

आयकर अपीलीय अधिकरण, "एस.एम.सी" न्यायपीठ, राँची
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, RANCHI

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.264/RAN/2017

(निर्धारण वर्ष / Assessment Year :2014-2015)

Deven Chand Jain(HUF) M.D.House, Chaibasa, Sadar, Singhbhum, Jharkhand-833201	Vs.	DCIT, Circle-3, Ranchi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHD 4479 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Devesh Poddar, Advocate

राजस्व की ओर से /Revenue by : Shri P.K.Mondal, ACIT(DR)

सुनवाई की तारीख / Date of Hearing : **20/05/2019**

घोषणा की तारीख/Date of Pronouncement **26/07/2019**

आदेश / O R D E R

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Ranchi, Jharkhand, dated 27.09.2017 passed in First Appeal No.CIT(A), Ranchi/10461/2016-17 for the assessment year 2014-2015.

2. The assessee has raised the following grounds of appeal :-

1. For that Ld. CIT(A) was not justified in confirming the disallowance of expenses made by the Ld. A.O. Appellant incurred expenses in usual course of business and such expenses were allowed in past. Ld. CIT(A) was not justified in suggesting that appellant had no business activity, as such, expenses claimed are to be disallowed merely because during the year there was no income received from partnership firm. The expenses which were incurred to protect interest of the appellant should not be disallowed.
2. For that the Ld. CIT(A) was further justified in making the enhancement by disallowance of the expenses claimed by the appellant which were incurred in usual course of business. Ld. CIT(A) disallowed expenses total of Rs. 9,66,637/- incurred by

the appellant on establishment of repair and services charges, legal and professional charges, postage, security, charges establishment expenses and etc. Enhancement of income by disallowance on expenses is unjustified, arbitrary and illegal.

3. *For that interest U/s 234A and 234B should be charged on the returned income and not on the assessed income following the decision of Jharkhand High Court.*
4. *For that other grounds in detail will be argued at the time of hearing.*

3. Brief facts of the case are that the assessee is an HUF and engaged in the business of share trading & currency futures and filed its original return of income on 27.09.2014 showing total income at Rs.1,10,022/-, which was processed and selected for scrutiny and notices u/s.143(2) & 142(1) of the Act were issued by the Assessing Officer to the assessee. Accordingly, the authorised representative of the assessee appeared before the Assessing Officer and the Assessing Officer after verification of necessary details, assessed the total income of the assessee at Rs.24,05,420/- making addition of Rs.25,15,443/- on account of car running expenses, car insurance premium and interest paid on car loan. Against which the assessee carried the matter to the CIT(A). In the appellate proceedings the CIT(A) dismissed the appeal of the assessee enhancing the income of the assessee by Rs.9,66,637/-

4. Aggrieved by the order of CIT(A), now the assessee is in further appeal before the Tribunal.

5. Ld. AR submitted that the Id. first appellate authority was not justified in confirming the disallowance of expenses made by the AO as the assessee actually incurred expenses in the useful course of business and impugned expenses were regularly and consistently allowed during

the immediately preceding years by the revenue authorities. The Id. AR further submitted that the Id. CIT(A) was not justified in concluding that the assessee had no business activity and such expenses claimed are to be disallowed merely because during the relevant year there was no income received from the partnership firm. Ld. AR contended that the expenses incurred by the assessee for maintenance of establishment of partnership firm and to protect the interest of the assessee firm and to comply with the legal statutory provisions of the various acts applicable to the partnership firm, therefore, the same cannot be disallowed. Ld.AR further submitted that the first appellate authority was not correct in making the enhancement of disallowance of expenses claimed by the assessee which was incurred during the useful course of business of establishment of repairs and service charges, legal and professional charges, postage and courier charges, security charges, establishment expenses etc. Therefore, enhancement of income by enhancing the disallowance of expenses was unjustified, arbitrary and illegal. Placing reliance on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Integrated Technologies Ltd., in ITA No.530/2011, order dated 16.12.2011, Id. AR submitted that for allowing establishment expenses, it is the only condition that business should not have been closed down once for all and that the assessee should demonstrate that the hopes of the business being revived are alive and real. Ld. AR submitted that the AO has not raised any doubt regarding incurring of expenses and quantum thereof. Therefore, no disallowance could have been sustained or enhanced.

Lastly, Id. AR prayed that the impugned first appellate order may kindly be dismissed by allowing the grounds of appeal of the assessee and the AO may kindly be directed to delete the same.

6. Replying to the above, Id. DR vehemently supported the action of authorities below and submitted that the Hon'ble Supreme Court in the case of CIT Vs. Malayalam Plantations Ltd.53 ITR 140 (SC) held that the expression 'for the purpose of business' is wider in scope than the expression 'for the purpose of earning profits'. Id. DR also submitted that there was no income during the relevant financial period to the assessee from the said establishment, therefore, expenses incurred by the assessee cannot be allowed and, thus, the impugned first appellate order may kindly be upheld. Id. DR further submitted that the AO had made disallowance of Rs.26,60,331/-, which was rightly enhanced by the CIT(A) to Rs.35,97,298/-, therefore, the impugned order may kindly be upheld.

7. In rejoinder, the Id. AR submitted that from the return of income, it is clearly discernible that the assessee had earned and shown the income from interest free saving account of Rs.16,15,129/- and interest on loan of Rs.18,66,951/- but no income under the had income from business or profession was declared but earning income is not a pre-condition for claiming business and establishment expenses.

8. On careful consideration of the above rival submissions, at the very outset, from the assessment order as well as from the first appellate order, I clearly observe that the revenue authorities have not doubted incurring of expenditure and quantum of Rs.35,97,298/- claimed by the

assessee on various heads including car insurance premium, interest paid on car loan, repair and service charges, car running and maintenance, telephone expenses, house tax, printing and stationery, legal and professional charges, postage and courier charges, security charges and establishment expenses. This fact has not been controverted or disputed by the revenue authorities that these expenses were consistently and continuously allowed to the assessee during the immediately preceding assessment year. I am in agreement with the contention of Id. AR with regard to earning from business and profession income is not a pre-condition for claiming business and establishment expenditure specifically when the assessee is showing huge interest income on saving account and other credits in the return of income during the relevant period.

9. In the case of Integrated Technologies Ltd (supra), in para 9, the Hon'ble Delhi High court has held thus :

"9. The Tribunal has referred to the judgments in Capital Bus Service (supra), CIT Vs. Refrigeration and Allied Industries Ltd. (supra) & CIT Vs. Panacea Biotech Ltd. (supra) and has applied the ratio laid down therein to the facts of the present case. The ratio in brief is that it is not necessary that the plant and machinery owned by the assessee should be actually put to use in the relevant accounting year to justify the claim of depreciation and that even if the plant and machinery or other asset is kept ready for use in the assessee's business, the assessee would be entitled to depreciation. The only condition is that the business should not have been closed down once for all and that the assessee should demonstrate that the hopes of the business being revived are alive and real. It is however not a matter that can turn entirely on the assessee's hopes alone. There should be evidence or material to show that the assessee took efforts to keep the business alive in the hope of reviving the same. Maintaining the office and establishment, complying with the statutory formalities, not disposing of the plant and machinery, incurring expenses on the repair of plant and machinery etc., are some of the indications of nurturing the hopes of reviving the business. The above are only illustrative instances and are by no means exhaustive and the

question as to whether the assets were kept ready for use in the business is largely to be decided on the facts and circumstances of each case. In our opinion, the Tribunal has not committed any error in applying the ratio laid down in the judgments of this Court to the facts of the present case in order to uphold the assessee's claim for depreciation."

10. In view of the above, I am inclined to hold that when the quantum of expenditure and incurring of same for the purpose of business of assessee has not been disputed by the revenue authorities, then merely because the assessee has not shown any business or profession income during the relevant financial period, the business expenses for maintenance of establishment and other requirements cannot be disallowed. Therefore, respectfully following the decision rendered by the Hon'ble Delhi High Court in the case of Integrated Technologies Ltd.(supra), we hold that the AO was not correct in making disallowance and the Id. CIT(A) was also not justified in confirming the disallowance and also enhancing the same. Therefore, the enhancement of disallowance made by the CIT(A) is dismissed and the AO is directed to allow the claim of the assessee for business and establishment expenses. Accordingly, ground Nos.1 & 2 are allowed.

11. Ground No.3 relates to charging interest u/s 234A& 234B of the Act by the AO and confirmed by the CIT(A). I have gone through the decision of Hon'ble Jharkhand High Court in the matter of Ajay Prakash Verma Vs. ITO(2010) TA No 38 of 2010 reported in 2013(1) TMI 140, placed by the Id. AR of the assessee before the Bench and found that the Hon'ble jurisdictional High Court in the aforesaid case has held that the revenue can levy the interest only on the total income declared in the return of

income and not on the income assessed and determined by the AO to that extent. Therefore, the AO is directed to delete the interest levied u/s.234A & 234B of the Act.

12. In the result, appeal of the assessee is allowed.

Order pronounced in pursuance with Rule 34/4 of ITAT Rules, 1963 by putting copy of the same on Notice Board on 26/07/2019, at Ranchi.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

राँची/Ranchi; दिनांक Dated 26/07/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant- .
Deven Chand Jain(HUF)
M.D.House, Chaibasa,
Sadar, Singhbhum,
Jharkhand-833201
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-3, Ranchi
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राँची / DR, ITAT, Ranchi
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, राँची / ITAT, Ranchi