

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2474/Bang/2018
Assessment Year: 2013-14

Income Tax Officer Ward-1 Chitradurga PAN NO : AAAAV0234E APPELLANT	Vs.	Deputy Registrar of Co- operative Societies Chitradurga Liquidator of the assessee M/s. Vani Vilas Co0- Operative Sugar Factory Ltd. Challakere Road Hiriyur, Chitradurga Dist. RESPONDENT
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Appellant by	:	Shri Pradeep Kumar, D.R.
Respondent by	:	Shri S. Ramasubramanyam, A.R.

Date of Hearing	:	10.06.2020
Date of Pronouncement	:	02.09.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The revenue has filed this appeal challenging the order dated 01-06-2018 passed by Ld CIT(A), Davangere for assessment year 2013-14, wherein the Ld CIT(A) has deleted the addition of Rs.6.24 crores made by the AO u/s 41(1) of the Income-tax Act,1961 ['the Act' for short].

2. The facts relating to the issue are discussed in brief. The assessee is a cooperative sugar factory. According to Ld A.R, it stopped its operations in the year 2004 and it is under the control of liquidator. The Ld A.R also stated that the assessee has not filed its returns of income since assessment year 2003-04 onwards.

4. In the appellate proceedings, the Ld CIT(A) accepted the contentions of the assessee. Since the assessee did not file returns of income for earlier years, the Ld CIT(A) held that the expenditure has not been claimed by the assessee. Accordingly he held that the waiver of interest of Rs.6,23,97,844/- is not taxable u/s 41(1) of the Act. The revenue is aggrieved by the said decision.

5. The Ld D.R submitted that the assessee has been preparing financial statements year after year, wherein the interest expenditure has been accounted for, meaning that the assessee has been claiming interest expenditure in its books of accounts. Hence mere non-filing of return of income cannot lead to the conclusion that the assessee did not claim interest amounts as expenditure. Accordingly, he submitted that the AO was right in assessing the interest waiver amount as income of the assessee u/s 41(1) of the Act.

6. However, according to Ld A.R, expenditure shall be deemed to have been allowed under the Income tax Act, only if the return of income has been filed under the Act. Accordingly, it was contended that the entire interest expenses cannot be considered as allowed, since the assessee has not filed returns of income from 2003-04 onwards. The Ld A.R submitted that the provisions of sec. 41(1) shall be attracted only if the expenditure had been allowed earlier. Accordingly he contended that the provisions of sec. 41(1) are not attracted in the facts of the present case, since no return of income has been filed by the assessee. He further submitted that the assessee has been incurring loss year after year even without considering the interest expenses also. Accordingly submitted that the orders passed by Ld CIT(A) does not call for any interference.

statements, the statement of total income could be prepared for every year by disallowing interest claim covered by waiver scheme. On a perusal of financial statements, we notice that the loss declared by the assessee every year is more than the amount of interest (net interest in AY 2011-12), meaning thereby, there should not be any tax liability, even if the interest expenses are disallowed. Accordingly, we direct the assessee to compute total income of earlier years by disallowing the interest expenditure, which have been waived by the Government of Karnataka. In that case, it can be easy for anyone to give a finding that the interest expenditure was not claimed in earlier years. In that situation, the interest waived by the Government will not be assessable u/s 41(1) of the Act.

9. Accordingly, we direct the assessee to furnish the income computation statements for assessment years 2006-07 onwards (period covered by the interest waiver scheme) to the Assessing officer for his consideration by disallowing interest expenditure covered by the waiver scheme. The AO, after examining the financial statements and after satisfying himself that the interest expenditure has been disallowed by the assessee, may desist from assessing the waiver amount u/s 41(1) of the Act. We confine ourselves with assessment year 2013-14 onwards. On the basis of income computation statement filed for earlier years, if any action is warranted, the AO may deal with it in accordance with law.

10. In view of the foregoing discussions, we set aside the order passed by Ld CIT(A) and restore the issue to the file of the AO for examining it afresh as per discussions made supra and also in accordance with law.