

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1689/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Circle-2, Aurangabad.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Maharashtra Water Conservation
Corporation, Fazalpur,
Nr. Collector Office,
Aurangabad-431 001.
PAN : AAMFM1607K

.....प्रत्यर्थी / Respondent

Appellant by : Shri O. A Mao

Respondent by : Shri Abhay Shastri

सुनवाई की तारीख / Date of Hearing : 29.08.2018	घोषणा की तारीख / Date of Pronouncement : 30.08.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals)-2, Aurangabad, dated 05.05.2016 relating to assessment year 2012-13 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The Revenue has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-2, erred in holding that the assessee is engaged in the business activities when there were only meager contract receipts from fisheries of Rs.6,38,224/- which was not at all the main business of the assessee but only a casual activity and when it has not earned any income from, or not engaged in any business of water conservation and /or implementation of irrigation project.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-2, Aurangabad erred in allowing the claim of depreciation amounting to Rs.14,46,61,834/- disallowed by the A.O., without appreciating the fact that the water conservation projects and other assets on which depreciation was claimed has not been used for the purpose of business and assessee has not earned any income from the same, thereby defying the ‘matching concept’ of accountancy.

3. On the facts and in the circumstances of the case, the order of the AO be restored and that of the CIT(A)-2 be vacated.

4. The appellant craves leave to add, amend or alter all or any of the Grounds of appeal.”

3. The Ld. AR for the assessee at the outset pointed out that both the issues raised in the present appeal are squarely covered by the order of Tribunal in assessee’s own case relating to assessment year 2010-11 & 2011-12.

4. The Ld. DR for the Revenue on the other hand placed reliance on the order of Assessing Officer.

5. We have heard the rival contentions and perused the record. Briefly in the facts of the case, the assessee was a Statutory Corporation owned by the State Government of Maharashtra formed by the Maharashtra Water Conservation Corporation Act, 2000 (Mah.III of 2001) with the purpose of promotion, operation and rapid development and regulation of watershed and water conservation works including social forestry and irrigation projects in the state of Maharashtra. The assessee filed return of income for the assessment

year 2012-13 on 29.09.1012 declaring a loss of Rs.2,35,28,155/-. The case of the assessee was taken up for scrutiny. The Assessing Officer was of the opinion that since the assessee had not earned income from its main business of irrigation and water supply and because the income earned from fisheries contract was not the main business of the assessee, there was no business activity and the assessee had not used any of its assets for the purpose of business for earning any income or profit. Therefore, he held that the assessee was not entitled to claim depreciation on the assets owned by it and he disallowed the claim of depreciation of Rs.14,46,61,834/- and added it back to the total income of the assessee. The Assessing Officer also treated the receipts from fisheries business as income from other sources.

6. The CIT(A) referred to the order of his predecessor in assessee's own case and noted that similar issue has been decided in assessment years 2010-11 and 2011-12. The CIT(A) held that the said decisions were binding for the year under reference. He further held that it was not repudiated that fishery was also one of the main business activity of the assessee corporation. The CIT(A) further observed that the assessee is engaged in the activities of conservation of water and implementation of irrigation projects approved by the Govt. of Maharashtra. Accordingly, the assessee had carried out said activities uninterruptedly and during the year under reference, it had earned income of Rs.6,38,224 on account of fishery permission fees, sale of tender forms, water charges etc. Further, its main purpose was promotion, operation and rapid development and regulation of watershed and water conservation works including social forestry and irrigation projects in the State of Maharashtra. As per Maharashtra Water Conservation Corporation Act, 2000, it had to promote irrigation related activities such as fisheries, floriculture, horticulture, sericulture

etc. Its object was not to earn any profit of income in such projects. The CIT(A), therefore, held that the assessee has used the assets for the purpose of its business and the AO was not right in disallowing depreciation of Rs.14,46,61,834/- on reservoir projects. He accordingly, directed the AO to delete the addition of Rs.14,46,61,834/- made by him and allowed the ground of appeal.

7. The Revenue is in appeal before us against the order of CIT(A).

8. We find that the Tribunal in ITA Nos.883 & 1568/ PUN/2015 relating to assessment years 2010-11 & 2011-12 vide order dated 23.03.2018 had allowed both the claims of the assessee as per observation in Para 6 and 7 and same are reproduced as under:

“6. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. We have also considered the decisions and documents on which the Id. AR of assessee has placed reliance to support his submission. Two issues have been raised by the Revenue in its appeals. The first issue is with respect to head of income under which income from fisheries is to be assessed i.e. whether it is ‘business income’ or ‘income from other sources’. The second issue raised by the Revenue is whether the assessee is eligible to claim depreciation on reservoir when no income has been declared from new asset acquired by assessee.

In so far as the first issue relating to income from fisheries is concerned, we find that it would be relevant to refer the objects of assessee. Chapter-IV of the Maharashtra Water Conservation Corporation Act, 2000 deals with functions and powers of Corporation. In section 18 of the said Act, functions of the Corporation are enumerated. In clause-(m) of Section 18, fisheries has been mentioned as one of the activities promoted by the assessee. The relevant extract of section 18 is reproduced herein below for ready reference:

“18. The functions of the Corporation shall be as follows, namely:-

(a).....

(b).....

.....

.....

(m) to promote irrigation related activities such as fisheries, pisciculture, floriculture, horticulture, sericulture, etc.”

*A perusal of the section 18 reveals that the functions or objects mentioned are not divided into main functions/objects or ancillary functions/objects. Thus, any income earned by the assessee from any of the activities/functions carried out as listed in section 18 would fall within the ambit of activities carried out by the assessee and income earned from such activities would be 'business income' of the assessee. Therefore, in our considered view, the income earned by assessee from fisheries, howsoever, small it may be, is 'business income' of the assessee. Accordingly, **ground No. 1 raised in appeals by Revenue for both the assessment years is dismissed.***

7. *The second issue raised in the appeal by the Revenue is with respect to claim of depreciation. The Assessing Officer rejected the assessee's claim of depreciation for the following reasons:*

(i) The assessee has not earned income from its main business of irrigation and water supply.

(ii) The income earned from fishing contract is not the main business of the assessee.

(iii) For the purpose of claiming depreciation the assets must have been used for the purpose of business. Since no income has been earned from the assets, therefore, it cannot be said the asset is put to use. Hence, depreciation on the said asset can be allowed to the assessee.

We find that objections raised by the Assessing Officer to disallow assessee's claim of depreciation are not sustainable. The Commissioner of Income Tax (Appeals) allowed the claim of assessee by following the decision of Co-ordinate Bench of Tribunal in the case of Tapi Irrigation Development Corporation Vs. ITO (supra).

*In the present case, we find that the assessee has earned income from allocating contract for fishing at newly created reservoir. While adjudicating ground No.1 of the appeal, we have held income earned by assessee from fisheries as 'Business Income' of the assessee. Thus, the asset had come into existence and assessee has earned some income from the said asset. It is not disputed by the Revenue that income from fisheries is not from reservoir on which depreciation has been claimed by the assessee. The quantum of the income earned from asset would not determine whether the asset has been put to use or not. Once the asset has come into existence and is put to use, the assessee is eligible to claim depreciation on same. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals). **Accordingly, the order of Commissioner of Income Tax (Appeals) is upheld and ground No. 2 raised in appeals by Revenue for both the assessment years are dismissed.**"*

9. The issue arising in the present appeal is similar to the issue raised before the Tribunal in assessment year 2010-11 & 2011-12 (supra.). Following the same parity of reasoning, we hold that receipts from fisheries business are

to be assessed as business income of the assessee; and assessee was also entitled to depreciation on the assets put to use. Accordingly, grounds of appeal No. 1 and 2 raised by the Revenue are dismissed.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced on this 30th day of August, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Aurangabad.
4. The Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.