

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.4856/Mum/2014
(Assessment Year: 2008-09)

Overseas Plastic Moulders India Limited 1-Sanskar, Road NO.8 Juhu Scheme Vile Parle(W) Mumbai-400 059	Vs.	ITO-8(2)(4) Aaykar Bhawan, M.K.Road Mumbai-400 020
PAN/GIR No.AAACO9679C		
(Appellant)	..	(Respondent)

Revenue by	Kumar Padmapani Bora, DR.
Assessee by	Vipul Shah, AR
Date of Hearing	26/11/2019
Date of Pronouncement	27/11/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals) –17, Mumbai, dated 15/05/2014 and it pertains to Assessment Year (AY) 2008-09. The appeal filed by the assessee has been disposed-off by the Tribunal, vide its order dated 11/10/2017 in ITA No. 4856/Mum/2014. Thereafter, the assessee has filed Miscellaneous Application u/s 254(2) of the I.T.Act, 1961 and requested to recall the order of the Tribunal for the reasons stated in its application, dated 12/04/2018. The Tribunal, vide its order dated 18/01/2019 in M.A.No 273/Mum/2018 recalled the order dated 10/10/2017 qua ground No.3 of the assessee appeal. Therefore, we deem it

necessary to reproduce ground No.3 of the assessee appeal, which is as under:-

3. On the facts and circumstances of the case and law the learned Commissioner of Income Tax-Appeal (CIT-A) erred in confirming the disallowance of Business Expenses without appreciating the following;

- i. that the appellant is engaged in the business of plastic moulding, which fact is confirmed by the AO himself in his order.*
- ii. That one of the major expense was interest paid on loan availed for purchase of Plant and Machinery which are used in the business and the said fact is not denied by the Learned AO.*
- iii. That the books of account of the appellant are duly audited under the provisions of the Companies Act, 1956 and the same are well accepted by the learned AO leading to the fact that expenses are genuine in nature.*
- iv. That the reason advocated by the learned AO for disallowing the expenses is against the fundamental principles and provisions of I.T.Act, 1961 and against the interest of Sect. 71 for set off of inter head loss and Sec. 72 governing Carry forward of loss.*

2. The brief facts of the impugned dispute are that as per the object clause (6) of memorandum and articles of association of company, the assessee is involved in the business of manufacturing and other related activities of all kinds of plastic moulded products, articles goods and things made of plastic or allied materials for industrial and commercial or domestic use. For the year under consideration, the assessee has not carried out any business activity, however derived income from letting out go-down and offered the same under the head income from business or profession. Against this, the assessee has claimed various business expenses including write off of preliminary expenses etc., The Ld. AO did not accept the contention of the assessee and assessed the rental income received from letting out of the property under the head income from house property and computed income after allowing standard deduction @30%. Further, the Ld. AO has also

disallowed various business expenditure claimed by the assessee, on the ground that there is no nexus between expenditure claimed in the profit and loss account and business activity of the assessee, because for the year under consideration, the assessee has not carried out any business activity and no receipts has been offered from business. The assessee carried the matter in appeal before the Ld.CIT(A), but could not succeed. The assessee carried the matter in further appeal before the ITAT and the Tribunal upheld findings of the Ld.CIT(A), insofar as, assessment of rental income under the head income from house property, however did not adjudicate the alternate ground taken by the assessee for allowing expenditure claimed under the head income from business or profession.

3. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in not allowing expenditure claimed under the head income from business or profession, when he has assessed income derived from letting out of premises under the head income from house property. The Ld. AR for the assessee submitted that whether or not business income derived from the year under consideration, relevant day to day expenditure incurred in order to maintain corporate status of the assessee needs to be allowed as deduction under the head income from business. The Ld. AR, further submitted that if you go through the nature of expenditure incurred by the assessee, it is abundantly clear that all expenditure are in the nature of general administrative and other expenses, which are required to be incurred to keep the corporate status of the assessee, whether or not any business income is derived for the year under consideration. Although, the Ld. AO has accepted the fact that the assessee main business activity is to manufacturing and trading in plastic moulded

and other goods, but failed to allow relevant expenditure debited into profit and loss account under the head income from business or profession.

4. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the Ld.CIT(A) has recorded categorical finding that the assessee has not earned any receipts from business for the year under consideration and consequently, no expenditure can be allowed under the head income from business or profession and hence, the order of the Ld.CIT(A) order should be upheld.

4. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is an admitted fact that the main objects of the assessee as per MOA/AOA is manufacturing and dealing in various plastic moulded industrial goods. Further, it is also very clear from the facts that the assessee company was come into existence by conversion of partnership firm under the provisions of companies Act, 2013. Further, the said firm was also engaged in the business of manufacturing plastic moulded industrial use goods. The fact that there are no business receipts for the year under consideration is not disputed by the assessee, as well as the revenue. However, the fact remains that the assessee has incurred various expenditure, which are in the nature of general administrative and other expenses required to be incurred by every business person, including a company to maintain corporate status of the assessee, whether or not any business receipts is earned for the year under consideration. Further, if you go through, the nature of the expenses, incurred by the assessee, it is very clear that all expenses are incurred like audit

fee, bank charges, legal and profession charges and other expenses are in the nature of day to day expenses required for maintaining the corporate status of the assessee. Therefore, we are of the considered view that when, the receipts of the assessee from rental income has been assessed under the head income from house property after considering relevant provisions of Act, the Ld. AO ought to have considered various expenditure claimed by the assessee under the head income from business and profession, whether or not any business receipts is received for the year. Further, once fact that the assessee is into certain business, then relevant expenses required maintaining the corporate status of the assessee needs to be allowed, whether or not any income is generated from said business for the year under consideration. Hence, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in disallowed expenses claimed under the head administrative and general expenses. Accordingly, we direct the AO to allow deduction for day to day expenses like, audit fees, bank charges, legal and professional fees and misc. expenses. But, insofar as rates and taxes, municipal tax, Director Remuneration, service tax expenses, preliminary expenses and finance charges debited into the profit and loss account, one has to see nature of expenses and relevance of said expenditure in the business of the assessee to give the benefit of deduction. No doubt municipal tax is always paid in connection with property to local authority and said expenditure is deductible under the head income from house property and hence it cannot be allowed as deduction under the head income from business and ordered accordingly. Similarly, in respect of Director Remuneration, service tax expenses, preliminary expenses written off and finance charges, the assessee has failed to prove nexus between business

activity and nature of expenses and how said expenditure is wholly and exclusively incurred for business purpose. Hence, this expenditure cannot be allowed as deduction under the head income from business for the year under consideration, when there is no business is carried on for the year. We ordered accordingly.

5. In the result, appeal filed by the assessee qua ground No.3 is partly allowed in terms of our observations given hereinabove.

Order pronounced in the open court on this 27 /11/2019

Sd/-
(C.N.PRASAD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 27/11/2019

Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai