

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH-SMC " B "**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A. No.2081/Bang/2016 (Assessment Year : 2012-13)		
M/s. Bindu Agro Products, No.30/4, 46 th Cross, 4 th Block, Rajajinagar, Bangalore-560 010 PAN AAJFB 3447M	Vs.	Income Tax Officer, Ward 2(2)(2), Bangalore.
Appellant		Respondent.

Appellant By : Shri H. N. Khincha, C.A. Respondent By : Shri AR.V.Sreenivasan, JCIT (D.R)
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Date of Hearing : 20.02.2017.

Date of Pronouncement : 15.03.2017.

ORDER

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.6.10.2016 of Commissioner of Income Tax (Appeals) for the Assessment Year 2012-13.

2. The assessee has raised the following grounds :

1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income-tax (Appeals) has erred in confirming the same. The orders passed by Assessing Officer and Commissioner of Income tax (Appeals) being bad in law are liable to be quashed.

2.1 The learned Assessing Officer has erred in disallowing the business loss claimed by the appellant holding that there is no separate business carried out by the appellant apart from letting out of warehouses and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. On the facts and circumstances the case, the appellant having set up its business, the disallowance of business loss being erroneous is to be deleted and business loss as claimed is to be allowed.

2.2 The authorities below have failed to appreciate the fact that appellant company has set up its business operations and the expenditure claimed is bonafide and incurred for the purpose of business and is to be accepted as such.

3. The appellant also denies the liability to pay interest. Interest being levied erroneous is to be deleted.

4. In view of the above and on other grounds to be adduced at the time of hearing, the impugned order be quashed or the claim of business loss be allowed, income returned by the appellant be accepted and the consequential interest levied also be deleted.

3. The only issue raised by the assessee in this appeal is regarding disallowance of business loss on the ground that the assessee has not set up its business.

4. The assessee is a partnership firm. During the scrutiny assessment, the Assessing Officer noted that in the profit and loss account the only income

credited by the assessee is income from rent of Rs.93,30,000. After claiming expenses the net profit of Rs.36,20,712 was determined. In the statement of income, the assessee has shown its rental income as income from house property after claiming standard deduction under Section 24(a) of the Income Tax Act, 1961 (in short 'the Act') and deduction on account of interest under Section 24(b) of the Act. The remaining expenses claimed in the profit and loss account were treated as income under the head profit from business and profession at loss of Rs.33,89,296. The Assessing Officer disallowed the claim of set off business against the rental income which was offered as income from house property and assessed the rental income by ignoring the loss. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

5. Before the Tribunal the learned Authorised Representative of the assessee has submitted that the claim of business loss was denied by the authorities below on the ground that the only activity carried out by the assessee during the year was let out of the warehouse, income from which has been declared as income from house property. Thus the authorities below have concluded that the assessee has not carried out any business activity during the year and

therefore the business loss claimed cannot be allowed. The learned Authorised Representative has contended that the business activity of the assessee includes acquiring immovable property, development of the same and sale, lease or mortgage the same. Therefore the development of the warehouse is part of the business activity of the assessee. Thus the learned Authorised Representative has contended that the authorities below are not right in concluding that the assessee has not set up the business. He has argued that the assessee has commenced business vide partnership deed dt.9.10.2009. He has further submitted that the entire activity of development of warehouse and loss of the same is part of the business activity and therefore the assessee has not only set up the business but also commence the business. The expenses which are claimed by the assessee as business loss on only in respect of the carrying out the business activity of the assessee which includes the bank interest, consulting charges, depreciation, electricity, property tax, interest on vehicle loan, professional charges, etc. All these expenses have been incurred by the assessee only with respect to the activity of development of property and leasing out of the property. Thus the learned Authorised Representative has submitted that the business loss is an allowable

claim and has to be set off against the rental income of the assessee. In support of his contention, he has relied upon the following decisions :

- a. **Dhoomketu Builders & Development (P) Ltd. Vs. Addl. CIT 17 Taxmann.com 36 (Del)**
- b. **CIT Vs. Dhoomketu Builders & Development (P) Ltd. 34 Taxmann.com 18 (Del)**
- c. **CIT Vs. ;Hughes Escorts Communications 165 Taxman 318 (Del)**
- d. **CIT Vs. Herbalife International Ltd. 163 Taxman 147 (Del)**

6. On the other hand, the learned Departmental Representative has submitted that the assessee has not carried out any business activity or earned business income during the year under consideration therefore the expenses cannot be allowed against the rental income which has been offered under the income from house property. He has relied upon the orders of the authorities below.

7. Having considered the rival submissions as well as the relevant material on record it is noted that there is no dispute that the assessee has offered the rental income as income from house property after claiming the standard deduction under Section 24(a) of the Act as well as deduction on account of interest under Section 24(d) of the Act. The assessee in the computation of

income has already claimed the expenditure which are claimed as business expenditure of the assessee and therefore offered the net income after the said expenditure of Rs.33,89,296. The Assessing Officer concluded that this expenditure is nothing but business loss but since the assessee has not carried out any business activity during the year the same cannot be set off against the rental income. Since the assessee has offered the rental income as income from house property and claimed deduction under Section 24 of the Act then the expenses in question which are claimed to have been incurred for the purpose of business cannot be allowed against the income from house property. The assessee itself has decided to offer the rental income under the head income from house property and therefore double deduction cannot be allowed as per the provisions of the Act. As regards the set up of the business it is manifest from the record and particularly the Partnership Deed dt.9.10.2009 that the acquisition of the property, development of the same and leasing out of the property is part of the business activity of the assessee. The assessee has also filed the sale agreement under which the property was purchased and after development it was let out. Therefore so far as the question of setting up of the business, the assessee has established this fact

that the business of the assessee was already set up. However since the assessee has not offered any business income during the year under consideration therefore the expenditure in question will be treated as business loss and has to be carry forward for set off against the business income if any in the subsequent year as per the provisions of Section 72 of the Act.

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

Order pronounced in the open court on 15th March, 2017.

Sd./-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Bangalore,
Dt.15.03.2017.

*Reddy gp

Copy to :

1. Appellant
2. Respondent
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4. CIT(A)
5. DR, ITAT, Bangalore.
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Assistant Registrar
Income Tax Appellate Tribunal
Bangalore.