apparently the accounting treatment given by the assessee by reducing share premium account by expenditure incurred for issue of nonconvertible debenture is incorrect. Accordingly, we dismiss ground no.3 of the appeal of the learned Assessing Officer.

013. Accordingly, ITA No.571/Mum/2023 filed by the learned Assessing Officer for A.Y. 2011-12 is dismissed.

Order pronounced in the open court on 31.07. 2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.07.2023

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai