

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1368/Bang/2017
Assessment year : 2013-14

M/s. Coffeeday Natural Resources Pvt. Ltd., No.23/2, Coffeeday Square, Vittal Mallya Road, Bengaluru – 560 001. PAN : AAEECC 4959 M	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. C. Ramesh, CA
Revenue by	:	Shri. Balakrishnan N, Addl. CIT (DR)(ITAT), Bengaluru

Date of hearing	:	16.01.2020
Date of Pronouncement	:	20.02.2020

ORDER

Per A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-2, Bengaluru, dated 13.04.2017 for the Assessment Year 2013-14. The grounds raised by the assessee are as under:

- 1. The order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it.*
- 2. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of the whole of the expenditure of Rs.2,37,21,075/- claimed by the appellant for the reason that, there*

was no revenue from business activity and hence no expenditure can be claimed.

- 3. The learned Commissioner of Income Tax (Appeals) erred in giving a finding that, the appellant had not commenced the business and hence the expenditure is not allowable, ignoring the fact that, the appellant was already setup and ready for business and under the circumstances, the expenses claimed could not have been disallowed.*
- 4. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, the company was incorporated and the expenditure was in the nature of running expenses to keep the company in operation and hence allowable as revenue.*
- 5. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, the appellant has declared income under the head other sources and if the expenditure is not allowable under the head business, should have been allowed under the head other sources, since the expenditure was revenue in nature and required for day to day running of the company.*
- 6. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the ratio laid down by the Mumbai Tribunal in the case of DCIT, Circle-8(1), Mumbai V. Bunge India (P) Ltd (2016) 70 Taxmann.com 323 (Mum), wherein it is held that, if the fixed deposits are not made with the purpose of earning interest, such interest income should also be assessed under the head business and under the circumstances the expenditure claimed should have been allowed against the interest income assessed.*
- 7. The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.*

2. In the course of hearing, it was submitted by learned AR of the assessee that the order of CIT(A) is very cryptic and he has not decided these issues which were raised before him by way of ground No.4 that the AO has erred in ignored the fact that the company is already set up and is in existence and therefore, expenditure incurred for day to day running of the company has to be allowed as business expenditure. He also submitted that the only objection of the AO is this that no income was earned by the assessee in the present

year. He placed reliance on the Tribunal order rendered in the case of Crowd Analytix Solutions Pvt. Ltd., Vs. DCIT ITA No.1202/Bang/2019 dated 30.12.2019. He submitted a copy of this Tribunal order and pointed out that in para No.11 of this order of the Tribunal, this is the decision of the Tribunal that the law is well settled that in terms of the proviso to section 3 of the Income Tax Act, 1961, business income can be computed only from the date on which the business is set up. He submitted that in that case, the matter was restored back to the file of AO for a fresh decision. He submitted that in the present case also, the matter should be restored back to the file of the AO for a fresh decision. He also submitted that all the aspects of the matter should be left open so that the assessee can raise various arguments on each of the aspects and the same may be decided by the AO by way of speaking and reasoned order. Learned DR of the Revenue supported the order of authorities below.

3. We have considered the rival submissions. First of all, we reproduce para Nos.3.1 to 3.3 of the order of CIT(A) because in these paras of his order, learned CIT(A) has noted the factual aspects up to assessment stage in Para 3.1 and thereafter, he has reproduced the grounds raised by the assessee before him in Para 3.2 and then his decision is contained in para 3.3 of his order. These three paras are as under:

“3.1 The Assessing Officer noticed that the appellant had debited an amount of Rs. 2,37,2,075 in the profit & loss account and shown other income of Rs. 1,00,38,733 being interest on bank deposit. The appellant was asked by the Assessing officer to show cause as to why only the income from other sources should not be considered as income and taxed during the year and business loss disallowed as the appellant has not yet commenced its business. The appellant, vide its letter dated 21.01.2016, furnished reply as under:

"The commercial activity is yet to begin for the reason that, there has been changes in Government policy in regard to exploitation of natural resources. Since, the company is ready for carrying on the commercial operations and such operations has not begun owing to circumstances beyond the control of the assessee, we submit that, the expenditure claimed for the company to be in existence and operative are to be allowed as revenue."

However, the AO did not accept the explanation of the appellant for the detailed reasons in the assessment order and brought to tax the sum of Rs. 1,00,38,733.

3.2 The relevant grounds of appeal are as under:

"2. The Learned Assessing officer erred in disallowing the whole of the expenditure of Rs. 2,37,21,075 claimed by the appellant.

3. The Learned Assessing officer erred in holding that, in the absence of any revenue earned from business activity no expenditure can be allowed.

4. The Learned Assessing officer erred ignoring the fact that the company is already setup and is in existence and therefore expenditure incurred for day to day running Like statutory audit fees, rates & taxes, miscellaneous expenses, financial charges and also professional charges are to be allowed as expenditure irrespective of the fact that the appellant has no business revenue.

5. The Learned Assessing erred in ignoring the ratios Laid down in the following decisions wherein it is held that, only for the reason that, there was no sales revenue, the expenditure incurred for day to day running cannot be disallowed.

- i) CIT v. Sarabhai Management Corporation Ltd (1991) 92 ITR 151 (SC)*
- ii) SPPS Systems (P) Ltd V. DCIT (2015) 154 ITD 65 (Hyd-Trib)*

- iii) *CIT V. Aspentech India (P) Ltd (2010) 187 Taxman 25 (DeLhi).*
- iv) *CIT (Central), Ludhiana V. Majestic Auto Ltd (2013) 38 Taxmann.com.214 (P&H).*
- v) *CIT V. Rampur Timber & Turnery Co. Ltd (1981) 6 Taxman.241 (ALL)."*

3.3 After perusing the assessment order and the arguments made by the appellant, it is seen that the expenses claimed in profit & loss account are primarily professional charges of Rs. 2,35,20,877 for raising funds as detailed in the assessment order at para 5 and admitted by the appellant and certain other expenses. It is also on record that the business activity has not commenced and that for earlier years the appellant had capitalised similar expenditure. During the year also, the business has not commenced. It is not a case where surplus funds are kept in bank deposits during the course of running of the business to render any income thereon to be termed as business income. The cases relied upon by the appellant also do not help the appellant under facts of the case. In this case, as brought out in detail by the Assessing officer, the income earned i.e., interest income is income from other sources. Expenses claimed of Rs. 2,37,21,075 against such income is not allowable. The action of the Assessing officer is upheld."

4. From the above paras, it is seen that in ground 4 raised by the assessee before learned CIT(A), this was the contention of the assessee that the AO has erred in ignoring the fact that the company is already set up and is in existence. There is no decision of CIT(A) on this vital aspect of the matter.

5. Now we reproduce para Nos.11 to 13 of the Tribunal order cited by learned AR of the assessee having been rendered in the case of Crowd Analytix Solutions Pvt. Ltd., Vs. DCIT (supra). These paras are as under:

11. We are of the view that the absence of revenue from business cannot be the basis to hold that expenditure debited in profit and loss account were not incurred for the purpose of business. The law is well settled that in terms of the proviso to Sec.3 of the Act,

business income can be computed only from the date on which the business is set up. Sec.3 of the Act defines Previous year as follows:

“Previous year defined.-For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year:

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.”

*12. The importance of previous year can be judged in the context of section 4 of the Act. Section 4 of the Act provides for a charge of income-tax for any assessment year is in respect of the total income of the previous year of every person. The whole process of levy of income-tax starts with computation of total income of the person during the previous year relevant to the assessment year. If the business of the Assessee was not set up during the previous year and therefore income under the head business cannot be computed, all expenses incurred by the Assessee prior to set up of the business, whether they are revenue or capital in nature, have to be capitalized over various assets of the Assessee and only depreciation can be claimed on such capitalized value. The expenditure incurred prior to the **‘setting-up of business’ is to be considered as a pre-operative capital expenditure**. The significance of this concept has been elucidated by the Bombay High Court in *Western India Vegetable Products Ltd. Vs. CIT 26 ITR 151 (Bom)* wherein it was observed that the expression ‘setting up’ means as is defined in the *Oxford English Dictionary* ‘to place on foot’ or ‘to establish’ and in contradistinction to ‘commence’. The distinction is that when a business is established and is ready to commence business there it can be said of that business, that it is set up. But before it is ready to commence business it is not set-up. But there may be an interregnum, there may be an interval between a business which is set up and a business which is commenced and all expenses incurred after the setting up of the business and before the commencement of the business during the interregnum, would be permissible deductions*

under section 10(2) of the Income Tax Act, 1922 (equivalent to Sec.37(1) of the Act).”

6. From the relevant paras reproduced from this Tribunal order, it is seen that this is the decision of the Tribunal in that case that the law is well settled that in terms of the proviso to section 3 of the Income Tax Act, 1961, the business income can be computed only from the date on which the business is set up. Hence, this issue is very vital to be decided as to whether the business in the present case is set up or not. This issue was very much raised by the assessee before CIT(A) but the same was not decided by the CIT(A). Hence, we feel it proper to set aside the order of CIT(A) and restore the matter back to the file of CIT(A) for a fresh decision on all aspects of the matter including this aspect that whether the business is set up or not and he should provide adequate opportunity of being heard and shall pass a speaking and reasoned order. We order accordingly. In view of this decision, no adjudication on merit is called for at the present stage and we make no comment on merit. We want to make it clear that we have left all the issues open and hence, the assessee can argue on all aspects before CIT(A) and if it is done by the assessee, then learned CIT(A) would decide all such aspects by way of a speaking and reasoned order after providing reasonable opportunity of being heard to both sides.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PAVAN KUMAR GADALE)
Judicial Member

Bangalore,
Dated: 20th February, 2020.
/NS/*

Sd/-

(A.K. GARODIA)
Accountant Member

Copy to:

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.