

आयकर अपीलीय अधिकरण, सी खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI -C BENCH
सर्वश्री आई पी बंसल , न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य
Before S/Sh. I P Bansal, Judicial Member & Rajendra, Accountant Member
आयकर अपील सं./ITA No4879/Mum/2012, निर्धारण वर्ष/Assessment Year-2006-07

Preimus Investment And Finance Ltd., Bajaj Bhavan, 3 rd Floor, Jamnalal Bajaj Marg, 226, Nariman Point, Mumbai-21. PAN:AACCP4032F	Vs	DCIT 3(2), Aayakar Bhavan, M.K. Marg, Mumbai -400020
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by :Dr. K. Shivaram, & Ajay R. Singh

राजस्व की ओर से/ Revenue by : Shri Premanand J.

सुनवाई की तारीख/ Date of Hearing : 07-05-2015

घोषणा की तारीख / Date of Pronouncement : 13-05-2015

आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dt.05.06.2012of the CIT(A)-4,Mumbai, assessee has raised following Grounds of Appeal:

1.The learned Commissioner of Income-tax (A) erred in confirming the order of A.O. disallowing the expenses as under:

a)	Interest on Loans (Rs,98609 1 2-7609404/-)	Rs. 22,51,508/-
b)	Legal and professional charges	Rs.71,864/-
c)	Auditor's remuneration	Rs.22,833/-
d)	General Expenses	Rs.52,866/-
e)	Directors sitting fees	Rs.3,500/-
		Rs. 24,02,571/-

2.The learned Commissioner of Income-tax (A) failed to appreciate that assessee being a corporate entity,it has to incur certain expenditure for the day to day functioning of the company which are allowable expenditure u/s. 37 of the Act.

3.On the facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the findings of the learned Assessing officer in not allowing setoff of brought forward unabsorbed business loss and depreciation against the assessed income.

4.The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.

Vide its application dated 04.04.2014,the assessee has made a request to admit additional grounds of appeal.In the application it was stated that the ground were purely of legal nature and facts were already on record.We find that the issue raised in the additional ground is about alternative claim for allowability of expenses u/s.57(iii) of the Act.Therefore,we are admitting the additional grounds raised by the assessee and same read as under:

1. Without prejudice and alternatively the learned CIT(A) failed to appreciate that once the income is tax u/s. 57 as income from other sources any expenditure incurred which has nexus with earning of the income ought to be allowed as deduction u/s. 57(iii) of the Act.

2. The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal

Assessee-company, engaged in the business of leasing, financing and trading, filed its return of income on 10.11.2006, declaring total loss of Rs.51,13,930/-. The Assessing Officer(AO) completed the assessment u/s.143(3) of the Act on 24.10.2008, determining the income of the assessee at Rs.22,51,508/-.

2. During the assessment proceeding, the AO found that the assessee had debited an amount of Rs.98.60 lacs under the head interest to the income and expenditure account, that out of the interest of Rs.98.60 lacs it reduced interest of Rs.22.51 lacs, that net amount of Rs.76,09,404/- was added to the computation of income. The AO issued a notice to the assessee asking it as to why certain disallowances should not be made to its income. In its reply, dated 12.10.2008, the assessee replied that it was engaged in the business of investing, leasing and financing, that it was incorporated with the objective of investing and financing since June, 1992, that since then it had carried on the said business, that receipt and payment of interest was an ordinary activity conducting in the normal course of business, that the interest receipt should not be considered separately, that it made an application for registration to Reserve Bank of India (RBI) to register it as NBFC, that the net owned funds of the assessee were below the prescribed minimum level, that because of that it could not get registration as NBFC, that it continued to carry on business, that it did not accept public deposits, that since incorporation the business of the assessee remained unchanged, that the assessee was maintaining two portfolios i.e. trading portfolio and investment portfolio. The AO referred to the comments of the auditor wherein it was mentioned that the RBI had rejected the application of the assessee to function as NBFC. He held that company was not authorised to carry out business of financing, by the Reserve Bank of India (RBI), that it could not be said that interest income earned by the assessee was from business activity, that an act prohibited under a law could not be allowed under other law. Finally, the AO rejected the claim made by the assessee and interest income, amounting to Rs.22.51 lacs was treated as income from other sources.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the First Appellate Authority (FAA). Before him, it was argued that the assessee suo moto had disallowed interest expenditure of Rs.76.09 lacs (Rs.98.60 lacs - Rs.22.51 lacs) and Rs.36082/- out of other expenses, that the AO had disallowed the whole of expenditure on the ground that the RBI had not recognized the assessee as NBFC, that the AO had treated the interest income of Rs.22.51 lacs as income from other sources without assigning any reason for such treatment, that the AO had allowed set off of the unabsorbed business losses/depreciation of earlier years against income assessed for the year under appeal. The assessee also contended that explanation to sec.37(1) dealt with the expenses incurred for any purpose which was an offense or was prohibited by law, that payment of interest, audit, professional fee, general expenses could by no means be said to be expenditure for any purposes which was an offense or prohibited by law, that the disallowance of expenditure amounting to Rs.213.66 lacs was not justified. Without prejudice to above it was argued that in case the AO held the assessee was carrying on illegal business then

the net income of such business was required to be computed under the head profits and gains from business and profession, that by no stretch of imagination such income could be assessed under the residuary type, that AO should have allowed interest expenditure u/s. 57 of the Act. Before the FAA, the assessee stated that it had claimed set off of brought forward losses and depreciation brought forward from earlier years, that the AO should have allowed the claim of the assessee, that he had assessed the interest receipts under the head income from other sources, that due to a difference of opinion between the AO and the assessee income chargeable under the business head was assessed u/s. 56 of the Act, that the nature of income had not changed, that brought forward business losses could be set off against other sources of income which were in the nature of business income.

After considering the submission of the assessee and the assessment order, the FAA held that the assessee was not carrying out any business activity during the year, that it could not get itself registered as NBFC with the RBI, that there was no possibility of having any business in future, that the business of the assessee was closed down permanently, that no business expenditure could be allowed to it. Upholding the order of the AO in disallowing the interest expenditure, he held that the interest income earned by the assessee could not be treated as business income, that assessee was not in the business of earning interest on loans, that it had failed to show nexus of expenditure with the interest income, that no expenditure was allowable against the interest income. He confirmed the action of AO in assessing the interest as income from other sources. He also concurred with the AO in disallowing expenditure from the interest. He also held that no business loss/depreciation could be allowed to be set off against income from other sources. Finally, he dismissed the appeal by the assessee.

4. Before us, Authorised Representative (AR) contended that the assessee was carrying out business activities, that it had disallowed interest amounting to Rs. 76.09 lacs, that it had incurred the expenses for running business and maintaining the corporate entity, that it had shown the income to the extent of income earned, that the RBI had rejected the application of the assessee as it was not having sufficient own fund, the denial by the RBI would not turn the business of the assessee into an illegal business, that the AO had erred in treating the income of the assessee under the head income from other sources, that interest income of the assessee was assessed as business income in the subsequent and earlier years, that if income was to be taxed u/s. 57 expenses having direct nexus should have been allowed, that carry forward of business loss and depreciation had to be set off against any other source of income. He relied upon the case of Gagan Trading Co. Ltd (46 SOT 260) Daljit Exports India Pvt. Ltd. (33 TJJ 564), Rampur Timber & Turnery Co. Ltd. (129 ITR 58), and Lavish Apartment Pvt. Ltd. (23 taxmann.com 414). DR supported the order of FAA.

5. We have heard the rival submissions and perused the material before us. We find that the AO had assessed the interest income under the head Income from other sources, that the basis for not treating the interest income as business income was the denial of the RBI to register the assessee as NBFC, that the FAA upheld the order of the AO and held that the assessee was not carrying on any business, that expenditure incurred by the assessee towards running its office were also disallowed. In our opinion, the approach of the AO and the FAA was not as per the provisions of the Act. Permission/denial by the RBI to register an assessee as NBFC does not decide the issue of carrying on business or make the business illegal. If the assessee had violated any provisions of law under the RBI Act it would be penalised by the appropriate authority. But that does not

mean that the systematic organized activity carried out by the assessee for earning profit would not be treated as business. The explanation to sec.37(1) of the Act is not at all applicable to the case under consideration. In the scrutiny assessment, completed in the earlier years, the AO had assessed the interest income as business income and had allowed all the expenditure related with the business activity. The rule of consistency demands that for deviating from the stand taken in the earlier AY. , the AO should bring on record the distinguishing feature of that particular year. We find that the AO or the FAA has not mentioned even a single line as to how the facts of the case under appeal were different from the facts of the earlier or subsequent years. We find that the disallowance of the expenses was without any basis. In the case of Rampur Timber & Turnery Co. Ltd. (supra), the Hon'ble Allahabad High Court has held that expenditure incurred for retaining the status of the company, namely miscellaneous expenses, salary, legal expenses, travel expenses, expenses would be expenditure wholly and exclusively for the purpose of making and earning income. There is no doubt that the assessee is a corporate entity. Even if it is not carrying on any business activity it has to incur some expenditure to keep up its corporate entity. Therefore expenditure incurred by it has to be allowed. Reversing the order of the FAA, we decide Ground No.1 and 2 in favour of the assessee. We hold that the interest income earned by the assessee has to be taxed under the head business income and all the expenses related with it have to be allowed.

5.1. As far as disallowance of Carry-forward loss and depreciation is concerned, we are of the opinion that the issue is squarely covered in favour of the assessee by the judgment of HDHC delivered in the case of Lavish Apartment Pvt. Ltd. (supra). In that matter, the assessee was carrying on business of sale and purchase of property and was deriving income from letting out and from other sources. In the return filed for the relevant assessment year it set off the business loss brought forward from the previous assessment year against its income by way of rent, car and computed hire charges and commission income. The AO was of the opinion that the rental income received while letting out the properties was chargeable to tax under the head income from house property, that the hire charges and commission income were chargeable to tax under the head income from other sources, that brought forward business losses were not permitted to be set off u/s.72(1) of the Act. When the matter reached to the Hon'ble High Court it held as under :

Income against which brought forward loss is claimed to be set off should represent business income judged by application of commercial principles and not on application of provisions of Act.

Following the above, Ground No.3 is decided in favour of the assessee.

As we have decided original grounds of appeal in favour of the assessee, so the additional ground raised by the assessee becomes infructuous and hence is being adjudicated.

As a result appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 13th, May, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 13th May, 2015 को की गई ।

Sd/-

(आई पी बंसल/I P Bansal)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai,दिनांक/Date: 13.05.2015

Patel. PS

Jv. Sr.PS

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "C" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, सी खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.