

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ 'A'- अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH 'A'

BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE PRESIDENT  
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकरअपीलसं.ITA No. 1509/Ahd/2014

निर्धारणवर्ष/Asstt. Year: 2010-11

<b>Bara Machines Pvt. Ltd.</b> C/o. Ritaben B. Patel (Director) 1/5-6, Manichandra Society, Nr. Surdhara Circle, Thaltej, Ahmedabad- 380054  PAN:AAB CB8 696 F	Vs.	<b>ITO</b> Ward-1(2) Pratyaksh Vera Bhavan, Ambawadi, Ahmedabad- 380015
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	<b>Shri S. N. Divatia, AR</b>
Revenue by :	<b>Shri James Kurien, Sr. DR</b>

सुनवाईकीतारीख/Date of Hearing : 25/03/2019

घोषणाकीतारीख/Date of Pronouncement: 24/04/2019

**आदेश/ORDER**

**PER MADHUMITA ROY- JM:**

The instant appeal filed by the assessee is against the order dated 28.02.2014 passed by the Commissioner of Income Tax (Appeals)-II, Ahmedabad arising out of the order dated 30.11.2012 passed by the ITO Ward-1(2), Ahmedabad u/s. 143(3) of the Act, 1961(hereinafter referred to as 'the Act') for assessment year 2010-11.

2. In this particular case the assessee has challenged the disallowance of Rs. 8,75,403/- as claimed by the assessee as business loss on the ground, that the appellant company has not undertaken any business activity. The fact of the case is this that in the Financial Year 2006-07 the appellant company as acquired the

business building of an amount of Rs. 2,02,85,902/- and other vehicles of Rs. 13,75,694/- pursuant to a scheme of arrangement for demerger between Net Vision Web Technology Ltd. and the appellant by and under an order dated 14.06.2006 passed by Hon'ble High Court finally approved on 04.05.2007. The appellant stopped his machinery supplying business activity in the Financial Year 2006-07 upon starting renting out the business property on lease to different companies and earned rental income which was offered to tax.

The appellant further incurred expenses towards remuneration of director, depreciation on vehicles u/s. 22 of the Act, maintenance expenses of such vehicles, administrative expenses etc. In addition to the claim as per u/s. 24(a) of the Act amounting to Rs. 15,43,697/- from the total rental income of Rs. 51,92,000/- the assessee has further claimed expenses totalling to Rs. 6,83,735/-. Further deduction of depreciation on law 1,91,668/- u/s. 32 of the Act totalling to Rs. 8,75,403/- as additional expenses has been claimed by the assessee. A show-cause dated 19.11.2012 was served upon the assessee pursuant to which the assessee submitted before the Ld. AO that it has not claimed any expenditure against rent income neither depreciation on the said business property. It was further narrated by the appellant that it has incurred certain fixed expenditure to maintain its existence and run business operations and therefore has set off thus minimum bare expenses as business expenses. It was further pointed out that the rental income from the building has been separately assessed as an income from house property and not a business income. The contention of the assessee was not found acceptable basically on this ground that the appellant company has not carried out any business activity during the year under consideration. The genuine business expenditure incurred by the assessee as claimed to have been set off against income from house property as contended by the assessee was not permissible u/s. 24 of the Act as also opined by the Ld. AO. Thus, the deduction of business expenses to the tune of Rs. 8,75,403/- as claimed u/s. 24 of the Act by the assessee

was disallowed which was confirmed in appeal. Hence the instant appeal before us.

3. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the authorities below failed to appreciate that the assessee has incurred expenses for maintaining the establishment. It is true that the assessee has changed its nature of business but there was no cession of business of the assessee as observed by the authorities below. Furthermore the asset has been used for the purpose of business and the expenditure incurred was of nature of capital expenditure or personal expenses of the appellant and exclusive for the purpose of business. In that view of the matter the Ld. AR argued that the expenditure and/or loss claimed under the head business and profession are eligible to be set off against the income from house property as claimed by the assessee. He also relied upon the judgment passed by the Hon'ble Tribunal, Delhi in the matter of Income Tax Appeal vs. Mukul Finance Pvt. Ltd. reported in [2009] 29 SOT 11 (Delhi), the judgment passed by the Hon'ble Calcutta High Court in the matter of Mukti Properties Pvt. Ltd. vs. CIT (2011) 50 DTR 273 & 238 CTR 174 (Cal) (High Court), CIT vs. New India Industries Ltd. (1993) 201 ITR 208 (Gujarat HC) in support of his claim.

On the contrary the Ld. DR relied upon the order passed by the authorities below.

4. Heard the rival contentions made by the respective parties and perused the relevant materials available on record. We have carefully considered the order passed by the Ld. Delhi Bench passed in the matter of Mokul Finance (P.) Ltd. vs. ITO. The relevant portion whereof is:-

*“5. Having given our careful consideration to the rival contentions and the material on record, we are inclined to uphold the conclusions arrived at by the CIT(A). As Dr. Gupta rightly contends, the assessee being an artificial juridical person, it needs to incur certain expenditure to keep itself afloat and*

*have its continued existence. Unlikely a natural person, a company can only operate through other natural persons—whether employees or others. It is not the case of the Assessing Officer that the expenditure of the assessee company are excessive or unreasonable vis-a-vis legitimate business requirements. The Hon'ble High Courts have consistently held that in the case of the corporate assessee such expenses have to be allowed as deduction irrespective of whether or not the assessee is engaged in active business and even if assessee has only passive incomes. The CIT(A) was, therefore, justified in his conclusions. That is, however, not the only reason why the disallowance made by the Assessing Officer was unsustainable in law. We agree with Dr. Gupta's second line of argument as well. We find that the whole cause of action of disallowance of expenses is in the background of Assessing Officer's observation that the assessee did not carry out any business transactions which at best was Assessing Officer's finding about an activity of business not being functional in the relevant previous year. In our opinion, not carrying on business activity in a particular period cannot be equate with closure of business as it takes an unsustainably narrow view of the scope of cessation of a business. In the case of LVE.VairavanChettiar. Vs. CIT [1969] 72 WR 114, their Lordships of Hon'ble Madras High Court were in seisin of a situation where the assessee had obtained an import licence for doing arecanut business but due to adverse conditions in market, he temporarily suspended the arecanut business for the assessment year in question. Nevertheless, he was maintaining the establishment and was waiting for improved market conditions in arecanut. It was thus an admitted position that no activities were carried out so far as this part of the business was concerned. On these facts, their Lordships took note of the position that "There is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of accounts". It was then observed that the question whether the business is being carried on must depend in each case on its own facts and not on any general theory of law. Their Lordships then referred to, with approval, Lord Summer's observation in IRC v. South Behar Railway Co. Ltd. [1925] 12 Tax Cases 657 that business is not confined to being busy; in many businesses long intervals of inactivity occur. "The concern is still a going concern though a very quiet one." After elaborate survey of judicial precedents on the issue, their Lordships concluded, in the light of, as noted above, the factual position that "there is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of, revealed that he was meeting the establishment charges and interest payments as detailed in the in the year of account," that the loss in arecanut business, in which admittedly no activity was out during the relevant previous year, was to be set off against assessee's business income in the t the ratio of the aforesaid judgment is summed up in the ITR head notes at p. 115 of the report, "as the assessee was maintaining the establishment and waiting for the improved market conditions in arecanuts and there was nothing to show that he completely abandoned or closed the business forever, the business must be deemed to be continuing". In the light of this legal position, it would follow that unless there issome material on record to show that the assessee has completely abandoned the share dealing business, merely because there are*

*no business transactions in the relevant previous year cannot bereason enough to come to the conclusion the business has come to an end. It could not thus be said; as was the case before the Hon'ble Madras High Court, that the assessee had "completely abandoned or closed the business forever". Unless the business is abandoned or closed and even if business is at a dormant stage waiting for proper market conditions to develop, the expenditure incurred in the course of such a business is to be allowed as deduction. For this reason also, disallowance made by the Assessing Officer was not justified, and the CIT(A) rightly deleted the same."*

5. In the matter of Mukti Properties it was held that the assessee derived income from real estate business are also income from house property. The assessee's claim for deduction of brokerage and commission cannot be disallowed against the business income on the ground that the assessee is not entitled to any further deduction other than those provided u/s. 24 of the Act.

In the case of CIT vs. New India Industries Ltd. it was further held that if an assessee derived income from a commercial asset which is capable of being used as a commercial asset, then it is income from his business whether he uses that commercial asset himself or let it out to somebody else to be used. The asset would not cease to be commercial asset simply because temporarily it was put out of use or it was let out to other person for his use.

So long as the commercial asset is capable of being exploited a such, its income is business income irrespective of the manner in which the asset is exploited by the owner of the business, he is entitled to exploit it to his best advantage and he may do so either by using it himself personally or by letting it out to somebody else.

Similarly in case of your appellant, assets let out are commercial and are capable of being used as commercial asset. Therefore, rent received from the said commercial property may be treated as business income and depreciation may be allowed to your appellant.

6. Having heard the Ld. Counsel appearing for the parties having regard to the facts and circumstances of the case and particularly the judgment cited above we are of the considered opinion that there is no complete cession of business of the assessee and in order to maintain the establishment the assessee has incurred expenditure which has been claimed to be set off. We are of the considered view that the assessee has incurred genuine business expenditure, during the year under consideration deduction whereof ought to have been allowed u/s. 24 of the Act. In that view of the matter the expenditure claimed by the assessee company of Rs. 8,75,403/- as business loss is hereby allowed. The addition on this ground as made by the authorities below is thus deleted.

7. In the result, assessee's appeal is allowed.

[Order pronounced in the Court on 24-04-2019.]

Sd/-  
**(PRAMOD KUMAR)**  
**VICE PRESIDENT**

TRUE COPY

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 24/04/2019

*Tanmay*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad