

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 6856/Mum/2019
(Assessment Year 2010-11)

The Bombay Oil Private Limited 4 th Floor, Grande Palladium 175 CST Road, Kaina Santacruz(E) Mumbai-400 098 PAN : AA ACT1392D (Appellant)	Vs.	DCIT-Circle-8(3)(1) Room No.615 Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent)
--	-----	---

Assessee by	Milind Bakhai
Department by	Ms. Smita Verma
Date of Hearing	12.10.2021
Date of Pronouncement	14.12.2021

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-14 dated 29.08.2019 and pertains to assessment year 2010-11.

2. Grounds of appeal read as under:-

1. The Learned Commissioner of Income Tax (Appeals) {"Ld. CIT(A)"} has erred in confirming the action of the Learned Assessing Officer ("Ld. AO") in disallowing interest on delay in payment of rent to Bombay Port Trust of Rs.39,69,999/- u/s 57(l)(iii) of the Act while assessing occupancy charges under the head "income from other sources". On the basis of facts and in the circumstances of the case and in law, the disallowance made ought to have been deleted.

3. In this case, the earlier round, ITAT has passed following order in this case:-

“The appeal of the assessee is directed against the order dated 20-08- 2014 passed by Ld CIT(A)-20, Mumbai and it relates to the assessment year 2010-11. The assessee is aggrieved by the decision of Ld CIT(A) in upholding the assessment of interest receipts under the head Income from other sources as against the claim of the assessee to assess the same under the head Income from business. The assessee is also aggrieved by the decision of Ld CIT(A) in confirming disallowance of various expenses claimed by the assessee.

2. We heard the parties and perused the record. The assessee is engaged in the business of investment into financial instruments, mutual funds etc. The assessee received interest income and miscellaneous income as detailed below during the year under consideration:-

Interest on income tax refund - 18,87,297
Interest on deposits with Bank - 7,47,260
Interest on deposits/ICD with corporate - 33,97,892
Interest received from a concern - 10,421 -----
60,42,870 =====

The assessee offered the above said interest income under the head Business. The assessing officer noticed that the assessee’s application for getting status of “Non-Banking Financial Company” (NBFC) was rejected by RBI. Further the assessee’s objective was to make investments in financing/mutual funds. Accordingly he held that the deposits made with banks/corporate cannot be treated as business activity of the assessee. Accordingly he assessed the above said income under the head income from other sources. The assessee had claimed various expenses in its profit and loss account. The AO rejected them, since there was no business income assessable in the hands of the assessee, as the AO had assessed the interest income under the head Income from other sources. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal.

3. The Ld A.R submitted that the assessee is engaged in the business of investing in financial instruments and the deposits were made in the course of carrying on the business. He submitted that the assessing officer has accepted the identical business activities carried on by the assessee in the past, i.e., in the 143(3) assessments completed for assessment years 2005-06 to 2009-10. Accordingly he submitted that there is no necessity for the AO to take a different view in this year alone and the same has violated the principles of consistency. In this regard, the Ld A.R placed reliance on the decision rendered by Hon’ble Supreme Court in the case of Radhoswamy Satsang (198 ITR 321), the decision rendered by Hon’ble Bombay High Court in the case of Gopal Purohit (336 ITR 287) and also other decisions.

4. The Ld A.R submitted that the rejection of the application for securing NBFC status would not render the assessee business less and the income derived by the assessee would not lose business character. In this regard, he placed reliance on the decision rendered by the co-ordinate bench in the case of Preimus Investment and Finance Ltd (ITA No.4879/Mum/2012 dated 13- 05-2015), wherein the Tribunal has

expressed the view that the denial of registration by RBI as NBFC does not decide the issue of carrying on business. Accordingly the Ld A.R pleaded that the order passed by the tax authorities should be reversed.

5. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A).

6. Having heard rival submissions, we are of the view that there is merit in the contentions of the assessee. We notice that the assessee has been earning income of identical nature in the past and the assessing officer has assessed the same under the head Income from business. Even though the principle of resjudicata is not applicable to the income tax proceedings, yet we notice that the tax authorities have not given any reason as to why the decision taken on identical issue in the earlier years should not be followed. Hence we are of the view that the Ld A.R was justified in contending that the principle of consistency should be followed in the year under consideration. The deposits made with the banks and corporate, in our view, can be considered as part of business activities of the assessee as it is engaged in the business of investing in financial instruments.

6.1. It is a fact that the RBI has rejected its application for NBFC status. In this regard, we may notice that the co-ordinate bench has already taken a view in the case of Preimus Investment and Finance Ltd (supra) that the said fact does not determine the nature of income. Accordingly the said reason given by the tax authorities also fails.

7. At the time of hearing, the Ld A.R fairly admitted that the interest on income tax refund is assessable under the head Income from other sources. Accordingly we uphold the view taken by the Ld CIT(A) in respect of interest from income tax refund.

8. In respect of remaining interest income, we set aside the order passed by Ld CIT(A) and direct the AO to assess the same under the head Income from business.

9. We notice that the AO has rejected the claim of expenses, since he assessed the interest income under the head Income from business. There was also no occasion for him to examine the various expenses claimed by the assessee. In the preceding paragraphs, we have held that the interest income from deposits made with banks and other parties is assessable as business income. In this view of the matter, the various expenses claimed by the assessee require examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) in respect of expenses and restore the same to the file of the AO for examining the same.

10. In the result, the appeal filed by the assessee is partly allowed.”

4. On the impugned issue AO has passed following order in the second round

The assessee has also debited Interest expenditure on delay in payment of rent to BPT amounting to Rs. 39,69,999/- to the P&L account and claimed it as an allowable expenditure against the interest receipts referred to above. It has submitted the following in support of the claim:

"The assessee company had taken 'a property on lease situated at Plot R R No. 1972 at Sewree, Mumbai for a lease of 30 years in 1995. The said property was given to Marico Ltd on which assessee was earning rent.

As stated above the property was taken on lease for 30 years, which got expired in 1985 vide its letter dated 23.4.1985, the assessee requested for the renewal of lease term for further period of 30 years. However, BPT re/used to renew (he lease and issued a notice to quit the premise. Further, BPT has also filed an eviction suit in 1986 with the Small Cause Court against the assessee in this matter. During the FY 2002-03, Marico Ltd had shown interest in getting the lease directly renewed in its name and accordingly paid an advance of Rs. 1.20 crore to BPT, Daring the year under consideration, BPT withdrew its eviction suit against the company vide Small Cause Court's order dated 23.11.2009(copy enclosed at page no. 88 to 98). Thereafter, during the year, out of deposit of Rs. },25,W,000/- BPT adjusted Rs. 87,69,1507- towards lease rent and interest thereon of Rs. 39.69.999/-(including TDS of Rs. 3.60.909/-J. We are enclosing herewith copy of adjustment letter received from BPT and ledger account of interest paid to BPT, same was claimed as deduction while computing the business income. ,, -Without prejudice to above, even if rental income from Marico is taxable wider the head "Income from Other Sources " the assessee is entitled for deduction for rent and interest paid to BPT from the said rental income. "

The submissions of the assessee have been duly considered. It is not in dispute that the rental Income(Occupancy charges") earned by the assessee from Marico is taxable as "Income from Other Sources", This has been confirmed by the Ld.CIT(A) and the assessee has not taken re matter to the Hon'ble ITAT, Thus, it has also, accepted that the rental income is not taxable the head Business Income. Further, it did not raise a ground before the Hon'ble ITAT that this interest expenditure on rent be allowed against the occupancy charges. The Hon'ble ITAT has **the** undersigned to examine the claim of expenses against the business income. This claim of expenditure cannot be allowed against the business income which consists of interest of the above discussion, the interest expenditure of delay in payment of rent to Rs, 39.69,999/- is hereby disallowed."

5. The Ld.CIT(A) confirmed the AO's action by following order:-

"So far as the second ground of appeal challenging the disallowance of interest expenditure on delay in payment of rent to BPT amounting to Rs. 39,69,999/- is concerned, I am in agreement with the finding of the AO that the issue does not arise out of order of honourable ITAT dated 29/12/2017, the effect to which has been given by the AO and which is the subject matter of this appeal Occupancy charges earned by the appellant from Marico were taxed by the AO as income from other sources. This action of the AO was confirmed by the learned CIT(A) who also did not allow deduction in respect of interest Expenditure on delay in payment of rent to

BPT, amounting to Rs. 39,69,999/- to the appellant, even though a specific submission was made by the appellant before him in this regard. The appellant did not take the matter of computation of rental income under the head income from other sources to the honourable ITAT. Thus, the issue of computation of rental income under the head income from other sources has already reached finality. Accordingly, disallowance of Rs. 39,69,999/- made by the AO is upheld and the second ground of appeal is dismissed.”

6. Against the above order assessee is in appeal before ITAT.
7. I have heard the Ld. DR and perused the record. Ld. Counsel of the assessee refers to paper book page No.3 for the grounds of appeal before ITAT in the earlier record as under:

The learned Commissioner of Income Tax (Appeals) [‘CIT(A)] has erred in confirming the action of the learned Assessing Officer in treating interest income of JRs.60,42,870/- as 'Income from Other Sources' as against 'Income from Business or Profession'. On the facts and circumstances of the case, the income ought to be assessed under the head 'Income from Business or Profession'.

The learned CIT(A) has erred in confirming the disallowance of following expenses while computing the taxable income of the assessee:

Particulars	Amount
Employees Remuneration (After adjustment u/s 43B items]	7,32,250/-
Repairs to Building	12,66,795/-
Electricity charges	54,003/-
Auditors Remuneration	8,39,147/-
Interest on delayed payment of rent to Bombay Port Trust	36,09,090/-
Legal & Professional charges	4,84,291/-
Miscellaneous Expenses	3,12,946/-
Security charges	2,07,202/-
Communication expenses	61,056/-

Traveling, conveyance & vehicle expenses	53,376/-
Bank charges	1,405/-
Depreciation (as per Income Tax)	1,14,751/-
Total	<u>77,36,312/-</u>

The aforesaid expenses ought to be allowed while computing the income of the assessee under the head "Income from Business or profession" or under the head 'Income from other sources'.

8. From the above, it is clear that this issue was very much before this tribunal and the tribunal had remanded the matter to examine all the expenses, which were raised in ground, which included this claim. The authorities below have clearly erred in holding that ITAT has not remanded this issue. The ITAT in concluding portion has clearly mention that various expenses claimed by the assessee require examination at the end of AO. In the present case, we note that assessee has duly submitted before the AO as under:-

As stated above the property was taken on lease for 30 years, which got expired in 1985 vide its letter dated 23.4.1985, the assessee requested for the renewal of lease term for further period of 30 years. However, BPT re/used to renew (he lease and issued a notice to quit the premise. Further, BPT has also filed an eviction suit in 1986 with the Small Cause Court against the assessee in this matter. During the FY 2002-03, Marico Ltd had shown interest in getting the lease directly renewed in its name and accordingly paid an advance of Rs. 1.20 crore to BPT, During the year under consideration, BPT withdrew its eviction suit against the company vide Small Cause Court's order dated 23.11.2009(copy enclosed at page no. 88 to 98). Thereafter, during the year, out of deposit of Rs. },25,W,000/- BPT adjusted Rs. 87,69,1507- towards lease rent and interest thereon of Rs. 39.69.999/--(including TDS of Rs. 3.60.909/-J. We are enclosing herewith copy of adjustment letter received from BPT and ledger account of interest paid to BPT, same was claimed as deduction while computing the business income. ,, -Without prejudice to above, even if rental income from Marico is taxable wider the head "Income from Other Sources " the assessee is entitled for deduction for rent and interest paid to BPT from the said rental income. "

9. From the above, it is amply clear that the amount involved is duly allowable as claimed. The plank of the authorities below in denying that this was not before ITAT is wrong and not sustainable. Hence, I set aside the order of Ld.CIT(A) and decide the issue in favour of the assessee.

10. In the result, assessee appeal is allowed.

Pronounced in the open court on 14.12.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14/12/2021

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai