



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3215/Mum/2012
(Assessment Year :2007-08)

Air Cargo Express P. Ltd.
214/8, Ground Floor
Raheja Centre, Nariman Point
Mumbai 400 021 PAN – AAFCA7702F

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-3(1), Mumbai

..... Respondent

Assessee by : Shri Milind V. Sahasrabudhe
Revenue by : Ms. N. Hemlatha

Date of Hearing – 24.05.2018

Date of Order – 25.05.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is against the order dated 10th February 2012, passed by the learned Commissioner (Appeals)-5, Mumbai, for the assessment year 2007-08.

2. In the grounds of appeal, the assessee has challenged disallowance of expenses claimed under various heads as well as treating the interest income as income from other sources as against business income. Of course, assessee has also raised an additional

ground on the issue that the income earned before setting up of business would constitute capital receipt and would go to reduce cost of project / pre-operative expenses, hence, cannot be subjected to tax.

3. Brief facts are, the assessee a company filed its return of income for the impugned assessment year on 27th October 2007, declaring income of ₹ 3,29,525. As alleged by the Assessing Officer, though, statutory notices under section 142(1) and 143(2) of the Income Tax Act, 1961 (for short "*the Act*") along with Questionnaire calling for various details were issued to the assessee several times, however, the assessee did not respond to them. Since, the assessment was getting time barred; the Assessing Officer proceeded to complete the assessment to the best of his judgment by invoking the provisions of section 144 of the Act. In the absence of any details furnished by the assessee in respect of expenditure claimed under various heads amounting to ₹ 3,29,525, the Assessing Officer disallowed them. Further, he observed that in the relevant previous year, assessee had not earned any income from business and the only income earned was towards interest amounting to ₹ 22,32,126. Thus, he treated the interest income as income from other sources and for that reason also disallowed the expenditure claimed by the assessee. Being aggrieved

of the assessment order so passed, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals), however, did not find merit in the submissions made by the assessee, hence, upheld the decision of the Assessing Officer both on the issue of interest income as well as expenses claimed.

5. The learned Authorised Representative submitted before us that due to lack of proper professional assistance, the assessee was unable to properly represent its case either before the Assessing Officer or before the learned Commissioner (Appeals). He submitted that the assessee was intending to start the business of international airlines cargo services. For that purpose, it had applied to the Ministry of Civil Aviation for obtaining the license. It was submitted, as per condition imposed, for obtaining the license the assessee has to invest in fixed deposits with Banks. He submitted, since, the license was not granted during the year by the Ministry of Civil Aviation, the assessee could not commence its business. The learned Authorised Representative submitted, the interest income has a nexus with the business activity of the assessee. He further submitted, in case it is held that the assessee has not commenced its business, the income earned prior to commencement of business has to be treated as capital receipt and

will go to reduce the cost. However, he fairly submitted that the issue raised in the additional ground was never raised before the Departmental Authorities. Thus, he submitted, all the issues raised in the present appeal may be restored back to the Assessing Officer for de novo adjudication.

6. The learned Departmental Representative has no objection if the issues are restored back to the Assessing Officer for fresh adjudication.

7. We have considered rival submissions and perused materials on record. It is evident, before the Assessing Officer the assessee did not appear and comply with the statutory notices as a result of which the assessment was completed ex-parte under section 144 of the Act. Before the learned Commissioner (Appeals) also, the assessee has not improved its case by furnishing any supporting evidence or substantive argument. However, it has been submitted before us that the failure on the part of the assessee to properly represent its case before the Departmental Authorities was due to lack of able professional assistance. It is also a fact on record that the additional ground raised before us was never raised before the Departmental Authorities. Therefore, on over all consideration of facts and material on record, we are of the view that the assessee deserves an opportunity to represent its case properly before the Departmental Authorities. Accordingly, we

set aside the impugned order of the learned Commissioner (Appeals) and restore all the issues raised in the present appeal, including the issue raised in the additional ground, to the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee. We also direct the assessee to comply to the notices to be issued by the Assessing Officer and cooperate in finalizing the proceedings. Grounds are allowed for statistical purposes.

8. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 25th May 2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 25.05.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai