

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES : BENCH "B" HYDERABAD**

(Through Video Conference)

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A.No. 1251/Hyd./2019
A.Y. : 2016-17**

Kakinada SEZ Limited
Hyderabad

vs. Deputy CIT, Circle 2(1)
Hyderabad

PAN: AACCK5670R

(Appellant/ Assessee)

(Respondent)

For Assessee: Sri Manish Shah, Adv.

For Revenue: Sri Rohit Mujumdar, D.R.

Date of Hearing : 06/01/2021

Date of Pronouncement : 11/01/2021

ORDER

PER BENCH

This assessee's appeal for A.Y. 2016-17 arises from the order of CIT(A)-2, Hyderabad dated 08.07.2019 passed in appeal no. 10151/2018-19 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act')

Heard both the parties. Case file perused.

2. The assessee has raised the following 3 substantive grounds in the instant appeal.

"Ground 1: Taxing Interest earned on fixed deposit under the head "Income from other Sources":-

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of Assessing Officer in charging to tax the interest income amounting to Rs.1,70,41,008/- on fixed deposits and others under the head "Income from other Sources".

2. The Appellant therefore prays that the AO be directed to delete the aforesaid chargeability of the amount of interest earned on fixed deposits as the same is in the nature of capital receipt and hence will go to reduce the amount of interest expenditure to be capitalized.

Without Prejudice to Ground I above:

Ground 2: Interest earned on fixed deposits should be netted off against interest expenditure on borrowed funds:-

1. Without prejudice to the foregoing ground, on the facts and in the circumstances of the case and in law, the learned CIT(Appeals) erred in upholding the action of Assessing Officer in not allowing the deduction of interest expense against interest earned despite the fact that there exists a nexus between the borrowed funds and the deposits placed on which interest is earned.

2. The Appellant therefore prays that the interest expense be allowed to be deducted against earned on fixed deposits.

Ground 3:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of Assessing Officer in disallowing the claim towards expenses of Rs.62,00,201/- incurred by the appellant in the course of business setup during the year and claimed in the return of income.

2. The CIT(A) has further erred in making certain irrelevant, incorrect and/or immaterial observation that the assessee is not entitled to claim business expenses since it has not commenced business.

3. The appellant therefore prays that the AO be directed to allow deduction of expenses of Rs.62,00,201/- during the assessment year under consideration.”

3. Coming to assessee's first substantive ground contending that both the lower authorities have erred in law and on facts in treating interest income of Rs.1,70,41,008/- as 'income from other sources', Mr. Shah is fair enough in not disputing the fact that the very kind of income stands assessed as 'income from other sources' in the earlier assessment years throughout. He has

himself placed on record the tribunal's order for earlier assessment years dated 9.6.2020 in ITA no.598/Hyd/14 to this effect. We adopt judicial consistency and uphold the lower authorities action on this count. This first substantive ground stands dismissed therefore.

4. We now come to assessee's second substantive ground that both the lower authorities ought to have adopted netting basis on assessee's interest income of Rs.1,70,41,008/-. A perusal of the case records and more particularly this tribunal's coordinate bench's decision (supra) has directed the assessing officer to adopt netting basis whilst computing the impugned disallowance. Mr.Shah fairly submitted that the assessee would place on record all the details of its fixed deposit details, investments, tenures, re-investments of the interest income if any, treated as income from other sources, as per law in consequential proceedings. We thus restore this second issue back to the assessing officer's file to be decided in tune with the tribunal's earlier decisions hereinabove. This second substantive ground is treated as allowed for statistical purposes.

5. This leaves us with assessee's third and final ground regarding disallowance of expenses of Rs.62,00,201/- incurred by assessee in the course of its business set up during the year.

The CIT(A)'s findings under challenge read as under:

"6. The AO made an addition of Rs.1,70,41,008/- on account of interest on fixed deposits and Rs.62,00,201/- debited to P&L a/c and claimed as business loss being disallowed on account of non-commencement of business.

The appellant has filed various grounds of appeal pertaining to these issues, the grounds of appeal in para I and para II pertain to the taxing of interest. It is seen that the matter has been adjudicated in the earlier years against the appellant by Hon'ble ITAT Hyderabad in ITA no.1218/Hyd/2010 for AY 2007-08 and ITA No.213/Hyd/2012 dated 18.01.2013 for AY 2008-09. Respectfully

following the decision of Hon'ble ITAT, the grounds of the appellant in Part I & II are dismissed accordingly.

The part III of grounds of appeal pertains to disallowance of Rs.62,00,201/- on account of no business activity reflected by the appellant during the year. The appellant has only earned income under the difference heads on account of interest on fixed deposits which were treated as income from other sources and the rental income which was shown as income from house property.

The appellant claimed that the expenses were routine in nature consisting of various expenses like business promotion, audit, advertisement, rates and taxes etc.

It is important to note that the appellant has capitalized a sizable amount of expenditure as the business has not commenced and has without any basis claimed the expenses which were essentially in the nature of creation of capital asset as revenue expenditure. The above is contrary to the position of law, the AO has rightly disallowed the said expenses and the appellant has also not been able to show any business activity in the past, which is natural as the appellant is into construction of an asset.

In view of above, the grounds mentioned in part III are dismissed accordingly.”

6. Mr.Shah first of all invited our attention to the fact that the impugned expenditure claimed as per assessee's Profit & Loss account (page 86, Schedule 17 at page 100 of the paper book) includes Fringe Benefit tax amount of Rs.11,34,587/- had already been disallowed and, therefore, it is clear cut instance of double disallowance. This clinching fact has gone un rebutted from the revenue side. The assessee gets relief of Rs.11,34,587/- therefore.

He next invited our attention to assessment order dated 4.12.2018 (pages 8 & 9) that the corresponding rental income of Rs.53,25,802/- pertaining to period from January to March, 2016 had been derived from a building constructed on about 5 acres of land which was leased out to M/s Pals Plush India Pvt. Ltd. His endeavour therefore is that once the assessee has declared

the impugned income as income from other sources, the corresponding expenditure also deserves to be allowed u/s 57 since incurred only for the purpose of rental receipt in question. He further argued that once either of the lower authorities has not questioned the head of the assessee's income, it is very much binding on the department as well as the tribunal. We find no merit in assessee's contentions per se. It is an undisputed fact that assessee has derived the income from leasing out its house property only before the commencement of the business and, therefore, both the lower authorities have erred in accepting its income declaration u/s 57 of the Act than the correct head of income from house property u/s 24 of the Act. We therefore exercise our inherent power vested u/s 254 of the Act. Hon'ble Bombay high court's full bench decision in (1993) 199 ITR 351 (Bom) Ahmedabad Electricity Co. Vs.CIT held long back that the legislative expression "pass such orders thereon as it thinks fit" confers the widest possible jurisdiction on tribunal so as to decide the issue before us. We also quote Chennai Properties and Investments Ltd. Vs. CIT (2015) 373 ITR 673 (SC) that if the assessee concerned has let out the property in the course of its regular business, the income derived therefrom ought to be assessed as business income and income from house property in case it does not carry out the renting business activity in regular course.

We therefore direct the assessing officer to assess assessee's rental income at Rs.53,25,802/- as income from house property followed by consequential standard deduction(s) u/s 24 of the Act. It is made clear that the assessee shall be at liberty to raise all factual/legal arguments qua allowability of the expenditure claimed in consequential proceedings.

6.1. Mr.Shah lastly submitted that once we have directed the assessing officer to assess the assessee's rental income as income from house property, its remaining expenses of Rs.50 lakhs (supra) hereinabove ought to be considered as incurred wholly and exclusively for the purpose of business u/s 37 of the Act.

We find force in assessee's above contention per se and restore this consequential issue as well back to the file of assessing officer for factual/legal adjudication. This third substantive ground is partly allowed in foregoing terms.

7. In the result, assessee's appeal is partly allowed for statistical purpose in above terms.

Pronounced in Open Court on 11th January, 2021.

Sd/-

**(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER**

Sd/-

**(S.S. GODARA)
JUDICIAL MEMBER**

Dated: the 11th January, 2021.

* gmv

Copy of the Order forwarded to:

1. Kakinada SEZ Limited (Formerly known as Kakinada SEZ Pvt.Ltd.), 4th Floor, GMR Aero Towers, Rajiv Gandhi International Airport, Shamshabad, Hyderabad 500 018, Telangana
2. Dy.CIT, Circle 2(1), Hyderabad
3. ACIT, Range 2, Hyderabad.
4. CIT(A)-2, Hyderabad.
5. Pr.CIT-2, Hyderabad
6. DR, ITAT, Hyderabad.
7. Guard File.