

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य के समक्ष ।
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3436/Mum/2017

(निर्धारण वर्ष / Assessment Year:2012-13)

M/s. Enlighten Lifestyle Limited (erstwhile Kornerstone Retail Limited) B-101, Synthofine Estate, Opp. Virnani Industrial Estate, Goregaon (E), Mumabi-400 063	बनाम/ Vs.	ITO-12(3)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCK 5467 D		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Chaitanya Joshi & Ms. Ayushi Madani
प्रत्यर्थी की ओर से/Respondent by	:	Ms. N. Hemalatha
सुनवाई की तारीख / Date of Hearing	:	08.11.2017
घोषणा की तारीख / Date of Pronouncement	:	08.01.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-20, Mumbai dated 02.02.2017 and pertains to the assessment year 2012-13.

2. The first issue raised relates to the disallowance of interest income from fixed deposits amounting to Rs.40,10,535/-, as income from other sources as against the income from profit and gains from business and profession treated by the assessee.

3. Brief facts of the case are as under:

During the course of assessment proceedings the Assessing Officer observed that the assessee company had a turnover of Rs.1,09,47,104/- and showed G.P. of Rs.36,21,239/-. The G.P. was 33.08%. The assessee company had taken a loan of Rs.8,56,00,000/- from Directors on which no interest had been given. The assessee utilized the loan taken for FD in the bank and earned interest on FD of Rs.40,10,535/-. The Assessing Officer was of the opinion that there was no apparent need for taking the loan for the business. Further on perusal of the records, it was seen by the A.O. that the assessee company had incurred loss on account of administrative expenses and the interest received on account of FD had been set off against such administrative expenses. It was inferred by the A.O. that the assessee's only intention for taking loan appeared to take set off of the expenses against the interest receipt. Assessing Officer held that the assessee had received interest of Rs.40,10,535/- on the FD and the same needed to be taxed under the head income from other sources. Relying on the decision of Apex Court in the case of Tuticorin Alkali Chemical & Fertilizers reported in 227 ITR 172, the interest received on FD was taxed under the head income from other sources.

4. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer.

5. Against this order, the assessee is in appeal before the ITAT.

6. I have heard both the counsels and perused the records. The Id. Counsel of the assessee submitted that the authorities below have totally erred in factually appreciating the case. He submitted that the assessee has conducted business during the year and there were transactions of business receipts and payments duly recorded in the profit and loss account, apart from the interest on fixed deposit. The counsel of the assessee submitted that as apparent from the balance sheet of the company, the company's reserves was in negative and the assessee company had to resort to borrowal from the directors to bolster the networth of the company. This was in order to seek further expansion and explore the opportunities. He submitted that these aspects have not been considered by the authorities below and they have wrongly observed that administrative expense have been set off only against the interest income. Hence, they have considered the interest income as income from other sources. In this regard, the Id. Counsel of the assessee referred to the Hon'ble jurisdictional High Court decision in the case of *CIT vs. Green Infra Ltd.* 392 ITR 7 (Bom) for the proposition that the interest income from funds pending its utilization for the purpose of business is assessable as business income and not income from other sources.

7. Per contra, the Id. Departmental Representative relied upon the orders of the authorities below.

8. Upon the careful consideration, I find that the Id. Counsel of the assessee is correct in his submission that the authorities below have failed to appreciate the factual aspects of the appeal. It is clear that the assessee has obtained loans from Directors free of interest and its reserves were in negative. Apart from interest on fixed deposits, the assessee has also operational income and expenses. Hence, by no stretch of imagination it can be said that the administrative expenses have been adjusted only against the interest income. Furthermore, the assessee's submission that the amount was obtained from the Directors as the reserves of the company were in negative in order to enable the company to pursue further expansion, has been rejected summarily. The Hon'ble High Court decision cited above duly supports the case of the assessee. The facts and circumstances clearly indicate that the authorities below have totally erred in appreciating the facts of the case. Accordingly, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

9. The second issue raised is that the Id. Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in disallowing the business income of Rs.10,41,647/-.

10. Brief facts on this issue are as under:

During the year, the assessee claimed rent expenses of Rs.18,54,780/-. On perusal of the rent agreement with M/s Keval Kiran Clothing Limited, a sister

concern, it was noted by the Assessing Officer from the Clause no 3 and 4 of the agreement, which read as under:-

"The monthly compensation for use and occupation of the aforesaid premises and amenities i.e. electricity, maintenance etc shall be Rs.1,00,000/- or 15% of the net realization of the said premises whichever is higher, service tax if any would be borne by licensee."

"It is agreed by and between the parties hereto that all out going expense shall be entirely borne and paid by the licensor only for the period of this leave and license."

11. On going through these term, the Assessing Officer opined that the assessee company had no need to incur expenses on day to day basis as the licensor had not only given the property on rent but it had also right of receipt of 15% of the sale/turnover of the assessee. The day to day expenses had to be borne by the licensor, i.e., M/s Keval Kiran Clothing Ltd. The Assessing Officer observed the licensor is the associate concern of the assessee company, the terms and conditions do not clearly mention about which expenses were going to be incurred by the licensor. That the only intention to have such terms between the two associate concerns appears to just claim expense in both the concerns. Hence, the Assessing Officer issued a notice to the assessee requesting him to explain the anomaly. The submission furnished by the assessee was considered but was not acceptable by the Assessing Officer as the assessee had stated that the assessee had incurred expenses and the same had been incurred exclusively for the business. The assessee's representative had not explained why the outgoing expenses including electricity and maintenance had not been

reduced from the rent given as per rent agreement. Hence, the Assessing Officer disallowed an amount of Rs.10,41,647/- and added back to the total income of the assessee.

12. Before the Id. Commissioner of Income Tax (Appeals), the assessee's submissions were noted by the Id. Commissioner of Income Tax (Appeals) as under:

The appellant has submitted that the allegation of the A.O. is patently wrong and misquoted the licensor has not only given the property on rent but it had also right of receipt of 15% of the sale/turnover of the assessee. The correct interpretation of clause no:-3 is licensor will get compensation for use of the premises at Rs.1,00,000/- per month or 15% of the net utilisation higher. The clause does not indicate both item of compensation. The method is defined to arrive at lease rent payable. We have submitted copy of calculation before A.O. for determination of rent expenses. These lease agreement is towards utilization of premises and not for conducting business of the appellant. All out going expenses for conducting business are borne by appellant and not licensor. Expenses are claimed only and only in the books of the appellant and not in the books of licensor. This is only a leave and license agreement for premises and have no what so ever locus standee on conducting business activities and business expenses agreement. The outgoing expenses of business do not include any expenses towards maintenance and electricity expenses. The maintenance expenses are towards society maintenance charges which have been borne by licensor and the appellant. A.O. disallowed genuine business expenses which are not part of any agreement of lease.

13. However, the Id. Commissioner of Income Tax (Appeals) has not convinced, he affirmed the action of the Assessing Officer by holding as under:

On going through the submissions of the appellant it is not clear as to how the expenses claimed were pertaining to the earning of interest on FDR which is the only activity of the company during the year. There is no evidence to establish that the expenditure was incurred for the purpose of income declared during the year. Having regard to the facts of the case the disallowance of expenses of Rs.10,41,647/- by the AO is found to be in order and the same is upheld/ Accordingly this ground of appeal is dismissed.

14. Against the above order, the assessee is in appeal before the ITAT.
15. I have heard both the counsels and perused the records. The Id. Counsel of the assessee submitted that the authorities below in this case have totally erred in appreciating the relevant clauses of the lease agreement. The assessee has acted only in accordance with the terms of the lease and the impugned payment was duly made under the terms of the lease. He submitted that the Id. Commissioner of Income Tax (Appeals) was totally incorrect in holding that there is no business of the assessee except earning of fixed deposits interest. He pleaded that the addition may be deleted.
16. Per contra, the Id. Departmental Representative relied upon the orders of the authorities below.
17. Upon careful consideration I note that the Id. Commissioner of Income Tax (Appeals) has affirmed the addition only on the ground that the expenses have been claimed pertaining to the earning of fixed deposit interest which is only the activity of the company. As already found while adjudicating the issue number 1 above, it is factually incorrect that the assessee had not been in any activity, except earning of interest on fixed deposits. Moreover, I have also held as above that the said interest was business income and accordingly, there is no justification of disallowance of the expenditure in this case. Accordingly, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

18. In the result, this appeal by the assessee stands allowed.

Order pronounced in the open court on 08.01.2018

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :08.01.2018

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai