

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.87/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Sinto Bharat Manufacturing Pvt.Ltd. II floor, R.A Building, Marshall Road, Egmore, Chennai-600 008.	Vs	The Income Tax Officer, Corporate Ward-6(2), Chennai.
PAN:AARCS 3960K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mrs. Nithya Sankaran, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. Suresh Periasamy, JCIT

सुनवाईकीतारीख/Date of hearing	:	29.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	29.12.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the learned CIT(A)-16, Chennai dated 14.11.2018 and pertain to assessment year 2013-14.

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

"1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of claim of business expenditure of Rs.64,35,738/- and treating the same as capital expenditure.

4. For that the Commissioner of Income Tax (Appeals) erred in upholding the conclusion of the Assessing Officer that the appellant had not commenced operations in the impugned assessment year.

5. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of depreciation on assets claimed by the appellant.

6. For that the appellant objects to the levy of interest u/s.234A and 234B”.

3. Brief facts of the case are that assessee company is engaged in the business of manufacturing of mould handling lines and shot blasting machines has filed its return of income for assessment year 2013-14 on 30.11.2013 admitting total income of ₹ 62,13,132/-. During the course of assessment proceedings, Assessing Officer noticed that assessee has claimed various expenditure under the head revenue expenditure, however, not admitted any income from business operations, therefore called upon the assessee to explain as to why expenditure claimed under various heads should not be disallowed. In response, the assessee vide letter dated 04.02.2016 submitted that company has commenced its business on 31.03.2012 for manufacturing of mould handling lines and shot blasting machines, for which it has placed orders for purchase and

installation of machines required for manufacturing activity and such machines have been installed in subsequent financial years. The assessee further submitted that the moment it has started its activities and ordered for procurement of plant and machinery, the business said to have been commenced and related expenditure in the nature of revenue expenditure can be allowed as deduction. The Assessing Officer was not convinced with explanation furnished by assessee and according to him, during the year under consideration, assessee did not set up its business activity which is evident from the fact that purchase order issued for procurement of plant & machinery required for manufacturing of goods was placed on 10.10.2012 and as per purchase order delivery of the above two machines was due on 20.08.2013, which comes under next financial year and hence, it cannot be said that assessee has commenced its business to allow deduction for various expenditure debited into profit & loss account and accordingly disallowed expenditure claimed including depreciation amounting to ₹ 64,35,736/-.

4. Being aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), assessee has filed detailed written submissions and argued that the

assessee has set up business and its business activities has commenced on 30.03.2012, which is evident from the fact that it has placed orders for procurement of plant and machinery as required for manufacturing activities and also in the process of installation of such machinery for which it has paid various expenditure including salary of technician and other relevant revenue expenditure. Therefore, the Assessing Officer is incorrect to say that business was not commenced for impugned assessment year. The learned CIT(A), after considering relevant submissions of assessee observed that although assessee has placed orders for procurement of plant & machinery on 10.10.2012, but such machinery was due for delivery on 20th August, 2013, which is previous year relevant to the assessment year 2014-15, hence, it cannot be said that assessee has commenced its business operations to allow deduction for various expenditure debited into profit & loss account. The learned CIT(A) further observed that moreover the assessee did not bring on record any evidences to prove that it has started its business activity and identified prospective clients etc. and therefore opined that Assessing Officer was right in disallowing expenditure debited into profit & loss

account accordingly, confirmed additions made by Assessing Officer towards disallowance of expenditure. Aggrieved by the learned CIT(A) order, assessee is in appeal before us.

5. The learned AR for assessee submitted that learned CIT(A) has erred in confirming additions made by the Assessing Officer towards disallowance of business expenditure of ₹ 64,35,736/- and treating the same as capital expenditure without appreciating the fact that assessee has commenced its business operations on 30.03.2012 and has started setting up of plant & machinery required for manufacturing activity. The learned AR for the assessee referring to paper book filed for this purpose submitted that assessee has placed orders for procurement of plant and machinery with its own specifications and drawings and such plant & machinery has been procured in subsequent financial year. The learned AR further submitted that assessee has placed orders for procurement of various plant & machinery and also started drawing and design work for this purpose and it has paid salary and other expenditure to various staff involved in execution of the project. Moreover, assessee has set up its business and started activity for

installation of plant & machinery required for business activities and once, it has started its activities it can be said to have commenced business and related expenditure in the nature of revenue expenditure can be allowed as deduction. In this regard, learned AR has relied upon the decision of Hon'ble Delhi High Court in the case of M/s. Carefour WC & C India P.Ltd Vs. DCIT reported in 368 ITR 692 (Del).

6. The learned DR, on the other hand, submitted that Assessing Officer has brought out clear facts to the effect that assessee has not even purchased basic machinery for trial run during the previous year relevant to assessment year 2013-14, which itself is sufficient to prove and hold that business was not commenced for the impugned assessment year and hence, question of disallowance of expenditure does not arise.

7. We have heard both parties, perused material available on record and gone through orders of authorities below. The term 'set up of business' and 'commencement of business' are two different events. If an assessee has set up business, even if the business was not commenced during the relevant financial year, then

necessary revenue expenditure incurred for the purpose of business can be allowed as deduction. But, in order to decide whether business has been set up or not various facts has to be examined including nature of business carried on by assessee . In a case where assessee is involved in business of manufacturing of any goods or articles, business can be said to have commenced only, if the assessee has installed necessary plant & machinery required for manufacturing of goods or articles. In a case, where assessee is engaged in the business of trading, then business can be said to have commenced or set up if the assessee has started process of taking premises, employing staff and other facilities. Therefore, based on universal principle, it cannot be said that business has been set up or commenced. In this case, assessee is involved in the business of manufacturing mould handling lines and shot blasting machines. For the impugned assessment year, assessee has not even set up its plant & machinery required for manufacturing of goods or articles which is evident from the fact that assessee has placed order for purchase of machinery on 10.10.2012, as per said purchase order delivery of such machinery is due on 20.08.2013, which is not coming under the impugned assessment year .

Therefore, it is difficult to come to the conclusion that assessee has set up or commenced its business activities for the impugned assessment year . Further it is well settled principle of law that unless business is set up all expenditure incurred in relation to said business have to be capitalized till business activity is commenced. Unless assessee has set up its business activity, then no expenditure can be allowed as revenue expenditure. Since assessee has not filed any evidences to prove that it has set up its business activity, expenditure debited into profit and loss account including depreciation on asset cannot be allowed as deduction. As regards case law relied upon by the assessee in the case of M/s. Carefour WC & C India P.Ltd Vs. DCIT (supra), we find that facts before the Hon'ble High Court of Delhi was on the context of the assessee was engaged in the business of trading activities where assessee company has rented out office premises, opened bank account, appointed employees and got registered under Shop & Establishment Act and under those facts, the Hon'ble High Court held that once assessee had rented out office premises and employed staff, business of the assessee said to have been set up and expenditure thereof were allowable as revenue expenditure. In

this case, assessee is involved in manufacturing activity and plant & machinery required for manufacturing activity was not set up for impugned assessment year and hence, it is very difficult to agree with the contention of the assessee that business of assessee was said to have been commenced, when it has placed orders for procuring plant & machinery. The learned CIT(A), after considering relevant facts has rightly confirmed additions made by Assessing Officer towards disallowance of expenditure debited into profit and loss account. We do not find any error in findings of learned CIT(A) and hence, we dismiss the appeal filed by the assessee .

8. In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 29th December, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,

Sd/-
(जी. मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

दिनांक/Dated 29th December, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.