

आयकर अपीलिय अधिकरण “SMC” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 4287/Mum/2019

(निर्धारण वर्ष / Assessment Year 2015-16)

The Dy. Commissioner of Income Tax, Circle-3(2)(2) Aayakar Bhavan, Room No. 674, M.K. Road, Mumbai-400 020	Vs.	Nuevo Consultancy Services Pvt. Ltd. Shapoorji Pallonji Centre, 41/44 Minoo Desai Marg, Colabal, Mumbai-400 005
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AABCD7314A		

अपीलार्थी की ओर से / Appellant by	:	Shri V.K. Chaturved, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Dr. K Shivram, AR

सुनवाई की तारीख / Date of hearing:	04.10.2021
घोषणा की तारीख / Date of pronouncement :	04.10.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of the Revenue is arising out of order of the Commissioner of Income Tax (Appeals)-8, Mumbai [in short CIT(A)], in appeal No. CIT(A)-8/IT061/2017-18 vide dated 10.04.2019. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-3(2)(2), Mumbai (in short DCIT/ AO) for the A.Y. 2015-16 vide order dated 31.05.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses on account of interest made by Assessing Officer under section 36(1)(iii) of the Act. The Revenue has raised various



argumentative grounds including many case laws but relevant ground No. 1 read as under: -

“1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the interest expenses were allowable to the assessee under section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') 1961 without appreciating that the assessee has not conducted any business during the relevant previous year and the interest paid was not for the purpose of business.”

3. Brief facts are that the Assessing Officer while framing the assessment under section 143(3) of the Act disallowed interest expenses of ₹1,50,21,152/- incurred by assessee on funds borrowed. The CIT(A) relying on the Tribunal's order for Assessment Year 2013-14 deleted the disallowance. Aggrieved, Revenue came in appeal before Tribunal.

4. The learned Sr. Departmental Representative supported the order of the Assessing Officer. On the other hand, the learned counsel for the assessee Dr. K Shivram, stated that the issue is covered and the funds borrowed are the same as in Assessment Year 2013-14, which is a lead year, where Tribunal vide order dated 12.05.2021 for Assessment Years 2012-13 to 2014-15 in ITA Nos.5650, 7382 & 7383/Mum/2018 has deleted the addition by observing in para 6 as under: -

“6. Undisputedly, the assessing officer has disallowed a part of expenditure claimed by the assessee simply for the reason that the assessee had not carried out any business activity during the year. However, as could be seen from the facts and materials on record, there was a temporary lull in the online lottery business



of the assessee. Further, it is a fact on record that assessee has started a new business activity in the year 2012 of providing project management services. Though, it may be a fact that there is no operating income in the impugned assessment year; however, on a perusal of the audited financial statement for the assessment year 2016-17, a copy of which has been placed before us, we find that the assessee has reported operating revenue of Rs.7,51,01,572/-. This fact on record clearly establishes that the business activity of the assessee has revived after a temporary lull. Therefore, it cannot be said that the assessee has completely closed down its business activity. In any case of the matter, as observed by learned Commissioner of Income Tax (Appeals), the borrowed funds were utilised for the purpose of assessee's business. Even, other expenditures have also been incurred for the purpose of assessee's business. That being the case, the deduction claimed by the assessee towards various expenditures have to be allowed. Accordingly, we uphold the decision of learned Commissioner of Income Tax (Appeals) by dismissing the grounds raised."

5. These facts are not controverted by the learned Sr. Departmental Representative as the funds on which interest disallowed made by Assessing Officer pertain to Assessment Year 2013-14, wherein Tribunal has deleted the disallowance. As the issue is squarely covered, respectfully following the Tribunal decision I confirm the order of CIT(A) deleting the disallowance. This issue of assessee's appeal is allowed.

6. The second issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of depreciation



claimed by assessee. For this assessee has raised the following ground No.5: -

“5. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the assessee was eligible for allowance of depreciation under section 32 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') 1961, without appreciating that the assessee has not conducted any business during the relevant previous year and that the assets of the assessee were not put to use for the purpose of business?”

7. At the outset, the learned Counsel for the assessee stated that the assets are same as in Assessment Year 2013-14 and Tribunal in earlier year order i.e. Assessment Year 2013-14 dated 12.05.2021 in ITA No.5650/Mum/2018 vide Para 9 deleted the disallowance of depreciation and the same read as under:-

“9. We have considered rival submissions and perused materials on record. It appears from the assessment order, the only probable reason for which the claim of depreciation was disallowed is, the assessee had not offered any operating income during the year, meaning thereby, it had no business activity. However, as could be seen from the materials on record as well as the observations of learned Commissioner of Income Tax (Appeals), there is no dispute that the assessee is the owner of the assets on which depreciation was claimed and they were part of block of assets on which depreciation was allowed earlier. Merely because there is a temporary lull in one stream of business activity, assessee's claim of depreciation on the written down value of the block of assets cannot be denied. Therefore,



we uphold the decision of learned Commissioner of Income Tax (Appeals) by dismissing the grounds.”

8. On the other hand, the learned Departmental Representative supported the order of the Assessing Officer. As the issue is covered and depreciation has already been allowed in Assessment Year 2013-14, this year depreciation cannot be disallowed. I confirm the order of the CIT(A) and this issue of Revenue's appeal is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 04.10.2021.

Sd/-
(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 04.10.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai