

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

I.T.A. No.106/Coch/2011
Assessment Year : 2007-08

Malayalam Communications, 61, Chandragiri Kuravankonam, Kowdiar P.O., Trivandrum. [PAN: AACCM 0065G]	Vs.	The Deputy Commissioner of Income-tax, Circle-1, Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Mohan Pulickkal, CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	20/06/2019
Date of pronouncement	21/06/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal was originally disposed of by this Tribunal vide order dated 21/11/2014. The assessee took up the matter before the High Court by raising the following questions:

- (i) Whether the disallowance of Rs.10,00,000/- which the assessee claimed as business expenditure, could have been treated as a capital expenditure?
- (ii) Whether the renting of OB van and rental value received for the same be taken as income from other sources?
- (iii) Whether the interest income obtained by the assessee from the fixed deposits can be termed as income from other sources?

2. The High Court, inter alia, vide judgment dated 13/09/2018 in ITA No. 145/2015 decided the first two issues in favour of the assessee. The third issue was remitted to the file of the Tribunal by observing as follows:

"4. Question No. (iii) is on the interest income, which the assessee contends, is from Fixed Deposits made for the purpose of carrying on the business itself. Annexure-F is the certificate issued by the Bank, certifying that certain Fixed Deposits are part of securities submitted for sanction of credit facilities. It is also the submission of the assessee that there were other Fixed Deposits made for the purpose of Export Purchase Credit Guarantee Scheme for import of equipments and machineries, again for the purpose of business purposes. The Tribunal has merely relied on a Supreme Court judgment and approved the disallowance. We are of the opinion that the Tribunal has to re-consider the matter on facts. Hence, we decline to consider question No. (iii) framed by us and require the Tribunal to address the facts for arriving at a decision. We also note that despite a request having been made, there is no permission for set off under section 32(2) of the Income Tax Act, 1961 as against the unabsorbed depreciation which, in any event, is permissible as has been held in CIT vs. Jaipuria China Clay Mines (P) Ltd. (1966) (59 ITR 555) (SC).

We, hence, partly allow the appeal and remand the matter to the Tribunal for considering the specific issue noticed above. There shall be no order as to costs."

Hence, the issue came up for fresh adjudication.

3. The Ld. AR drew our attention to the true copy of the certificate issued by Dhanalakshmi Bank, giving details of the Fixed Deposits made for the purpose of obtaining bank guarantee and cash credit facilities for working capital. The Ld. AR also furnished details of the various fixed deposits held by the assessee with Dhanalakshmi Bank and Indian Bank as on 31/03/2007, showing the amounts of the fixed deposits and the interest earned thereon. The Ld. AR also produced details of the business loss

and the unabsorbed depreciation of the previous assessment years upto 2004-05. He also submitted that certain deposits were made on the insistence of the Bank to avail credit facility from the Bank.

4. The Ld. DR relied on the order of the lower authorities.

5. We have heard the rival submissions and perused the record. Before us, the assessee has furnished the details of fixed deposits and submitted that they were made for the purpose of business so as to avail credit facility from the Bank. In our opinion, these documents are required to be examined by the Assessing Officer so as to decide whether these deposits were made on the insistence of the Bank to get credit facility and if it is made on the insistence of the Bank for the purpose of granting credit facility, the interest income from such deposits is to be considered as business income. Further, it was submitted that even if the income is assessed as income from other sources, the said income is qualified to be set off u/s. 32(2) of the I.T. Act against unabsorbed depreciation. For this proposition, the assessee relied on the judgment of the Supreme Court in the case of CIT vs. Jaipuria China Clay Mines (P) Ltd. (1966) (59 ITR 555) (SC). In our opinion, on this issue there is no dispute as this was already considered by the High Court vide judgment cited supra. Hence, this ground of appeal of the assessee is partly allowed for statistical purposes.

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

Order pronounced in the open Court on this 21st June, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 21st June, 2019

GJ

Copy to:

1. Malayalam Communications, 61, Chandragiri Kuravankonam, Kowdiar P.O., Trivandrum.
2. The Deputy Commissioner of Income-tax, Circle-1, Trivandrum.
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