

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “एक-सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.164/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

M/s. Agrawal Business Corporation,
09, Yashomandi,
Near Ravindra School,
Takali Road, Dwarka,
Nashik – 422 101
PAN : AAOFA3947J

.... अपीलार्थी/Appellant

Vs.

ACIT, Circle-1, Nashik

.... प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 25.07.2018	घोषणा की तारीख / Date of Pronouncement: 03.08.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-1, Nashik, dated 03-11-2016 for the Assessment Year 2013-14.

2. Grounds raised by the assessee are extracted as under :

“1. On the facts and in the circumstances of the case and in law Lower Authorities have erred in treating the interest earned on business advances as income taxable under the head income from other sources thereby rejected appellant’s claim that this interest is earned out of business activity of the appellant and therefore correctly treated under the head Profits and Gains from Business and Profession.

2. On the facts and in the circumstances of the case and in law Learned Assessing Officer further erred in disallowing remuneration paid to partners by invoking provisions of section 40(b) of the Income Tax Act, 1961, to the extent of Rs.13,98,503/- by rejecting the appellant’s contention that interest earned on business advances is also part of business income of the appellant.”

From the above, it is evident that the Ground No.2 is consequential to Ground No.1 that relates to the proper head of income for taxing the interest income received by the assessee.

3. Briefly stated relevant facts of the case include that the assessee is a firm engaged in the business of Builders/Developers and Estate Agent. Assessee filed the return of income on 23-09-2013 declaring total income of Rs.23,30,840/-. During the year under consideration, the assessee firm earned interest income of Rs.23,61,817/- and credited the same to the profit and loss account. As a result, the net profit as per books of account works out to Rs.60,52,097/-. Assessee treated the same as business income and computed the allowable remuneration on the said increased profits. In the assessment proceedings, the AO treated the interest income as taxable u/s.56 of the Act and therefore, the allowable remuneration is reduced proportionately. In effect, against the assessee's claim of deduction on account of remuneration at Rs.37,21,258/-, the same is reduced by the AO to Rs.23,22,755/-. It is the claim of the assessee that he is also into the money lending business and therefore, the interest income constitutes the business income of the assessee. In this regard, the assessee relied on various decisions in this regard. Relying on the judgment of Hon'ble Apex Court in the case of East India Housing and Land Development Trust Ltd. reported in 42 ITR 49, the AO held that mere object of formation of a company or a firm does not define the character of income. He accordingly disallowed the claim of remuneration to the extent of Rs.13,98,503/- and the same is added to the income of the assessee. CIT(A) confirmed the same. In para No.5 of her order, the CIT(A) concluded that the assessee does not possess

licence for money lending activity and the transactions of lending are not substantial. Relying on various decisions mentioned in the said para, the CIT(A) confirmed the disallowance made by the AO. CIT(A) also dismissed the contention of the assessee relating to the principle of consistency stating that the assessee's claim of said income as business income was not disturbed in the earlier assessment years.

4. Aggrieved with the same, the assessee is in appeal before us with the above referred grounds.

5. Ld. Counsel for the assessee explained the above facts of the case and submitted that the interest income is taxable as business income when the assessee earned the same from the fixed deposits. In support of his case, Ld. Counsel relied on the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Paramount Premises (P) Ltd. 190 ITR 259 (Bom.). He also relied on certain decisions the copies of which are filed in the paper book from pages 32 to 34 of the paper book.

6. On the other hand, Ld. DR for the Revenue mentioned that the interest earned on Fixed Deposits is unrelated to the business activity of the assessee when the same could not be part of the book profits of the firm for the purpose of computation of allowable salary, interest payable to the partners etc. He therefore prayed for affirming the order of Ld.CIT(A).

7. We heard both the parties on this issue of treating the interest income as business income of the assessee and consequently the inclusion of the same in the business profits for the purpose of computing deduction u/s.40(b) of the Act. Undisputedly, the facts

include that the interest income is reflected by the assessee as business income of the assessee over the years. It is the claim of the assessee that the said entries are undisputed by the AO in the past as well as in the current assessment year. Further, it is the claim of the assessee that the assessee-firm is into money lending activity and the same is in accordance with the amended objects of the supplementary partnership deed of the assessee. Assessee relies on the supplementary deed dated 01-04-2010 (page 3 of the paper book) to substantiate the claim and stated that this document was not available on 05-02-2016 when the assessment is made. Therefore, we are of the opinion that there is a requirement of examining the genuineness of the supplementary deed of partnership. The availability of surplus funds is the another issue which requires examination at the end of the AO. Further, the exclusion of such interest receipts for the purpose of section 40(b) of the Act was affirmed by the Hon'ble Rajasthan High Court in the case of CIT Vs. Allen Career Institute reported in 403 ITR 375 (Rajasthan).

Therefore, we are of the view that this issue should be remanded to the file of AO for fresh adjudication on the correctness of the returned income for taxing the interest receipts after determining the facts relating to the availability of excess funds and the scope of the objects of the assessee if the money lending activity is authorised by the partnership deed. AO is also required to examine the number of transactions if they constitute substantial business of the assessee or otherwise. AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 03rd day of August, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

(D. KARUNAKARA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 03rd August, 2018
सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-1, Nashik
4. The Pr.CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC Bench"
Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune