

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1044/JP/2017
निर्धारण वर्ष / Assessment Years : 2011-12

M/s Bhatia Corporation Pvt. Ltd. 23-24 B, Small Scale Industrial Area, Opposite Rajasthan Patrika, Kota	बनाम vs	ACIT, Circle-1 Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCB8402C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri Ran Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 21/02/2018
उदघोषणा की तारीख / Date of Pronouncement : 23/02/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)- Kota dated 09.11.2017 for Assessment Year 2011-12 wherein he has confirmed the levy of penalty amounting to Rs 99,653 u/s 271(1)(c) of the IT Act, 1961.

2. Briefly stated facts of the case are that the assessee company is a authorized dealer for sale of Maruti Vehicles and spare parts of Maruti and has filed its return of income for the assessment year 2011-12 on

29.09.2011 declaring total income at Rs. 2,06,65,910/-. The assessment was completed u/s 143(3) of the Act wherein the AO made an addition of Rs. 20,31,991/- on account of various heads of expenses. One of the disallowance made by the AO was on account of expenses amounting to Rs. 3,00,000 on increase in the authorized share capital, which is the subject matter of impugned penalty order u/s 271(1)(c) of the Act.

3. During the course of assessment proceedings, the AO observed that assessee has claimed at Rs. 3,08,818/- under the head 'Rate and Taxes' debited in the profit and loss account. The assessee was asked to furnish the details and the details so submitted by the assessee shows that Rs. 1.5 lac was paid for increase in share capital and another Rs. 1.5 lac was paid towards ROC fees for increase in the share capital. The assessee submitted that the said amount of Rs. 3 lac was paid to Registrar of companies towards increase in authorized share capital of the company. The Assessing Officer however did not agree to the said claim made by the assessee company and disallowed the same holding it to be nature of capital nature and relied on the decision of Hon'ble Supreme Court in case of Brooke Bond India Ltd. vs. CIT 225 ITR 798 and Punjab State Industrial Development Corporation vs. CIT 225 ITR 792 (SC) among others. Separately, penalty proceedings u/s 271(1)(c) were initiated for furnishing inaccurate particulars of income of Rs. 3 lac. The said addition has since been confirmed by the Id. CIT(A), Kota vide his order dated 24.07.2014 and apparently, the same has attained finality in absence of any further appeal by the assessee.

4. During the course of penalty proceedings, the assessee in its submission submitted that the expenses were incurred to expand the

capital base of the company for the purpose of availing more credit facilities from the Bank for its working capital requirement. It was further submitted that the same was not added while computing the total income at the time of filing return income as company was under the bona fide belief about allowability of the said expenditure as allowable deduction u/s 37(1) of the Act. The reply of the assessee was however, not found acceptable to the AO. The AO was of the view that there is no iota of doubt about the fact that the expenses claimed by the assessee towards increase in share capital and ROC fees are of capital expenditure relying on the decisions of the Hon'ble Supreme Court referred supra. It was accordingly held that the assessee has furnished inaccurate particulars of income to the tune of Rs. 3 lac and penalty of Rs. 99,653/- under section 271(1)(c) was levied on the assessee company.

5. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) who has confirmed the said levy of penalty u/s 271(1)(c) of the Act. The Id CIT(A) held that the claim of the assessee was not bonafide in view of the existing position of law as on the date of raising the claim related to increase in the authorized share capital which being a capital expense, deduction was not allowable in the profit/loss account per se. It was held by the Id CIT(A) that it could not therefore be held that there was no deliberate intention of making a wrong claim before the authorities especially when the appellant was assisted by the competent professional team. Further, the Id CIT(A) relied on the decisions of the Coordinate Benches in case of Param Jewels (P) Ltd vs ITO, Ward 5(2) 9 Taxmann.com 225 (Ahd) and in the case of DCIT VS Tel-Abridge International Ltd 126 TTJ 672 (Del).

6. Being aggrieved, the assessee is now in appeal before us. During the course of hearing, the Id. AR submitted that there is a cleavage of opinion as to whether the fees paid for increasing the authorized capital, particularly when the same is to meet the working capital requirement is a capital expenditure or not. In penalty proceedings, assessee vide letter dated 12.01.2016 (reproduced at pages 102 of the penalty order) has categorically stated that the increase in the authorized share capital was with a view to expand the capital base of the company for availing more credit facility from the bank for its working capital requirement. This is also evidenced by the loan sanction letter dated 31.05.2010 for working capital requirement wherein the assessee was required to increase the share capital from Rs. 9 crores to Rs. 11 crores.

7. It was further submitted by the Id AR that the Hon'ble Supreme Court in case of General Insurance Corporation vs. CIT 286 ITR 232; Hon'ble ITAT, Chennai Bench (TM) in case of Lakshmi Auto Components Ltd. vs. DCIT 101 ITD 209; and Hon'ble ITAT, Mumbai Bench in case of Mumbai SEZ (P.) Ltd. vs. ACIT 152 ITD 828 have held that when the share capital is increased to meet the working capital requirement of the business, the expenditure incurred in connection with the increase in the authorized capital is a revenue expenditure. In these cases, the decision of the Hon'ble Supreme Court referred by the AO in the penalty order has been distinguished. Thus, the claim of the assessee that the expenditure incurred in connection with the increase in the authorized share capital is bonafide and therefore, on disallowance of such bonafide claim, penalty cannot be levied, should be accepted.

8. Reliance was further placed on the decision of the Coordinate Bench in case of JKP Auto Parts Pvt. Ltd. vs. ACIT in ITA No. 3458/Del/2104 dated 31.05.2017 reported in (2017) 50 CCH 113 wherein it was held as under:

"So far as the levy of Rs. 5 lakhs, Tribunal find that the assessee's case has been that it was on account of fee paid to ROC to increase the authorized capital which has been claimed as revenue. Nowhere from the records is it borne out that, whether such authorized capital was for either running of business or for any expansion of business or for setting up of new business. The treatment of such an expense whether it is for capital or revenue largely depends on the facts of the case and there is often very thin line demarcation between the expense which can be reckoned as capital or revenue. If the assessee had claimed to be a revenue expenditure stating that the authorized capital was for the purpose of its running of business, then, it cannot be held that the assessee has filed any inaccurate particulars of income, if such an expense is treated as capital expenditure for the purpose of levy of penalty u/s 271 (1)(c). In any case whether the expenditure is revenue or capital is quite debatable issue and on such a claim, penalty u/s 271 (1)(c) for furnishing of inaccurate particulars cannot be levied. Thus, Tribunal hold that on this addition also no penalty can be levied by the Assessing Officer or can be confirmed by the Id. CIT(Appeals) and therefore same is directed to be deleted. If assessee had claimed expenses incurred by it to be revenue expenditure stating that it authorized capital was for purpose of its running of business, then, it could not be held that assessee filed any inaccurate particulars of

income, if such an expense was treated as capital expenditure for purpose of levy penalty u/s 271 (1)(c)."

9. It was submitted by the Id AR that the above decision of the Tribunal being the latest decision and is identical to the fact of the assessee's case, the two earlier decisions of the Tribunal relied by the Id. CIT(A) are not applicable. In any case, in penalty matters, where two views are possible, the view favourable to the assessee should be adopted as held by the Hon'ble Supreme Court CIT vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466. In view of above, it was submitted that the penalty confirmed by the Id. CIT(A) be directed to be deleted.

10. The Id DR has vehemently argued the matter and relied upon the order of the lower authorities.

11. We have heard the rival contentions and perused the material available on record. In order to appreciate the contentions so advanced by the Id AR that there is a cleavage of opinion as to whether the fees paid for increasing the authorized capital, particularly when the same is to meet the working capital requirement is a capital expenditure or not, we refer to the legal proposition so laid down by the Hon'ble Supreme Court, the Jurisdictional High Court and which has been subsequently followed/analysed by the Coordinate Benches of the Tribunal.

12. In case of **Punjab State Industrial Development Corporation vs CIT reported in 225 ITR 792** which has been relied by the Revenue, the question referred for decision of the Hon'ble Supreme Court was "whether the amount of Rs. 1,50,000 paid to the

Registrar of Companies, as filing fee for enhancement of capital, was not revenue expenditure." While adjudicating the same, the Hon'ble Supreme Court held as under:

"3. *The issue has been answered in favour of the assessee and against the revenue by the High Courts of Madras, Karnataka, Andhra Pradesh and Kerala in the following decisions: CIT v. Kisenchand Chellaran (India) (P.) Ltd. [1981] 130 ITR 385 /5 Taxman 58 (Mad.); Warner Hindustan Ltd. v. CIT [1988] 171 ITR 224/ 36 Taxman 106 (AP), Hindustan Machine Tools Ltd. (No. 3) v. CIT [1989] 175 ITR 220 / [1988] 40 Taxman 43 (Kar.) and Federal Bank Ltd. v. CIT [1989] 180 ITR 241 / 45 Taxman 262 (Ker.). **The High Courts of Allahabad, Himachal Pradesh, Delhi, Calcutta, Bombay, Punjab, Gujarat, Andhra Pradesh and Rajasthan have held in favour of the revenue in the following cases: CIT v. Modi Spg. & Wvg. Mills Co. Ltd. [1973] 89 ITR 304 (All.), Mohan Meakin Breweries Ltd. v. CIT (No. 2) [1979] 117 ITR 505/2 Taxman 460 (HP), Bharat Carbon & Ribbon Mfg. Co. Ltd. v. CIT [1981] 127 ITR 239 / [1980] 3 Taxman 568 (Delhi), Brooke Bond India Ltd. v. CIT [1983] 140 ITR 272/ [1982] 10 Taxman 18 (Cal.), Bombay Burmah Trading Corpn. Ltd. v. CIT [1984] 145 ITR 793/ [1983] 12 Taxman 178 (Bom.), Groz-Beckert Saboo Ltd. v. CIT [1986] 160 ITR 743 / 27 Taxman 138 (Punj. & Har.), Ahmedabad Mfg. & Calico (P.) Ltd. v. CIT [1986] 162 ITR 800 / 28 Taxman 306 (Guj.), **CIT v. Aditya Mills [1990] 181 ITR 195 / 50 Taxman 120 (Raj.), CIT v. Multi Metals Ltd. [1991] 188 ITR 151 (Raj.) and Vazir Sultan Tobacco Co. Ltd. v. CIT [1988] 174 ITR 689 / 41 Taxman 7 (AP). We may also state that the Calcutta High Court has affirmed this earlier view in three subsequent decisions reported in Kesoram Industries & Cotton Mills Ltd. v. CIT [1992] 196 ITR 845 (Cal.), Wood Craft Products Ltd. v. CIT [1993] 204 ITR 545 (Cal.) and CIT v. Tungabhadra Industries Ltd. [1994] 207 ITR 553 (Cal.) and so also the Gujarat High Court has affirmed its earlier view in Alembic Glass Industries Ltd. v. CIT [1993] 202 ITR 214 (Guj.).*****

7. *We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. We are, therefore, of the opinion that the view taken by the different High Courts in favour of the revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in Kisenchand Chellaram (India) (P.) Ltd.'s case (supra). We, therefore,*

answer the question raised for our determination in the affirmative, i.e., in favour of the revenue and against the assessee."

13. In above referred decision, the Hon'ble Supreme Court has affirmed the decision of the jurisdictional High Court in case of CIT v. Aditya Mills [1990] 181 ITR 195 / 50 Taxman 120 (Raj.) and CIT v. Multi Metals Ltd. [1991] 188 ITR 151 (Raj.). It would therefore be relevant to refer to these decisions, being the decisions of the jurisdictional High Court, even though not brought to our notices by either of the parties.

14. In case of **CIT v. Aditya Mills (supra)**, the question for consideration before the Hon'ble Rajasthan High Court was whether the amount of Rs. 7,500 paid as fees to the Registrar of Companies, Jaipur, for bringing about change in the memorandum and articles of association of the company in relation to increase in its authorised capital is allowable as a revenue expenditure. While adjudicating the same, the Hon'ble High Court held as under:

"4. The question as to whether the amount deposited with the Registrar in connection with the amendment of the memorandum and articles of association in relation to increase of the capital has come up for consideration before various High Courts and the view is consistent that the said expenditure is capital expenditure and not revenue expenditure and in this connection reference may be made to Mohan Meakin Breweries Ltd. v. CIT (No. 2)[1979] 117 ITR 505 (HP), Bharat Carbon & Ribbon Mfg. Co. Ltd. v. CIT [1981] 127 ITR 239 (Delhi), Bombay Burmah Trading Corpn. Ltd. v. CIT [1984] 145 ITR 793 (Bom.) and Groz-Beckert Saboo Ltd. v. CIT [1986] 160 ITR 743 (Punj. & Har.).

5. The Tribunal has placed reliance on the decision of the Allahabad High Court in CIT v. Modi Spg. & Wvg. Mills Co. Ltd. [1973] 89 ITR 304 and the decision of the Bombay High Court in CIT v. Elphinstone Spg. & Wvg. Mills Co. Ltd. [1975] 100 ITR 139. We have considered the said decisions and we find that these decisions have no application to the present case. In Modi Spg. & Wvg. Mills Co. Ltd.'s case (supra) it was held that the amount paid to a lawyer for advising a company on amendments in the articles of association and for drafting a special resolution so that the articles could be amended to bring them into accord with changes brought about in the law relating to companies

is an allowable expenditure under section 10(2)(xv) of the Act as it is incurred in order that the company should continue to function in accordance with law and is not capital expenditure. Similarly in Elphinstone Spg. & Wvg. Mills Co. Ltd.'s case (supra) the Bombay High Court, relying upon the decision of the Allahabad High Court in Modi Spg. & Wvg. Mills Co. Ltd.'s case (supra) has held that the amount expended by a company for making alterations in its memorandum and articles of association in order to bring them into accord with changes brought about in the law relating to companies is expenditure incurred by the assessee solely and exclusively for the purpose of its business and the said expenditure is incurred in order that the company should continue to function in accordance with law. The expenditure incurred for the purposes of amending the memorandum and articles of association so as to increase the capital, however, stands on different footing as mentioned in the decisions mentioned above because, as a result of the said amendment, additional amount of capital is available for carrying on the business of the company and, as such, the expenditure is an expenditure of a capital nature and not a revenue expenditure. We are, therefore, of the view that the Tribunal was not justified in allowing the deduction of Rs. 7,500 paid as fees to the Registrar of Companies, Jaipur, for bringing about a change in the memorandum and articles of association of the company in relation to increase in its authorised capital as revenue expenditure. In our view, the said expenditure should have been treated as a capital expenditure."

15. In the case of **CIT v. Multi Metals Ltd.(supra)**, the question for consideration before the Hon'ble Rajasthan High Court was whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the fees paid to the Registrar of Companies for raising the authorised capital of the assessee-company was allowable as revenue expenditure. While adjudicating the same, the Hon'ble High Court followed its earlier decision in case of CIT v. Aditya Mills (supra) and held as under:

"Sri N.M. Ranka, learned counsel for the assessee, urged that several aspects of the matter which were relevant and pertinent to the enquiry were not urged and placed before the court which decided the Aditya Mills' case [1990] 181 ITR 195 (Raj). Had those aspects been brought to its notice, the decision would have been different. The decision given in Aditya Mills [1990] 181 ITR 195 (Raj) requires reconsideration. Strong reliance was placed by learned counsel for the assessee on Federal Bank Ltd. v. CIT [1989] 180 ITR 241 (Ker). The submission was that where registration fee is paid only to broaden the capital base for better conduct and efficiency and profitability of business,

the amount spent is deductible as revenue expenditure under section 37(1) of the Income-tax Act.

It is, no doubt, true that the distinction between "revenue" and "capital" expenditure is a fine one. Dealing with all those cases which took the view that expenses incurred in obtaining registration of the memorandum of association and articles for enhancing capital, the Kerala High Court held that the fee paid under the Companies Act, 1956, to the Registrar was a revenue expenditure. To the same effect was the view taken by the Madras High Court in CIT v. Kisenchand Chellaram (India) P. Ltd. [1981] 130 ITR 385. In coming to the conclusion, the Madras High Court had applied the ratio enunciated by the Hon'ble Supreme Court in India Cements Ltd. v. CIT [1966] 60 ITR 52 . The decision of the Madras High Court was followed by the Karnataka High Court in Hindustan Machine Tools Ltd. (No. 3)v. CIT [1989] 175 ITR 220 . In its view as well, the expenditure incurred by way of remitting filing fee to the Registrar of Companies in respect of enhancement of the authorised share capital of the company was allowable as a revenue expenditure.

As already stated above, the Rajasthan High Court has taken a different, view in the case of Aditya Mills [1990] 181 ITR 195.

Learned counsel for the assessee urged for making reference of the aforesaid question to a larger Bench. We do not, however, consider it necessary to do so. The Rajasthan High Court decision in the case of Aditya Mills [1990] 181 ITR 195 is clear and explicit on the point and we are bound by the same. We, consequently, answer the first question in the negative by saying that the fee paid to the Registrar of Companies for raising the authorised capital was not allowable as revenue expenditure."

16. We now refer to the subsequent decision of the Hon'ble Supreme Court in case of **Brooke Bond India Ltd vs CIT reported in 225 ITR 798** which has been relied upon by the Revenue where the question referred for decision of the Hon'ble Supreme Court was "Whether, the Tribunal was right in sustaining the disallowance of Rs. 13,99,305 being expenses incurred in connection with the issue of fresh lot of shares in 1967." While adjudicating the same, the Hon'ble Supreme Court held as under:

"4. We find that this matter has come up for consideration before this Court in *Punjab State Industrial Development Corpn. Ltd v. CIT* [Tax Reference No. 1 of 1990, dated 4-12-1996]. In that case, the question under consideration was whether an amount of Rs. 1,50,000 paid to the Registrar of Companies as filing fee for enhancement of capital was not the revenue expenditure. The Court has taken note of the decisions of the Madras, Andhra Pradesh, Karnataka and Kerala High Courts to which reference has been made by Dr. Pal as well as the judgment under challenge in this appeal and the judgment of the High Courts taking the same views that taken in the impugned judgment. This Court has also taken note of the decisions in *Empire Jute Co. Ltd. s case (supra)* as well as *India Cements Ltd.'s case (supra)*. While holding that the amount of Rs. 1,50,000 paid to the Registrar of Companies as filing fee for enhancement of the capital was not the revenue expenditure, this Court has said :

*"We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital incidentally that would certainly help in the business of the company and may also help in profit making, it still retains the character of a capital expenditure, since the expenditure was directly related to the expansion of the capital base of the company. We are, therefore, of the opinion that the view taken by the different High Courts in favour of the Revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in *Kisenchand Chellaram s case.*"*

5. This decision thus covers the question that falls for consideration in this appeal.

6. **Dr. Pal has, however, submitted that this decision does not cover a case, like the present case, where the object of enhancement of the capital was to have more working funds for the assessee to carry on its business and to earn more profit and that in such a case the expenditure that is incurred in connection with issuing of shares to increase the capital has to be treated as the revenue expenditure. In this connection, Dr. Pal has invited our attention to the submissions that were urged by the learned counsel for the assessee before the AAC as well as before the Tribunal. It is no doubt true that before the AAC as well as before the Tribunal it was submitted on behalf of the assessee that increase in the capital was to meet the need for working funds for the assessee-company. But the statement of case sent by the Tribunal does not indicate that a finding was recorded to the effect that the expansion of the capital was under taken by the assessee in order to meet the need for more working funds for the**

assessee. We, therefore, cannot proceed on the basis that the expansion of the capital was undertaken by the assessee for the purpose of meeting the need for working funds for the assessee to carry on its business. In any event, the above quoted observations of this Court in Punjab State Industrial Development Corpn. Ltd. 's case (supra) clearly indicate that though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and may also help in the profit making, the expenses incurred in that connection still retain the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company.

7. In these circumstances, we do not find any merit in the appeal and it is accordingly dismissed. No order as to costs."

17. The above decision of the Hon'ble Supreme Court in case of Brooke Bond (India) (supra) came up for consideration before the Tribunal in case of **Lakshmi Auto Components Ltd vs DCIT reported in 101 ITD 209** where, on account of difference of opinion, the matter was referred to a Third Member to express his opinion on the question of "Whether, on the facts and circumstances of the case, and in view of the decision of the Hon'ble Supreme Court in the case of Brooke Bond (India) Ltd. v. CIT, adjustment under section 143(1)(a) in respect of expenditure on right issue can be sustained?" and the findings of respected Third Member were as under:

"2. I have heard the rival submissions. Assessee claimed expenditure amounting to Rs. 19,94,594 on the issuance of right shares. Assessing Officer completed the assessment under section 143(1)(a) of the Income-tax Act, 1961 ('the Act' for short) and added the right issue expenditure claimed under section 37(1) of the Act. The question before the Tribunal was whether such addition comes within the ken of prima facie adjustment.

6. Adverting to the applicability of the ratio of the decision of the Hon'ble Apex Court rendered in the case of Brooke Bond (India) Ltd. v. CIT [1997] 225 ITR 798, learned counsel submitted that it was incumbent on the Assessing Officer to examine the object of the capital enhancement. The ratio of Brooke Bond (India) Ltd. is not applicable if enhancement of capital was in

the context of more working funds. This decision of the Apex Court does not cover all the cases of capital enhancement.

7. It was further contended that the Revenue did not examine the issue in the right perspective. Even the applicability of section 35D of the Act was not considered. Matter was not viewed in totality. De hors examining the object of making right issue, matter was adjudicated. Allowability of the claim under other provisions of the statute was not considered.

8. Shri Shaji P. Jacob, Id. D.R. submitted that it is open for the Assessing Officer to make the disallowance on the basis of information available in the return. The claim of the assessee was inadmissible in view of the decision of the Apex Court. Law pronounced by the Apex Court is binding under Article 141 of the Constitution. Assessee claimed expenditure under section 37(1) in respect of the right issue. Reference was also made to the decision of the Apex Court rendered in the case of Punjab State Industrial Development Corpn. Ltd. v. CIT [1997] [225 ITR 792](#). In this case Hon'ble Supreme Court took note of the decision in the case of CIT v. Kisenchand Chellaram (India) (P.) Ltd. [1981]30 ITR 385² (Mad.). In that case assessee had paid fees to the ROC for raising capital. The amount was claimed as revenue expenditure. Hon'ble Madras High Court has held that without capital a company cannot carry on its business and hence the expenses incurred for increasing the capital were bound up with the functioning and financing of the business. On that basis, the assessee's claim for deduction was allowed. Hon'ble Apex Court has held that the fees paid to Registrar for expansion of capital base of the company was directly related to the capital expenditure incurred by the company. The decision of Hon'ble Madras High Court was reversed.

*9. Having heard both the parties on the point and after perusing the various precedents relied upon, I find that the issue in question is a debatable issue. It is not directly covered by the decision of the Apex Court rendered in the case of Brooke Bond (India) Ltd. v. CIT [1997] [225 ITR 798](#)³. **In this case Hon'ble Supreme Court has held that expenditure incurred by a company in connection with issue of shares, with a view to increase its share capital is directly related to the expansion of the capital base of the company, and is capital expenditure, even though it may incidentally help in the business of the company and in the profit-making. It was contended before the Hon'ble Supreme Court that where the enhancement was to have more working funds for the assessee to carry on its business and to earn more profit and that in such a case the expenditure that is incurred in connection with issuing of shares to increase the capital has to be treated as revenue expenditure. On this the Hon'ble Supreme Court has held that the statement of case sent by the Tribunal did not record the finding to the effect that the expansion of the capital was undertaken by the***

assessee for the purpose of meeting the need for more working funds for the assessee to carry on its business.

10. From this it can be concluded that if the expansion of capital is in order to meet the need for more working funds, in that eventuality the expenditure could partake the nature of revenue expenditure. De hors examination in this regard, it is not possible to apply the ratio.

11. Each case depends on its own facts, and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid temptation as said by Cordozo by matching the colour of one case against the colour of another. I am reminded of Heraclitus who said "you never go down the same river twice". What the great philosopher said about time and flux can relate to law as well. It is trite that a ruling of superior court is binding law. It is not of scriptural sanctity but is of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decision, exalting the doctrine of precedents into a prison house of bigotry, regardless of varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration.

12. I have considered the entire conspectus of the case. In my opinion, the decision of the Apex Court in the case of Brooke Bond (India) Ltd. (supra) can be applied only after examining the object of the capital enhancement. This decision is not applicable if enhancement of capital was made for gearing up funds for working capital. The object of gearing up of the capital was not looked into. Total amount was disallowed without examining the details. Even applicability of section 35D was not considered. In my opinion, this is not correct. I have gone through the reasoning adduced by the Id. Judicial Member. In my opinion he took a correct view in the matter. I concur with his decision on this issue.

13. The matter will now go back to the regular Bench for deciding the appeal in accordance with the majority."

18. Following the above decision in case of Lakshmi Auto Components Ltd (supra), the Coordinate Bench in case of **Mumbai SEZ (P) Ltd vs ACIT reported in 152 ITD 828** has held as under:

"11.1 A perusal and understanding of the above judicial analysis shows that the Hon'ble Supreme Court in the case of Brooke Bond India Ltd. (supra) has held that such expenditure are of capital in nature. The Co ordinate Bench of the Tribunal in the case of Laxmi Auto Component Ltd. v. Dy. CIT [1975] 101 ITD 209/(Chennai) (TM) has observed that the Hon'ble Apex Court in the case of Brooke Bond (India) (supra) has not decided the issue as regards expenditure incurred by the assessee on increase in the capital to meet need for working funds to the assessee as the Tribunal has not recorded the finding to the fact that the expansion of the capital was undertaken by the assessee in order to meet the need for more working funds to the assessee."

12. Taking a leaf out of the observations made by Hon'ble Supreme Court in the case of Bombay Steam Navigation Co. [1953] (P.) Ltd. (supra), Punjab State Industrial Development Corpn. Ltd. (supra), Brooke Bond India Ltd. (supra) and the observations of the Co-ordinate Bench of the Tribunal (supra), let us now see the balance sheet of the assessee for the year under consideration.

13. A perusal of the balance sheet shows that the share capital has been increased from 477.77 crores to 722.35 crores and the share application money has been increased from 172.12 crores to 1170 crores. The inventories which were Nil during the previous year ending on 31.3.2007 now stand at 2472.48.

14. The aforementioned figures clearly show that the entire incremental share capital has been absorbed in the inventories. The Hon'ble Supreme Court in the case of Punjab State Industrial Development Corpn. Ltd. (supra) has clearly laid down that the celebrated test as laid down in the case of Lord Cave L.C. in Atherton (supra) must yield where there are special

circumstances leading to a contrary conclusion. After considering the balancesheet of the assessee as stated hereinabove, we find that special circumstances do exist in the present case which lead to taking a contrary conclusion. There is not an iota of doubt that the increase in the share capital has been fully utilized only in the purchase of trading stock.”

19. In light of above, as per the decision of the Coordinate Bench in case of Lakshmi Auto (supra), it is clear that the decision of the Hon'ble Supreme Court in the case of Brooke Bond (India) Ltd. (supra) cannot be applied in all cases universally but after examining the object of the capital enhancement. This decision is not applicable if enhancement of capital was made for gearing up funds for working capital. If the expansion of capital is in order to meet the need for more working funds, in that eventuality, the expenditure could partake the nature of revenue expenditure. And we also note that the said contention that share capital is increased to meet the working capital requirement was neither raised nor came up for consideration before the Hon'ble Rajasthan High Court in case of CIT v. Aditya Mills and CIT v. Multi Metals Ltd. and to that extent, the said decisions are distinguishable on facts. In light of the same, where an assessee in a given case raises such a contention, in our view, it is a plausible explanation in support of its claim of the capital issue expenditure.

20. In the instant case, as we have noted above, in the penalty proceedings, assessee has categorically stated that the increase in the authorized share capital was with a view to expand the capital base of the company for availing more credit facility from the bank for its working capital requirement. This is also evidenced by the loan sanction letter issued by the assessee's bank on 31.05.2010 for working capital

requirement (due to proposed increase in sales) wherein the assessee was required to increase the share capital from Rs. 9 crores to Rs. 11 crores before release of enhanced limits, which is available on APB pages 3-7. The Revenue has not controverted the said explanation of the same submitted during the course of penalty proceedings. The bonafide of the said explanation is therefore not under challenge especially in light of the plausible view which can be taken in respect of share issue expenditure which has been claimed as revenue expenditure. Given that all necessary facts are on record regarding claim of the share issue expenditure and the explanation of the assessee has been found to be bonafide, merely because the expenditure so claimed is disallowed and treated as capital expenditure, the same cannot be basis for levy of penalty for furnishing inaccurate particulars of income u/s 271(1)(c) of the Act. A similar view has been taken by the Coordinate Bench in case of JKP Auto parts (supra). In the result, the penalty so levied and confirmed by the Id CIT(A) is hereby deleted.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23/02/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23/02/2018

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Bhatia Corporation Pvt. Ltd., Kota
2. प्रत्यर्थी / The Respondent- ACIT, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1044/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar