

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4871/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

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| ACIT-17(2) O/o Asstt. Commissioner of Income Tax-17(2), Aayakar Bhavan, Room No.123A, 1 st Floor, M. K. Road, Mumbai- 400020. | बनाम/ Vs. | Maharashtra-Urban Infrastructure Fund Cr-2 Bldg, Ground Floor, Barrister Rajni Patel Road, Nariman Point, Mumbai- 400021. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTM8094M | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Revenue by: | Ms. Jothi Lakshmi Nayak (SR. AR) | |
| Assessee by: | Shri J. P. Bairagra | |

सुनवाई की तारीख / Date of Hearing: 04/11/2019
घोषणा की तारीख /Date of Pronouncement: 28/11/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 23.05.2018 passed by the Commissioner of Income Tax (Appeals) -57, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.

2. The revenue has raised the following grounds: -

- "1) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to allow the expenses of



Rs.1,96,74,479/- claimed by assessee and delete the disallowance.

2. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*”

3. The brief facts of the case are that the assessee filed its return of income on 15.10.2010 declaring total income to the tune of Rs.5,73,47,539/-. The case was selected for scrutiny assessment and assessment u/s 143(3) of the Act was completed on 31.12.2012 determining total income to the tune of Rs.7,70,22,020/- against the returned income of Rs.5,73,47,539/- after making disallowance of Rs.1,96,74,479/- on account of expenses. The AO observed that the assessee has credited income from treasury operation of Rs.7,70,65,255/- which consists of interest income only. Further, the AO observed that against this income, the assessee has claimed various expenses totaling to Rs.1,97,17,726/- which consists Rs.87,53,737/- on account of Administrative & Support Fees and an amount of Rs.39,85,264/- on account of Consulting Charges and an amount of Rs.48,39,573/- on account of Treasury Management Fees and an amount of Rs.11,92,373/- on account of Project Development Fee and an amount of Rs.3,53,420/- on account of Advertisement Expenses and an amount of Rs.5,50,112/- on account of Professional Charges and an amount of Rs.43,017/- on account of Audit Fees and an amount of Rs.230/- on account of bank charges. The AO also observed that during the year under consideration, the assessee has neither undertaken any business activity nor earned any income from business activity. Accordingly, the AO relying upon various judicial decision in the case titled as (i) CIT Vs. Govinda Choudhury and Sons (1993) 203 ITR 881 (SC) (ii) CIT Vs. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC) (iii) CIT Vs. Coromandal Cement Ltd.



(1998) 234 ITR 412 (SC) and (iv) CIT Vs. Autokast Ltd. (2001) 248 ITR 110 (SC) allowed expenses of Rs.43,247/- incurred for the purpose of earning interest income and disallowed the balance expenses totaling to Rs.1,96,74,479/-.

4. Being aggrieved, the assessee preferred an appeal before the CIT(A) and the CIT(A) partly allowed the expenses vide order dated 09.01.2014. Being aggrieved, with the order of CIT(A), the assessee preferred an appeal before the Hon'ble ITAT. The Hon'ble ITAT vide order dated 09.12.2015 in ITA. No.2010/M/2014 restored the matter back to the file of AO for considering bona-fide in the change in the method of accounting during the year under consideration and for deciding afresh allowability of the expenses. On the basis of direction of Hon'ble ITAT vide order dated 09.12.2015 in ITA. No.2010/M/2014, the disallowance of expenditure in sum of Rs.1,97,17,726/- was again examined and the AO further disallowed the claim and added to the income of the assessee. The total income of the assessee was assessed in sum of Rs.7,70,22,018/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

5. We have heard arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the claim of expenses in sum of Rs.1,97,17,726/- was wrongly allowed by the CIT(A) however change of method of accounting from cash to mercantile nowhere allowed the earlier expenses, therefore, in the said circumstances, the finding of the CIT(A) is not justifiable hence is liable to be set aside. However, on the other hand, the Ld. Representative of the



assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"4 1,96,74,47911- on account of expenses. The CIT (A) allowed the appeal of the assessee Partly vide order dt. 9.01.2014. The assessee preferred appeal before the Hon'ble. The Hon'ble ITAT vide order dt. 09.12.2015 in ITA /No. 2010/Mum/2014 restored the matter back to the file of AO for considering bona fide in the change in the method of accounting during tile year under consideration and for deciding afresh allowability of the expenses.

The assessing officer vide order cit. 23.12.2016 opined that from the perusal of the income & expenditure account filed by the assessee for the year ended 31.03.2010, it is seen that assessee has credited Income from treasury operations of Rs.7,70,65,255/- which consist of interest income only. Against this income, assessee claimed various expenses totaling of Its. 1,97,17,726/- which include major expenses oil of administration and support Fees Rs.87.53.737/- consulting charges of its. 39.85,264/- Treasury Management fee of RS. 4839,5731- Project Development fees of its. 11,92,373/-. Assessee also claimed expenses vu. Advertisement expenses of Rs.3,53,420/- professional charges of RS. 5.50,112/- audit fees of Rs. 43,017/- and batik charges of Rs. 230/-.

From the details, it is ascertained that the assessee has not undertaken an' business activity during the year and the only income earned by the assessee is interest income &'FDR& in view of the same, vide order sheet noting dated 02.08.2016, the assessee, was asked to explain as to why the expenses should not be disallowed as there was no business activity as per objective of the trust and income has been assessed as "income from other Sources". These expenses are not allowable u/s. 57 of the Act. in response to the same, assessee tiled details of various expenses claimed by it along with copy of Fund Management Agreement, write up regarding the basis on which the Fund Management Fee is paid to the Fund Manager. Assessee has further submitted the expenses claimed are legitimate and thence, requested to allow the same as they were incurred for the functioning of the MUIF and hence are admissible the deduction from the income.

The explanation offered by the assessee is not acceptable. As per the Fund Management Agreement (FMA), the objective of the assessee included facilitating assessee to institutional finance and capital markets for increased investment in urban infrastructure, reduction of cost of



capital, promote and community sector participation, improving creditworthiness of the local bodies, initiating and sustaining urban institutional reform through capacity building, assessee are Project development building facilitating finance, and partial direct lending. Admittedly. (luring the relevant assessment year the assessee has not carried out nay business activity. The corps fund available with the assessee was put in the form of a fixed deposit which has resulted in earning of interest income.

The Fund Management Agreement (FMA) was entered into on 02.06.2010 between Maharashtra Urban Infrastructure Trustee Company Ltd Mumbai A corporate trustee of the MUIF Trust) and Maharashtra Urban Infrastructure Development it Company Ltd. (MUIDCL. Fund Manager of the ML'IF Trust. In order to facilitate the objectives of the MUIF the Fund management activities of MUIF are managed by the Fund Manager. Accordingly, MUIDCL also provides Treasury management services to MUIF for all investments made by it for which it charges a Treasury Management Fee @ 0.25% of weighted average of investments made during a particular year.

Assessee has claimed Treasury Management Fee for the year under consideration at Its. 48,39,573/- which includes prior period fees of F.Y 2006-07 of Rs. 9,88,0822- F.Y 2007-08 Rs. 11 ,99,873/- and FY 2008-09 of Rs. 12:85,982f- and for FY 200-10 of RS. 13,65,636/- MUIDCL. also provides administrative and secretarial support of MUIF to carry out its objectives for which and Administration and Support Fee is chargeable which increase by 15% over the previous year.

AO further contended that having held that interest income of the assessee is to be assessed as income from others trees, expenses for earning such interest can only be allowable u/s. 57(iii) of the LT Act 19 . The clause (iii) of section 57 states that any expenditure (not being in the nature of ca '.al expenditure) laid out or expended wholly and exclusively for the purpose of making earning such income shall be allowed as deduction.

In view of section 57 (iii) of the IT Act 1961, assessee is allowed to claim expenses which are wholly and exclusively for the purpose of earning interest income from FDRs only. Accordingly, expense on account of bank charges and audit fee totaling to Rs. 43,247/- are allowed and the balance expenses totaling to Rs. 1,96,74,479/- are disallowed and added to the total income.

During the course of appellate proceedings, the appellant has raised nine grounds of appeal. Ground No. 1 and 6 is regarding Assessing



officer not following and not accepting the findings of Hon'ble ITAT in mercantile accounting to mercantile accounting system, the expenses payable in respect of earlier year i.e. AY 2005-06 is 2009-10 to MUIDCL are allowable as deduction.

Ground No. 2,3,4,7 & 8 is regarding disallowance of expenses totaling to Rs. 1,96,74,477/- claimed by the appellant.

Ground No 5 & 9 is with regard to assessing officer holding that the appellant has not commenced its business activity during the year under consideration and therefore the interest earned on the corpus fund which is put in the bank in the form of FD is taxable under the head income from other sources and without prejudice the appellant further held that AO erred in not allowing the deduction of these expenses even under the held income from other sources as these expenses are incurred for Treasury operation the income of which is to be assessed under the head Income from other sources.

have already elaborately reproduced in above paras AO's order and also appellant's submission

with regard to all grounds of appeal. From the perusal of the same it is seen that basically appellant is objecting to assessing officer not accepting FEAT direction and also treaty appellant's it come as income from other sources and not business Income.

Before proceeding to adjudicate the issues it will be relevant to go through the Hon'ble ITAT's direction vis-a-vis first order of the AO.

"The Hon'ble ITAT said the AO has disallowed the above expenses on the ground that since no business activity has taken place during the year, therefore issue of payment or expenses does not arise as the said expenses have not accrued to the assessee. The AO has also stated that since the assessee is following mercantile system of accounting, the above expenses not accrued and hence the same cannot be allowed. As per the agreement between the assessee and MUIDC1,, these charges are payable to them w.e.f 21.05.2004 for providing treasury management services to the assessee. The deductions of all these expenses claimed by the assessee as declared by the MUIDCL. in their Profit & Loss Account. Regarding the objection of the AO these expenses have not accrued during the year, even though the assessee is following mercantile system of accounting, we found that as per the agreement. these amounts are clearly payable to MUIDCL w.e.f. 21.05.2004, but since the same was not paid or proved for in earlier years as the assessee was following cash system of accounting, however, since in this



assessment year, the assessee is following mercantile system of account, therefore, the expenses payable as per the agreement even for earlier assessment year 2005-06 to 2009-10 and for the assessment year 2010-11 are provided in the books of accounts".

"The ITAT further said that regarding the objection of the AO that these expenses have not accrued during the year, even though the assessee is following mercantile system of accounting, we found that as per the agreement, these amounts are clearly payable MUIDCL w.e.f 21.05.2004 but since the same were not paid or provided for in earlier years as the assessee was following cash system of accounting, however, since in this assessment the assessee is following mercantile system of account, therefore, the expenses payable as per the agreement even for earlier assessment year 2005-06 to 2009-10 and for the assessment year 2010-11 proved in the books of accounts. The year-wise calculation of these charges payable was also provided to the AO. Further all these expenses are shown in the Profit & Loss A/c. By MUIDCL. which is clear from the audited statement of accounts for the year ended 31' March, 2010. Hence, the assessee is entitled to deduction of these expenses after due verification by the AO.

In view of the above discussion, we do not find any merit in the action of the authorities for disallowing the expenses ignoring the changed method of accounting during the year under consideration. In the interest of justice and fair-play, we restore the matter Sac.k to the file of AO for considering bonafide in the change in the method of accounting Ins; the year under consideration and for deciding afresh the allowability of above expenses, terms of mercantile system of accounting being followed by the assessee during the year under consideration. We direct accordingly".

From the above order of Hon'ble ITAT '13' Bench Mumbai the matter was restored back to the file of the AO with the direction that with changed method of accounting the disallowance of expenses is allowable with the direction to decide afresh allowability of above expenses in terms of mercantile system of accounting being followed by the assessee during the year under consideration So it is seen that in the instant case the AO in set aside proceedings treated the income as not business but income from other sources and disallowed the expenses of Rs.1,96,74,479/- allowed only audit fees and bank charges amount to Rs. 43,247/-.

The appellant submitted that in view of the ITAT order the mercantile system of accounting was to be allowed and also prior period expenses claimed. However, the AO has changed the head of Income from



"business" to "income from other sources- where as in AY 2011-12, 2012-13 & 2013-14 the Income declared by the fund is accepted by the AO under the head business income and all the expenditure were allowed.

I find that the AO instead of following the Hon'ble ITAT direction on the set aside proceedings started on a different tangent and formed an opinion that income should be assessed as Income from other sources and disallowed all expenses.

However this treatment of assessing the Income by AO is not found to be tenable. I find that as this is the first year in which the method of accounting was change a from cash to Mercantile the expenses of Prior year were claimed and I agree that expenditure increased so the income also increased. Hence I direct the A to allow the expenses claimed by the appellatant. Moreover the income should be continued to be taxed as income from business. Hence ground of appeal no. Ground no. 5 & 9 becomes infructuous in light of above decision."

6. On appraisal of the above mentioned finding, we noticed that in the year under consideration, the assessee has changed the accounting system from cash to mercantile. The Hon'ble ITAT in ITA. No.2010/M/2014 dated 09.12.2015 had remanded the issue for limited purpose to be allowed the expenses for earlier year on the basis of changed method of accounting in cash to mercantile. The AO again disallowed the expenses. However, we find that in the subsequent year 2011-12, 2012-13 & 2013-14, the AO allowed the claim of the assessee on the basis of the mercantile system. The claim of the assessee was disallowed on the basis of this fact that the assessee was not having business income in this year but no doubt the claim of the assessee was of the earlier year when he was doing the business and treated the income from other sources. The claim of the expenses was disallowed which nowhere seems justifiable in the circumstances when the accounting system of the assessee was changed from cash to mercantile. Since the expenses are related to the business, therefore, the CIT(A) has



observed to tax the income as business income and accordingly allowed the claim of the assessee. Needless to say that in the subsequent year from the A.Y.2011-12, 2012-13 & 2013-14, the claim of the assessee has been accepted by revenue. Therefore, taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

7. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 28/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :28/11/2019

Vijay/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 4871/M/2018
A.Y.2010-11

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**