

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI G. MANJUNATHA, AM AND SHRI RAVISH SOOD, JM**

ITA No. 3266/Mum/2017

(निर्धारण वर्ष / Assessment Year:2013-14)

M/s Ceres Capital and Financial Services Pvt. Ltd., B-404, Country Park, Opp. Tata SSL, Dattapada Road, Borivali(E), Mumbai-400066	बनाम/ Vs.	Dy. CIT-12(1)(2), Mumbai, Aayakar Bhavan, 2 nd Floor, Room No. 223, Mumbai - 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN No.		AAECC0126C
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Mandar Vaidya, A.R.
प्रत्यर्थी की ओर से / Respondent by	:	Shri R. Sindhu, D.R.

सुनवाई की तारीख / Date of Hearing	:	06.02.2019
घोषणा की तारीख / Date of Pronouncement	:	29.03.2019

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-20, Mumbai, dated 02.03.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of

the Income Tax Act, 1961 (for short 'IT Act'), dated 16.02.2016 for A.Y 2013-14. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:-

"1a. On the facts and in the circumstances of the case as well as in law, the learned Deputy Commissioner of Income Tax-12(1)(2) erred in adding a sum of Rs. 52,20,126/- to the total income of your appellant on account of managerial remuneration & P.F. Contribution by observing that managerial remuneration is allowable expenses if there is business income in the year under consideration. The learned Deputy Commissioner of Income Tax Circle-12(1)(2) observed that the director had not given any services to the appellant company during the year under consideration.

The leaned CIT(A)-20 observed in his order that "there were no efforts or contributions made by the Directors to carry on the business of the company a in-fact no business was carried on by the assessee company during the entire previous year, hence in his view the employee benefit expenses of Rs. 53,12,126/- as Salaries and incentives 92,000/- Managerial Remuneration 4,42,130/- and Contribution to P.F. 777,996/- paid to directors was rightly disallowed by the A.O". Thus the learned CIT(A)-20 Mumbai confirmed the addition made by the assessing officer.

- 2. The appellant submit that action of the learned Dy. CIT-12(1)92), Mumbai is against the weight of nature justice and evidence on record.*
- 3. The appellant craves his right to add, alter, to delete and amend any grounds of appeal on or before the times of hearing."*

2. Briefly stated, the assessee company which is engaged in the business of financial services (investment banking) i.e. arranging funds for corporates had e-filed its return of income for A.Y. 2013-14 on 08.08.2013, declaring loss of Rs. 55,18,265/-.The return of income filed by the assessee was processed as such under Sec.143(1) of the IT Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings it was noticed by the A.O that the assessee had no revenue from operations during the year as in comparison to the immediately preceding year wherein it had accounted for a revenue of Rs. 1.5 crores. It was observed by

the A.O that the assessee's income only consisted of "other income" of Rs. 2,63,601/-, which included interest on income tax refund (Rs. 1,52,526/-), interest on bank deposit (Rs. 42,296/-) and net short term capital gain on sale of mutual fund units (Rs. 68,779/-). As against the aforesaid income, the assessee had claimed employee benefit expenses aggregating to Rs. 53,12,126/- viz. (i) salaries and incentives : Rs. 92,000/-; (ii) managerial remuneration to the working director Sh. Sanjay Kumar Maheshka: Rs. 44,42,130/-; and (iii) contributions to provident fund : Rs. 7,77,996/-. Apart there from, the assessee had also claimed depreciation of Rs. 2,42,883/- and other expenses to the extent of Rs. 2,49,739/-. After claiming all the above expenses the assessee had worked out its business loss at Rs. 57,81,866/-, which was 'set off' against the Short term capital gain (for short 'STCG') and income from other sources. The A.O observed that the assessee had not carried out any business activity during the year and had only earned interest income on FDR and capital gain on transfer of the units of mutual funds. On the basis of his aforesaid observations the A.O called upon the assessee to explain the steep hike in the cost of salary/managerial remuneration which had resulted into huge losses during the year under consideration. Apart there from, the assessee was also called upon to explain as to how the expenses in the absence of any business income were allowable as a deduction in its hands. In reply, it was submitted by the assessee that the expenses were incurred in respect of certain investment deals which were in pipeline and had moved in positive direction during the year. It was the claim of the assessee that due to the prevailing market conditions the aforesaid deals could not be closed and hence no revenue from operations could be recognized as regards the same. Insofar the query of the A.O as regards the steep hike in the cost of salary/managerial remuneration was concerned, it was submitted by

the assessee that due to certain change of events the board of directors had during the immediately preceding year viz. F.Y. 2011-12 decided not to pay any remuneration to the management which comprised only of Sh. Sanjay Kumar Maheshka, director, and as such, the employee benefit expenses in the said preceding year had remained substantially low. However, during the year under consideration i.e F.Y. 2012-13 the board of directors restored the salary of Sh. Sanjay Kumar Maheshka, director, which had thus resulted to a higher amount of expenditure towards salary/managerial remuneration during the year under consideration. The A.O deliberating on the contentions advanced by the assessee was however not persuaded to accept the same for two reasons viz. (i) that the assessee had failed to substantiate on the basis of documentary evidence its claim of having signed the mandates with various promoters etc.; and (ii) that as the assessee had not carried out any business activity and consequently had no business income under Sec. 28, therefore, the expenses claimed under Sec. 30 to 43D could not be allowed under Sec. 29 of the IT Act. In the backdrop of his aforesaid deliberations the A.O disallowed the managerial remuneration and PF contributions aggregating to Rs. 52,20,126/-.

4. Aggrieved, the assessee assailed the assessment framed by the A.O in appeal before the CIT(A). However, the CIT(A) declined to accept the contentions advanced by the assessee as regards the allowability of the employee benefit expenses of Rs. 52,20,126/- and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Learned Authorized Representative (for short 'A.R') for the assessee submitted that the

assessee company which is a going concern had started its business during the year 2010. It was submitted by the Ld. A.R that backed by business prudence the board of directors had decided not to pay any remuneration to the management team during the F.Y. 2011-12, as a result whereof the employee benefit expenses in the said preceding year were substantially low. However, as certain investment deals were in the pipeline during the year under consideration viz. F.Y. 2012-13, therefore, the board of directors had decided to restore the salary of Sh. Sanjay Kumar Maheshka, director, who is a B-Tech from IIT, Kanpur and a post graduate in business management from XLRI, Jamshedpur with more than two decades of experience in financial services at a senior level. It was averred by the Ld. A.R that on the basis of the resolution passed in the board meeting remuneration of Rs. 44,42,130/- was paid to the aforementioned director viz. Sh. Sanjay Kumar Maheshka during the year under consideration. In sum and substance, it was the claim of the Ld. A.R that the substantial increase in the employee benefit expenses during the year was on account of the remuneration paid by the assessee company to its director i.e. Sh. Sanjay Kumar Maheshka. It was further submitted by the Ld. A.R that as Sh. Sanjay Kumar Maheshka, director was taxed at the 'maximum marginal rate' on the aforesaid remuneration so received by him during the year, therefore, the claim of the said amount as an expenditure by the assessee company was tax neutral in nature. In order to fortify the aforesaid factual position the Ld. A.R took us through the copy of the income-tax return and the assessment order of the said director for the year under consideration, placed at Page 138 & Page 145 of the assesses 'Paper book' (for short 'APB'). It was further submitted by the Ld. A.R that merely for the reason that the assessee during the year had witnessed a period of inactivity due to lull in the business which in turn had resulted to no revenue, the

expenditure incurred by the assessee in the course of its business could not be disallowed for the said reason. In support of his aforesaid contention the Ld. A.R relied on the judgments of the Hon'ble High Court of Bombay in the case of Karsondas Ranchhoddass Vs. CIT (1972) 83 ITR 1 (Bom) and that of Hon'ble Supreme Court in the case of CIT Vs. Rajendra Prasad Moody (1978) 115 ITR 519 (SC).

6. Per contra, the Learned Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee had not carried out any business during the year, therefore, the lower authorities had rightly disallowed its claim of expenses.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee had *inter alia* incurred employee benefit expenses viz. (i) managerial remuneration to the working director Sh. Sanjay Kumar Maheshka : Rs. 44,42,130/-; and (ii) contribution to provident fund : Rs. 7,77,996/-. As observed by us hereinabove, the A.O had declined to allow the aforesaid claim of expenses raised by the assessee for two reasons viz. (i) that the assessee had failed to substantiate on the basis of documentary evidence its claim of having signed the mandates with various promoters etc.; and (ii) that as the assessee had not carried out any business activity and resultantly had no business income under Sec. 28, therefore, the expenses claimed under Sec. 30 to 43D were not allowable under Sec. 29 of the IT Act. Insofar the observations of the A.O that the assessee had failed to substantiate its claim of having incurred the expenses in the course of its business i.e. signing the mandates with various promoters etc. is concerned, we are unable to

persuade ourselves to subscribe to the view taken by him. On a perusal of the assessment order, it stands revealed that the assessee had vide its letter dated 21.09.2015 filed with the A.O, furnished specific details of the active mandates/investment deals in pipeline as on 01.04.2012 along with the potential fees pertaining to the same viz. (i) India Rizing Fund; (ii) Chemmanur Credits and Investments Ltd.; (iii) R f Properties and Trading Ltd.; (iv) Satellite developers Ltd.; (v) Mangalam Build Developer Limited; (vi) Aristo Realty Developers Ltd.; and (vii) SIIC Packaging Pvt. Ltd. Apart there from, the assessee had also furnished details in respect of few more mandates which it had procured during the year viz. (i) B Nanji Enterprises Ltd.; and (ii) Kamat Hotels (India) Ltd. Interestingly, a perusal of the aforesaid reply of the assessee that has been reproduced by the A.O in the assessment order reveals that the assessee had also enclosed the photocopies of few mandates for the ready reference of the A.O. As regards the observations of the A.O that the assessee had failed to place on record proofs in the form of speed post/courier receipts or any other mode through which such mandates had been sent and received by the assessee to/from the entities which were based outside Mumbai, we find that the assessee had submitted before the A.O vide its letter 27.01.2016 that the mandate letters were mostly signed and exchanged face to face. Be that as it may, we have perused the observations of the lower authorities wherein they had concluded that the nature of working of the assessee i.e. the procedure claimed by the assessee for executing the mandate, discussion with the company officials, followed by discussions with the prospective bankers, arranging of meetings between promoters and prospective investors etc. did not inspire any confidence, and are unable to persuade ourselves to subscribe to the same. In our considered view as the assessee had substantiated its claim that certain investment deals

were in the pipeline and had moved in a positive direction during the year, therefore, it would be incorrect to conclude that the assessee had failed to show that it was carrying on the business during the year under consideration.

8. We have also deliberated at length on the observations of the lower authorities that as the assessee had not earned any business income chargeable to tax under Sec. 28 during the year, therefore, the expenses claimed by it viz. (i) managerial remuneration to the working director Sh. Sanjay Kumar Maheshka : Rs. 44,42,130/-; and (ii) contribution to provident fund : Rs. 7,77,996/- were not to be allowed as a deduction as per the provisions of Sec. 29 of the IT Act, and are unable to find ourselves to be in agreement with the said observations. In fact, as observed by us at length hereinabove the lower authorities had proceeded with on the basis of the misconceived fact that the assessee had not carried out any business activities during the year under consideration. We find substantial force in the contention advanced by the Ld. A.R that a period of inactivity in the business for whatsoever reason would not be conclusive for deciding the allowability of expenditure in the hands of the assessee. As is discernible from the records, as there is neither any evidence which would reveal that the assessee during the year had given up its intention of doing any further business or abandoned or discontinued the same, therefore, merely for the reason that no revenue from the business operations was recognized during the year would by no means justify disallowance of the expenses that were wholly and exclusively incurred by the assessee in the course of its business. Our aforesaid view is fortified by the judgments of the Hon'ble High Court of Bombay in the case of Karsondas Ranchhoddass Vs. CIT (1972) 83 ITR 1 (Bom) and that of Hon'ble Supreme Court in the case of CIT Vs.

Rajendra Prasad Moody (1978) 115 ITR 519 (SC). Rather, the fact that in the immediately succeeding year i.e. A.Y. 2014-15 and thereafter i.e. in A.Y. 2015-16 and A.Y. 2016-17 the assessee had accounted for its business income fortifies the fact that the it had at no stage ceased its business during the year under consideration. We thus being of the considered view that as the expenses incurred by the assessee towards (i) managerial remuneration to the working director Sh. Sanjay Kumar Maheshka : Rs. 44,42,130/-; and (ii) contribution to provident fund: Rs. 7,77,996/-, were in the normal course of its business of financial services (investment banking) i.e. arranging funds for corporates, therefore, the same are duly allowable as deduction while computing its income under the head "Profits and gains of business or profession". In terms of our aforesaid observations, we set aside the order of the CIT(A) and delete the addition/disallowance of Rs. 52,20,126/- made by the A.O.

9. The appeal of the assessee is allowed.

Order pronounced in the open court on 29.03.2019

Sd/-

(G. Manjunatha)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 29.03.2019

Ps. Rohit Kumar

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**