

**आयकर अपीलीय अधिकरण, मुंबई “ ई” खंडपीठ**  
**Income-tax Appellate Tribunal -“E”Bench Mumbai**  
**सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य**  
**Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member**  
**आयकर अपील सं./I. T. A./5135/Mum/2013, निर्धारण वर्ष /Assessment Year: 2007-08**

Solid Containers Limited 2006, Amdani Chawl, Fossberry Road, Near ICI Ltd., Reay Road Mumbai-400 033. <b>PAN:AABCS 4907 N</b>	Vs.	Income tax Officer Range-7(2)(4), Room No.670 Aayakar Bhavan Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Vishwas Mundhe-DR

Assessee by: Shri Neeraj Sheth

सुनवाई की तारीख / **Date of Hearing:** **15.03.2017**

घोषणा की तारीख / **Date of Pronouncement:** **03.05.2017**

**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, dated 21/06/2012 of the CIT (A)-13, Mumbai, the Assessing Officer (AO) has filed the present appeal. Assessee-company, engaged in the business of manufacturing pulp from waste paper, filed his return of income on 26/10/2007 declaring total income of Rs. NIL. The AO completed the assessment u/s.143 (3) of the Act, on 24/12/2009, determining its income at Rs.9.10 lakhs.

2.First ground of appeal is about treating the rental income under the head income from house property,as against the business income as claimed by the assessee.During the assessment proceeding the AO found that the assessee has received rent of Rs. 3 Lakhs for letting out a part of the Godown on a monthly rent of Rs. 25,000/-. He held assessee was the deemed owner of the property,that it was taken on rent at the rate of Rs.18,600/- p.a., that no rent agreement was produced,that the rent amount was very nominal.He further observed the said property was taken on Pagdi with all virtual ownership rights on long term basis, that the rental income at direct nexus to the property,that same was to be assessed under the head income from house property.

2.1.Aggrieved by the order of AO,the assessee preferred an appeal before First Appellate Authority(FAA).Before him,it was argued, the assessee had leased part of its premises for use as a Godown,that the receipt on account of rent was rightly treated as business income, that the AO had taxed the same as house property income.After considering the available material the FAA

held that the assessee was the deemed owner of the property, that the AO had rightly assessed the income under the head house property. He referred to the case of Shambhu Investments P. Ltd., (263 ITR 143).

**2.2.** During the course of hearing before us, the Authorised Representative (AR) argued that the assessee had discontinued his business, that in earlier year part of the property was given on sub-lease, that the rental income was shown under the head income from business. The Departmental Representative (DR) contended that the assessee had not carried out any business during the year, that it had not shown any business income during the year under consideration.

**2.3.** We have heard the rival submissions and perused the available material. It is found that assessee had merely rented out the property and had earned rental income from it. From the conduct of the assessee it is clear that main intention was to let out the property, so, the income has to be considered rental income/income from property. As the primary object of letting out godown was not to exploit the property by way of complex commercial activities, so, same cannot be termed as business income of the assessee. Therefore, we do not want to interfere with the orders of the FAA. Confirming his order, we decide first ground of appeal against the assessee.

**3.** Second ground of appeal is about treating the business income as income from other sources, amounting to Rs.7 Lakhs. During the assessment proceedings, the AO found that the assessee had received compensation of Rs.7 Lakhs towards delay in receipt of advance from various parties on account of sale of plant and machinery. He directed the assessee to explain as to why the above income should not be assessed under the head income from other sources. After considering letter of the assessee, dated 17/11/2009, he held the assessee had received a sum of Rs.7 lakhs as an incidental income, that same was not in the nature of business income as claimed by it, that it had received interest of Rs.48.13 lakhs on loans advanced, that it had paid some interest to M/s. Intrex India Ltd., that there was no business activity during the year under appeal, that it had suspended its operation from September, 1998, that in its P & L account the assessee had declared income under the head income from other sources, that the assessee was not engaged in any business activity, that the claim made by it towards personal cost and administrative expenses had to be rejected.

**3.1.** During the appellate proceedings, after considering the available material, the FAA held that compensation received by the assessee was nothing but interest on delay on receipt of advance

payment, that the AO had rightly treated the same as income from other sources.

**3.2.** During the course of hearing before us, the AR argued that the assessee had sold machinery during the year under appeal, that same were business assets, that interest income arising out of the said transaction should be treated as business income. The DR supported the order of the AO and the FAA.

**3.3.** We have heard the rival submissions and perused the available material. We find that the disputed amount represented interest on delay on receipt of advance payment. In our opinion, income arising out of the impugned activity cannot be treated as carrying on of business. So, in our opinion, order of the FAA does not need any interference from our side. We dismiss second ground.

**4.** Next ground of appeal is about disallowance of business expenses the FAA held that the only source of income for the year under consideration was interest /miscellaneous income, that rental income was treated as income from house property for which statutory deduction had been allowed, that assessee had not carried out any business during the year under appeal, that various expenses debited as business expenditure were not allowable, that there was no indication of any business revival, that the assessee had not brought anything on the record to establish that it intended to revive the business. He referred to the cases of Narayandas (149 ITR 339) and S.P.V. Bank Ltd., (126 ITR 773) and held that question of allowability of any expenditure would not arise in absence of carrying out of business. Finally, he dismissed the ground raised by the assessee.

**4.1.** During the course of hearing before us the AR stated that expenses incurred by the assessee included salary, leave pay and other expenses of similar nature, that it was a listed corporate entity, that it had to incur expenses for maintaining corporate existences, that it had filed detailed submission for justifying the expenditure, He referred to pg.35-36 of the PB and relied upon the cases of New Savan Sugar & Gur (185 ITR 565), Tansy Investment Pvt.Ltd. (ITA/3722/Mum/09, dtd.20.11.2010.) and Mokul Finance (P.) Ltd. (29 SOT 11). The DR supported the order of the FAA and stated that the assessee had not carried out any business activities,

**4.2.** We have heard the rival submissions and perused the available material. We find that the assessee is a corporate entity and for maintaining its identity it has to incur expenditure, even if it is not carrying on business activities. A company cannot stop working like a proprietorship. Even for winding up it has to follow a certain procedure. The expenditure incurred by the assessee were necessary to maintain its existence. In the case of New Savan Sugar & Gur (supra) the Hon'ble

Apex Court has also held that deduction of expenditure cannot be held to be conditional upon making or earning of the income. Therefore, following the above judgment, we hold that the FAA was not justified in holding that normal expenses incurred by the assessee-company were not allowable as it had not carried out any business. Reversing his order, we decide Ground no.3 in favour of the assessee.

5. Last ground of appeal is about non-allowing of set off of brought forward losses. In the appellate proceedings, the FAA confirmed the order of the AO to hold that the assessee was not entitled to carry forward earlier years losses. He held assessee had not carried out any business during the year, that AO had rightly disallowed the claim made by it for carrying forward the losses of earlier years.

5.1. During the course of hearing before us the AR stated that issue was setting off of losses, that if expenses were not be allowed set off should be allowed, that the assessee had suffered loss in earlier years. The DR argued that without carrying on business the assessee was not entitled for setting off of losses.

5.2. We have heard the rival submissions. We find that the assessee had made claim for carrying forward of earlier years' losses, that the revenue authorities have disallowed the claim made by it, that before us, the AR argued that if business expenses were allowed the issue raised in GOA 4 will be academic. While deciding the earlier ground, we have held that the claim made by the assessee about expenses has to be allowed. Accordingly, we are not deciding the issue of carrying forward of losses, as it is of academic nature.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिता द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है।

Order pronounced in the open court on 3<sup>rd</sup> May, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 3 मई, 2017 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 03.05.2017.

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 " E" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ई 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.**