

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "B" , MUMBAI

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER

&

SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA no.7274/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2008-09)

M/s. Multi Act Realty Enterprises Pvt.

Ltd.

2nd Floor, ICC Chambers II,

Saki Vihar Road, Powai

Mumbai 400 072

..... अपीलार्थी /

Appellant

बनाम v/s

ITO-8(2)(3),

Aayakar Bhavan,

Mumbai-

..... प्रत्यर्थी /

Respondent

स्थायी लेखा सं./ Permanent Account Number – AAACN3295K

Appellant by : Shri Satish Mody (AR)

Revenue by : Shri Vijay Kumar Soni (DR)

सुनवाई की तारीख /
Date of Hearing -10.08.2015

आदेश घोषणा की तारीख /
Date of Order -28.08.2015

आदेश / ORDER

PER ASHWANI TANEJA, A.M.

The present appeal has been filed by the Assessee against order dated 12.09.2011, passed by the Ld. Commissioner of Income Tax (Appeals)-17,Mumbai, for the assessment year 2008-09. During the course of hearing, the assessee submitted following ground as revised ground:

" On the facts and in the circumstances of the case and in law the CIT(A) erred in disallowing as business expenditure the sum of Rs.2,69,275/- incurred by the appellant for maintaining and running and further not allowing the set off of the same as per the provisions of section 71 of the I.T. Act against the interest income assessed under the head income from other sources."

3. It is seen by us that aforesaid ground is modified ground and does not require any examination of new facts. Therefore, after obtaining consent of both the parties in this regard, this ground is admitted for adjudicating this appeal.

4. Brief facts as per assessment order are that the assessee was in the business of dealing in immovable properties and development rights etc. It was observed for by the AO that no business income was earned by the assessee company during the year. However, in the income tax expenditure account, the assessee has debited various expenses such as travelling expenses, conveyance, printing & stationery, audit fees, professional fees, sundry expenses and interest on statutory payments etc. aggregating to Rs.2,69,275/-. The AO disallowed these expenses on the ground that there was no business income received by the assessee during the year. The assessee contested this issue before the Ld. CIT(A), wherein the Ld. CIT(A) confirmed the disallowance on the ground that no business was carried out during the year. Before us, the Ld. Counsel appearing on the behalf of the assessee submitted that routine business expenses incurred during the normal course have been wrongly disallowed by the authorities below and requested for reversing the action of AO and Ld. CIT(A). On the other hand, the Ld. DR relied upon the orders of Ld. CIT(A) and the AO.

5. We have carefully considered arguments made by both the sides. It is noted from the facts on record that the assessee had purchased residential flats at Ashoka Towers for the purpose of resale/lease. It is also admitted fact that it is main object of the assessee company. Under these circumstances, we have to examine whether there was commencement of the business during the year or not. In this regard, we shall first refer to the definition of term 'previous year' as defined in section 3 of the Income Tax Act 1961, and the same is reproduced here for the sake of ready reference:

"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."*
(emphasis supplied)

The perusal of aforesaid clause would show that relevant date for commencement of the business would be the date of setting up of business. It has been held in various judgments that 'setting up of business' and 'commencement of business' may be too different and independent events. For the purpose of deductibility of the business expenses, the reference point would be initial setting up of the business. The commencement of the business may take place at later date. Thus, even if the assessee does not earn any business income during the year, but if the business is set up, it would amount to carrying on the business under the income tax law and therefore, the business expenses would stand allowable.

6. In following cases it has been held that whether income has been earned or not and whether ultimate benefit has accrued immediately or not, the expenses incurred shall be allowable if these have been incurred for the purpose of business or for commercial expediency:-

1. Eastern Investments Ltd. Vs. CIT **(20 ITR 1) (SC)**
2. J.R. Patel & Sons Pvt. Ltd. **69 ITR 782 (Guj)**
3. Raipur Mfg. Co. Ltd. **(84 ITR 508,516) (Guj)**
4. Security Printers of India Pvt. Ltd. **(78 ITR 766,774) (All)**
5. Tatasons Ltd. **(18 ITR 460,467) (Bom)**
6. Walchand & Co. P. Ltd. **(65 ITR 381, 385) (SC)**
7. J.K. Woolen Manufactures **(72 ITR 612) (SC)**
8. Aluminium Corp. of India Ltd. **(86 ITR 11, 17) (SC)**
9. Orissa Cement Ltd. **(73 ITR 14, 17) (Del)**

In following cases it has been held that expenses shall become deductible after setting up of the business, even if commencement of business has not yet taken place:

1. CIT Vs. Ralliwolf Ltd. **(121 ITR 262) (Bom)**
2. Saurashtra Cement & Chemical Industries Ltd. **(91 ITR 170) (Guj)**
3. Western India Vegetable Products Ltd. **(26 ITR 151)**
4. Ramaraja Surgical Cottons Mills Ltd. **(63 ITR 478)**
5. CIT v. Whirlpool of India Ltd **318 ITR 347** (Delhi High Court)

In the case of CIT vs Sardar Sarovar Narmada Nigam Ltd **364 ITR 477 (Guj)** it has been held that where business of the assessee consists of different categories, then company can be said to have set up its business from the date when one of categories of its business was started and all the revenue expenditures after such date are allowable.

Hon'ble Mumbai bench of Income Tax Appellate Tribunal in the case of M/s DHL Express (I) Pvt. Ltd. v. ACIT **124 TTJ 108** held as under:

"a unit cannot be said to have been set up unless it is ready to discharge the function for which it is being set up. It was further held that setting up of business is distinct from commencement of business and expenses incurred after the setting up of the business are deductible as Revenue expenditure. It was held as held by the Hon'ble Delhi High Court in CIT Vs. ESPN Software India (P) Ltd. 301 ITR 368 that the date of setting up of business and date of commencement of business are distinct and the expenses incurred after the setting up of the business are deductible as Revenue expenditure."

7. In the case before us, it may be seen that the assessee has already purchased residential flat for the purpose of resale/lease, and therefore assessee was apparently ready to do its business. Under these circumstances, it can be said that the business is set up by the assessee during the year under consideration. For the deductibility of expenses incurred after this stage, earning of the business income is not a mandatory condition under the law. The assessee may not have been successful in getting customers or earning the business income, but if the assessee has done requisite preparations and if the assessee can be said to be in a position to cater to its customers, then it can be said that business is set up and it would amount to carrying on the business and accordingly the expenses would stand allowable to the assessee, irrespective of the fact whether actually assessee got any customer and earned any business income during the year or not. Thus, the disallowance made by the AO is contrary to law and facts and the same is deleted and the AO is directed to allow

the expenses claimed by the assessee amounting to Rs.2,69,275/-. Thus, revised ground of the assessee is allowed.

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

Order pronounced in the open Court on 28th day of August, 2015.

Sd/-
(Joginder Singh)
JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

मुंबई MUMBAI, दिनांक DATED: 28 .08.2015

Patel

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

- (1) निर्धारिती / The Assessee;
- (2) राजस्व / The Revenue;
- (3) आयकर आयुक्त(अपील) / The CIT(A);
- (4) आयकर आयुक्त / The CIT, Mumbai City concerned;
- (5) विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / The DR, ITAT, Mumbai;
- (6) गार्ड फाईल / Guard file.

आदेशानुसार / By Order

उप / सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai