

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.179/Coch/2018 & S.P. No.17/Coch/2018
Assessment Year : 2014-15

HLL Biotech Limited, Mahilamandiram road, Poojappura, Trivandrum. [PAN: AACCH 8828A]	Vs.	The Income Tax officer, Ward- 1(1), Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Govind Shastri, CA
Revenue by	Smt. A.S. Bindhu, DR

Date of hearing	19/09/2018
Date of pronouncement	24/09/2018

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Trivandrum dated 23/3/2018 for the assessment year 2014-15.

2. The assessee has raised the following grounds:

1. The CIT(A) erred in confirming the action of the Assessing Officer in not setting off the interest income received during construction period against the expense during construction period and assessing it as income

from other sources" overlooking the fact that income earned on funds which are otherwise inextricably linked to the setting up of the plant is required to be capitalized and set off against the expense during construction.

2. The CIT(A) failed to note that the ratio of the Apex Court in the case of Turticorin Akali Chemicals & Fertilizers Ltd. (227 ITR 172) is not applicable to the case of the appellant.

3. Without prejudice to the above grounds, the CIT(A) erred in confirming the action of the Assessing Officer not setting off the business loss of Rs.52,52,714/- returned by the appellant against the additions made by him.

3. The facts of the case are that the assessee company is a subsidiary of M/s. HLL Lifecare Limited. It was set up by the Government of India, Ministry of Health and Family Welfare in Chengalpattu District of Tamil Nadu for manufacture and supply of safe and effective vaccines at affordable prices. In the return filed for the year under consideration, the assessee had shown a business loss and unabsorbed depreciation of Rs.11,17,752/- and Rs.41,34,962/- respectively apart from showing a brought forward loss of Rs.52,52,714/-. In the audit report, it was stated that revenue was not recognized in the current financial year since the company was yet to commence the commercial operations and the project was under construction stage. Interest earned during the construction period on unutilised surplus funds was deducted from the revenue expenditure incurred during the construction period and the net amount of such revenue expenditure would be capitalized when the construction was completed. Further, as per 6D(i), the assessee had earned income from interest on deposits and interest income from Holding Company amounting to

Rs.14,10,38,438/- and Rs.78,25,950/- respectively apart from having interest accrued but not due on fixed deposits at Rs.61,27,128/- as mentioned in the balance sheet. The assessee submitted that it had incurred construction expenditure of Rs.30,15,57,058/- from which it had set off the interest and tender fee received of Rs.14,90,59,784/- and had shown the net balance of Rs.15,24,97,274/- towards expenses incurred during construction. However, the Assessing Officer had not accepted the setting off the interest income against the expenditure incurred during the construction period and accordingly, completed the assessment by treating the interest earned of Rs.14,88,64,388/- as taxable under the head income from other sources.

4. On appeal, the CIT(A) decided the issue against the assessee by holding that any income earned on surplus fund deposited with Banks cannot be incidental to the implementation of the assessee's project and therefore, it becomes 'income from other sources' and is to be taxed separately.

5. Against this, the assessee is in appeal before us.

6. The Ld. DR relied on the order of the CIT(A).

7. Before us, the Ld. AR filed a petition for admission of additional evidence as per Rule 29 of I.T. Rules and submitted that additional evidence in the form of

letter dated 14/06/2018 from Government of India, Ministry of Health and Family Welfare, New Delhi was received after the CIT(A) passed the impugned order and it was not available at the time of adjudication of the appeal by the CIT(A). It was submitted that as per clarification issued by Ministry of Health and Family Welfare, cited supra, any income earned out of the funds provided by the Government of India for any specific purpose must be utilized for the purpose for which such funds are released. Being so, any interest earned by way of depositing the said equity funds received by the assessee from Government of India in Banks or otherwise form part of funds for establishing the Integrated Vaccine Project at Chengalpattu, Chennai and is to be utilized for the purpose of the project only and not for any other purpose. Further, it was submitted that the above letter is very important to decide the issue by the CIT(A) as he has observed in his order that no specific direction from the Ministry of Health and Family Welfare, Government of India and HLL Lifecare Ltd. while giving the fund that the surplus fund not immediately required for the implementation of the project can temporarily be deposited with banks and interest earned thereon would form part of the fund, has ever been made. Hence, the Ld. AR prayed for admission of the additional evidence.

8. The Ld. DR strongly opposed the admission of additional evidence and submitted that the CIT(A) had considered all the aspects and decided the issue on merit and there is no necessity to admit the additional evidence.

9. We have heard the rival submissions and perused the record. The additional evidence filed by the assessee in the form of a letter from Government of India, Ministry of Health & Family Welfare dated 14/06/2018 is very vital for deciding the disputed issue. For this proposition, we rely on the judgment of the Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT (229 ITR 383) wherein it was held as under:

"Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

9.1 Being so, we are inclined to admit the additional evidence. Accordingly, we remit this issue to the file of the CIT(A) to decide it afresh after considering the relevance of the letter cited supra. Since we have remitted the issue to the file of the CIT(A) for de novo consideration, we refrain from going into the other grounds raised by the assessee before us. This ground of appeal of the assessee is partly allowed for statistical purposes.

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10. Since we have disposed of the appeal of the assessee, the Stay Petition filed by the assessee has become infructuous and the same is dismissed as infructuous.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes and the Stay Petition filed by the assessee is dismissed.

Order pronounced in the open Court on this 24th September, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 24th September, 2018

GJ

Copy to:

1. HLL Biotech Limited, Mahilamandiram Road, Poojappura, Trivandrum.
2. The Assistant/Deputy Commissioner of Income-tax, Circle-1, Income Tax Officer, Ward-
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin