

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2109/M/2016
Assessment Year: 2010-11**

Income Tax Officer, Ward 20(2)(5), Room No.208, Piramal Chamber, Lalbaug, Mumbai – 400 012 (Appellant)	Vs.	M/s. P.N. Writer & Co., 201, 2 nd Floor, Astoria Hotel, J Tata Road, Churchgate, Mumbai - 21 PAN: AA EFP5561D (Respondent)
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Present for:

Assessee by : Shri Satish Mody, A.R.
Revenue by : Ms. Pooja Swaroop, D.R.

Date of Hearing : 20.02.2018
Date of Pronouncement : 28.03.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 05.01.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The grounds raised by the assessee are as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating interest income from deposits as business income instead of income from other sources in spite of the fact that earning interest is not the business of the assessee.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) is not justified in allowing expenses towards prof. and legal charges of Rs.73,38,8321-and admin expenses of Rs. 54,537/-as these expenses were not incurred solely for business purpose but for the existence of the firm.

3. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The facts in brief are that the assessee filed the return of income on 15.10.10 which was processed under section 143(1) of the Act and thereafter selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee shown interest on termed deposit of Rs.4,56,757/- and other interest of Rs.1,59,386/- as business receipt and claimed against this business receipts various expenses such as rates and taxes of Rs.3,11,444/-, repair and maintenance of Rs.1,67,302/-, insurance charges of Rs.41,142/-, professional and legal charges of Rs.73,38,832/-, profession tax of Rs.2,500/-, adult fees of Rs.15,000/-, telephone charges of Rs.14,537/-, travelling expenses of Rs.22,376/-, interest expenses of Rs.7,063/- and brokerage/commission expenses of Rs.99,270/- aggregating to Rs.80,05,966/-. According to the AO, the interest on the term deposit and interest on bonds and loans was assessable under the head "Income from other sources" and therefore the expenses are not deductible. The AO also observed that expenses of Rs.80,05,966/- would not have expended for earning interest on term deposits, bond and loans given and accordingly served a show cause notice dated 18.10.12 as to why the amount of Rs.80,05,966/- should not be disallowed as the same is not spent for the earning of interest on term deposit which was replied by the assessee vide letter dated 23.03.13. The assessee submitted that the interest income, in fact, represented the business income of the assessee. The assessee also submitted that the Ld. CIT(A) in assessee own case in A.Y. 2001-02 has held the same as business income and not the income from other sources. As regards the claim of the expenses the assessee submitted that all these expenses were incurred for maintaining the office of the company and in order to keep the assessee going . It was also submitted that substantial part of these expenses in the form of legal and professional charges were incurred towards defending the properties of firm as hostile attempt made by one ex-partner of the firm, Mrs. Ramona Pinto, who wanted the dissolution of the firm and consequent distribution of its assets to the partners. Therefore, the assessee has to defend its existence and all these are revenue expenses were incurred either to defend the existence of the firm

or to maintain the office of the firm . The AO however rejected the contention of the assessee and assessed the interest income under the head of "Income from Other Sources" without allowing any deductions qua expenses.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by following the order of his predecessor in A.Y. 2001-02. So far as the ground No.1 is concerned and as far as the claim of the expenses incurred, Ld. CIT(A) recorded the finding of the fact that assessee has claimed only those expenses which were necessary to day today operation of the assessee and also incurred wholly and exclusively for keeping the firm alive though there was no business during the year due to temporary lull which was the result of a litigation by one of the ex-partners of the firm. The Ld. CIT(A) relied on the decisions of Hon'ble Supreme Court in the case of CIT vs. Rajendra Prasad Moody, 1979 AIR 373, Mangalore Ganesh Beedi Works vs. CIT CA Nos.10547/48 of 2011 SC and Bombay High Court in the case of Hindustan Chemical Works Ltd. vs. CIT 1980 124 ITR 561 Bom HC,.

5. The Ld. D.R. vehemently submitted before us that the action of the Ld. CIT(A) was erroneous and against the facts on the record. The Ld. D.R. submitted that the Ld. CIT(A) has wrongly directed the AO to treat the interest income under the head business which was to be rightly taxed by the AO under head "Income from other sources" as the assessee was not doing any business activity during the year. The Ld. D.R. submitted that the Ld. CIT(A) erred in following the order of his predecessor in A.Y. 2001-02.

6. So far as the allowance of expenses is concerned, the Ld. D.R. submitted that since there was no business during the year and all the expenses were not incurred wholly and exclusively for the purpose of business. The Ld. D.R. stated that the major element in the expenses represented legal and professional charges which were incurred to protect the property of the company and therefore constituted to be not incurred wholly and exclusively

for the purpose of business. Similarly other expenses were also not incurred for the purpose of business. The Ld. D.R. also submitted that even the property expenses such as repairs and maintenance charges were claimed by the assessee which is in contradiction to the fact that while computing the income from house property the assessee claimed 30% towards repair and maintenance. In view of these facts, the Ld. D.R. prayed that the order of AO needs to be restored by setting aside the order of the Ld. CIT(A).

7. The Ld. A.R., on the other hand, vehemently relied on the order passed by the Ld. CIT(A) and submitted that the order passed by the Ld. CIT(A) is quite comprehensive and the reasoned one as the same has been passed after considering the ratio passed by the Apex Court and High Courts on the issues involved in the appeal. The Ld. A.R. submitted that so far as treating of interest income as assessable under business income the Ld. CIT(A) has rightly allowed the same by following the order of his predecessor in A.Y. 2001-02 whereas the admissibility of business expenses are concerned, the courts and judicial forums have duly held that even if there are no business during the year due to lull in the business the expenses incurred in order to maintain the office of the assessee has to be allowed. In defense of his argument, the Ld. A.R. relied on the decision of the Hon'ble Supreme Court and High Courts which were relied by the Ld. CIT(A) while passing the order.

8. Having heard the rival submissions and perused the material on record including the decisions referred to by the Ld. A.R., we find that the issue of treating the interest income as income assessable under the head business as has been passed by the Ld. CIT(A) after following the order of his predecessor in 2001-02, is correctly allowed by the Ld. CIT(A). So far as the allowance of business expenditure is concerned, we find that the expenses comprised of repair and maintenance of Rs.1,67,302/-, rates and taxes of Rs.2,99,344/-, insurance charges of Rs.41,142/- and interest expenses of Rs.7,083/- totaling to 5,15,851/- which were disallowed and added back by the assessee in the

computation of income itself and the assessee has only claimed the legal and professional charges of Rs.73,38,832/-, admin expenses of Rs.54,413/- which further consists of profession tax of Rs.2,500/-, audit fees of Rs.15,000/-, telephone charges of Rs.14,537/- and travelling expenses of Rs.22,376/- which were only allowed while disallowing the brokerage of Rs.99,270/- and part of rent and taxes of Rs.12,000/-. Considering the ratio laid down in the various decisions as referred by Ld. CIT(A), we are of the view that the order of the Ld. CIT(A) is quite reasoned one and as per ratio laid down by the Apex Court, High Courts and therefore the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28.03.2018.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.03.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.