

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

ITA No.	Asst. Year	Appellant	Respondent
1659/Hyd/16	2007-08	Dy. Commissioner of Income Tax, Circle-2(1), HYDERABAD	M/s. Karvy Global Services Limited, HYDERABAD [PAN: AACCK5037C]
745/Hyd/17	2006-07		

For Revenue : Smt. Geetender Mann, DR
For Assessee : Shri P. Murali Krishna, AR

Date of Hearing : 23-05-2018
Date of Pronouncement : 08-06-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

These are Revenue appeals against the orders of the Commissioner of Income Tax (Appeals)-2, Hyderabad, dated 29-06-2016 & 25-01-2017 for the AYs. 2007-08 and 2006-07 respectively on the issue whether assessee's claim of loss in the impugned years is allowable, as Revenue contends that the business has not commenced.

2. Briefly stated, assessee-company filed its return of income for the AY.2007-08 declaring loss of Rs. 8,42,21,637/-. The assessment was reopened u/s. 147 of the Income Tax Act [Act] on the reason that assessee has not commenced

commercial operations during the year under consideration and as the assessee is in pre-operative stage, the loss claimed cannot be allowed. After giving opportunity to assessee and taking objections from assessee, AO was of the view that assessee failed to prove satisfactorily that the business has commenced during the financial year and the expenditure whatever incurred was treated as 'pre-operative expenditure'. Accordingly, losses in business of Rs. 11,59,07,789/- in the revised computation was not allowed. Consequent to the stand taken in AY. 2007-08, the assessment in AY. 2006-07 was also reopened and relying on the findings in the AY. 2007-08, AO has brought to tax the Short Term Capital Gain offered in the return of income and the loss claimed Rs. 16,10,97,712/- was disallowed. Aggrieved, assessee preferred appeals before the Ld.CIT(A).

3. Before the Ld.CIT(A) it was contended that assessee-company was incorporated to carry on the business and providing Information Technology Enabled Services (ITES) and other related services and all divisions of company have not become operative. Therefore, P&L A/c was not drawn. However, as some of the verticles have generated revenue, it became mandatory for assessee to offer the revenue to tax. In the process of computing profits and gains from the business, assessee has claimed various expenditure as it had incurred loss more than the revenue's which was carried forward. Assessee relied on various principles on 'setting up of business' and 'commencement of business' and relied on

Section 3 of the Act specifies which about setting up of the business and not commencement of business. It relied on the decision of the ITAT in the case of M/s. Surya Infra IT Parks Pvt. Ltd., Vs. CIT in ITA No. 863/Hyd/2014, dt. 30-11-2015 and also the decision of Hon'ble High Court of Delhi in the case of CIT Vs. M/s. Dhoomketu Builders & Development Pvt. Ltd., [34 taxmann.com 18] (Delhi). It also relied on the decision of ITAT in the cases of Dakshin Shelters Pvt. Ltd., Vs. Dy.CIT in ITA Nos. 1983 to 1985/Hyd/2011, dt. 04-05-2012 and ITO Vs. M/s. Trident Shelters Pvt. Ltd., in ITA No. 1160/Hyd/2012, dt. 22-01-2014. Assessee also relied on the principles laid down by the jurisdictional High Court in the case of CIT Vs. Sponge Iron India Ltd., [201 ITR 770] (AP) and also on the principles laid down by the Hon'ble Bombay High Court in the case of Western India Vegetable Products Ltd., Vs. CIT [26 ITR 151] and CIT Vs. Saurashtra Cement and Chemical Industries Ltd., [91 ITR 170] (Gujarat). It also relied on various other case law as extracted by the CIT(A) in his order.

4. After considering the above, Ld.CIT(A) allowed the contentions of assessee by stating as under:

“6. I have considered the assessment order, grounds of appeal and the AR submissions in this regard. The only issue involved in this appeal is with regard to AO's action is not allowing the expenditure of Rs. 11,44,94,078/- incurred as revenue expenditure. AO was of the view that the assessee has not commenced its business during the year under appeal, the expenditure incurred prior to the commencement of business is capital in nature and hence the assessee's claim does not hold any merit.

6.1. In this regard, I have perused the case laws relied upon by the AR. The Hon'ble ITAT, Hyderabad in the case of M/s. Surya Infra IT parks Pvt. Ltd Vs. CIT in ITA No. 863/Hyd/2014, dated 30.11.2015 has held as under:

“the question which arises for consideration is as to when the assessee said to have commenced its business. It has to be observed that there is a distinction between setting up of the business and commercialization of the operation, which generates actual revenue to the business. What is relevant under the Income-tax Act is the set up of the business and not the commencement of the business by referring to the provisions of section 3 of the Act”. The Hon'ble ITAT has largely relied on the decision of the Hon'ble High Court of Delhi in the case of CIT V DHOOMKETU BUILDERS & DEVELOPMENT (P.) LTD 34 taxmann.com 18 (Delhi) (HC)”.

6.2. Similar view was also taken by the Hon'ble Tribunal in the case of DAKSHIN SHELTERS PVT. LTD. in ITA Nos 1983 to 1985/Hyd/2011 and in the case of ITO VS. TRIDENT SHELTERS PVT. LTD., ITA No. 1160/Hyd/2012.

6.3. In view of the above, the AO should have considered the assessee's plea that once the business is set up, the assessee is eligible to claim the expenditure irrespective of the commencement of commercial operations, in light of decided case laws on this subject. Therefore the AO is directed to allow the business loss of Rs. 11,44,94,078/-. Hence, the grounds raised in this regard are allowed”.

4.1. Following the order in AY. 2007-08, Ld.CIT(A) vide the order dt. 25-01-2017 allowed the contentions of assessee in AY. 2006-07 as well. Revenue has raised common grounds in both the years and mainly contesting that assessee has not commenced business operations, so the loss is not to be allowed.

5. After considering the rival contentions, we are not in a position to appreciate the stand taken by the Revenue. It is now practically well settled by various judicial pronouncements that a business is a set up as soon as it is

ready to commence operations and it is not necessary that actual revenue/production should also be received/commenced. Assessee is eligible for claiming the expenditure once it is established that business is set up. The principles laid down by various co-ordinate Benches, following the principles on the issue established by various Hon'ble High Courts and Hon'ble Supreme Court have been followed by the Ld.CIT(A). We have also examined the statements of computation filed and orders of the authorities. Assessee has indeed completed certain projects and received revenue receipts also against which the expenditures were claimed. Since assessee's business was set up, we are in agreement with the findings of the Ld.CIT(A) that the loss is allowable.

6. There is no need to discuss the various principles laid down in various judgments, which are extracted in the order of the CIT(A) in the assessee's submissions. We are of the opinion that the business has been set up which is the requirement u/s. 3 of the Act and accordingly, assessee's claim of loss is allowable. There is no merit in the contentions of Revenue that assessee should commence commercial operations. Consequently both the appeals are dismissed.

Order pronounced in the open court on 8th June, 2018

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 8th June, 2018

TNMM

Copy to :

- 1. The Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.*
- 2. M/s. Karvy Global Services Limited, No. 46, Avenue No. 4, Karvy House, Street No. 1, Road No. 10, Banjara Hills, Hyderabad.*
- 3. CIT(Appeals)-2, Hyderabad.*
- 4. Pr.CIT-2, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*