

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA. No. 2919/Del/2017
ANDITA. No. 7587/Del/2018
(Assessment Years: 2013-14 & 2015-16)

Rajputana Fertilizers Ltd., M-3, Modi Towers, 98 – Nehru Place, New Delhi – 110 019. PAN: AACCR6083M	Vs.	ACIT, Central Circle : 26, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Anil Jain, Advocate;
Department by:	Shri Munesh Kumar [CIT]-D.R.;
Date of Hearing :	26/10/2021
Date of pronouncement :	22/12/2021

ORDER

PER KULDIP SINGH, J.M. :

1. The aforesaid appeals bearing common question of law and facts are being disposed of by way of composite order to avoid repetition of discussion.
2. Rajputana Fertilizers Ltd. (hereinafter referred to as the assessee) by filing present appeal sought to set aside the impugned orders passed by the ld. Commissioner of Income Tax (Appeals)-29, dated 20.02.2017 and the ld. CIT (Appeals)-7, dated 3.10.2018 respectively, on the identically worded grounds, inter alia, that:

ITA. No. 2919/Del/2017 :

“1. The Ld. CIT (A) has erred in confirming the order of the assessing officer by confirming the addition of Rs.3,09,51,000 (charged under the head income from other sources) as against NIL business income declared by the appellant.

2. The Ld. CIT(A) has erred in confirming the order of the AO in disallowing the expenses including depreciation allowance, employee benefit expenses, finance cost and other expenses amounting to Rs.3,09,51,000/-.
3. The Ld. CIT(A) has erred in confirming the order of the AO in treating the expenses disallowed amounting to Rs.3,09,51,000/- as income from other sources without assigning any reason.
4. The Ld. CIT(A) has erred in confirming the order of the AO in holding that the business of the appellant has been closed and not appreciating the fact that the expenses has been incurred for maintaining the business assets and corporate identity.
5. The Ld. CIT(A) has erred in not commenting on the action of AO in not providing benefit of set off of unabsorbed depreciation. “

ITA. No. 7587/Del/2018 :

- “1. The Ld. CIT (A) has erred in confirming the order of the AO in assessing the income at 24349290 as against the returned loss of 7592715.
2. The Ld. CIT(A) has erred in confirming the disallowance of expenses claimed in profit and loss account for Rs.31942000/-.
3. The order of the CIT(A) is against law and facts of case. “

3. Briefly stated the facts necessary for adjudication of the controversy at hand are:

During the year under assessment assessee was into the business / in the process of taking complete control, possession and title of assets vested in it pursuant to the implementation of Board for Industrial and Financial Reconstruction (BIFR) Sanctioned Scheme of Modi Spinning & Weaving Mills Ltd. In the computation of income assessee company has declared income from other sources including interest income to the tune of Rs.4,81,746/- and dividend income of Rs.60,76,875/- for AY 2013-14 and interest income of Rs.8.03 lacs, dividend income of Rs.78.23 lacs claimed as exempt u/s 10(34), income from capital gains of Rs.280.70 lacs, income from lease rent of Rs.4 lacs and loss from business and profession to the tune of Rs.28831580/- for AY 2015-16.

Assessing Officer noticed from the perusal of the Income Tax Return filed by the assessee for the last 4-5 years that no business activity is being

carried out by the company, however, expenses and depreciation is being claimed over the years including years under assessments. Assessing Officer also issued a notice under Section 142(1) of the Act along with questionnaire to the assessee, to which reply was filed by the assessee company. Finding the contentions raised by the assessee company, not tenable, Assessing Officer proceeded to hold that since no business activity is being carried out by the assessee company from assessment year 2007-08 till assessment year 2015-16, no expenses can be allowed nor there is any sign of revival of the company. Accordingly, Assessing Officer disallowed business expenses of Rs.3,09,51,000/- and Rs.3,19,42,000/- for AY 2013-14 and AY 2015-16 respectively (which includes depreciation and amortization expenses) employees benefit expenses, finance cost expenses and other expenses and thereby framed the total assessment at Rs.3,09,51,000/- and Rs.3,19,42,000/- for AY 2013-14 and Rs.3,19,42,000/- for AY 2015-16 respectively under Section 143(3) of the Act.

4. Assessee carried the matter before the Id. CIT (Appeals) by filing the appeals, who had confirmed the additions by dismissing the appeals. Feeling aggrieved assessee has come up before the Tribunal by way of present appeals.
5. We have heard the Id. Authorized Representatives of the parties to the appeals, perused the orders passed by the Id. Lower authorities in the light of the arguments addressed.
6. Undisputedly, no business activity has been carried out by the assessee company during the year under assessment. It is also not in dispute that the assessee company was in the process of acquiring Modi Spinning & Weaving Mills Co. Ltd., pursuant to the implementation of BIFR Sanctioned Scheme. It is also not in dispute that assessee company has brought on record its audited financials during the assessment proceedings. It is also not in dispute that in assessment years 2006-07 to 2012-13 and 2017-18 returned income of the assessee company has been accepted by the Revenue authority by allowing business expenditures. It is also not in

dispute that no such disallowance has been made by the Assessing Officer right from assessment years 2006-07 to assessment year 2012-13.

7. In the backdrop of the aforesaid un-disputed facts, we are of the considered view that the Assessing Officer as well as the Id. CIT (Appeals) have not decided the issue in controversy in the right perspective taking into consideration the view taken by them during preceding and succeeding years.
8. When the assessee company has come up with categoric contention before the Assessing Officer as well as before the Id. CIT (Appeals) that due to slowing down in the business of manufacturing fertilizers and spinning, the company was in the process of identifying alternative long term business plans in order to revive its business as per scheme sanctioned by BIFR for Modi Spinning & Weaving Mills with effect from 2003 as approved by the Hon'ble Delhi High Court in 2008 because assessee received certain investments and immovable properties qua which litigations were going on and the company remained in the business / in process of getting its complete control, position and title of assets vested in it.
9. In the given circumstances, the Id. Assessing Officer / CIT (Appeals) were required to decide the issue by following the "Rule of Consistency". The Assessing Officer / CIT (Appeals) were also required to decide the allowability of expenses in the light of the expression "for the purpose of business" as used in Section 37(1) of the Act. Moreover, when identical expenditure incurred by the assessee company in the earlier years has been accepted as business expenditure right from AY 2006-07 to AY 2012-13, as the assessee company was in the process of reviving its business and any distinctive material qua the years under consideration is not on record.
10. Moreover in order to maintain the assets received on merger and income earned on account of interest, rent and capital gains on sale of some of the properties the assessee company remained in existence as there was never a permanent closure of the business of the assessee. However, the Assessing Officer and the Id. CIT (Appeals) have decided the issue on the basis of conjectures and surmises by taking the facts brought before them by the assessee company on face value without applying the law to the facts of the

case, particularly when assessee company has never abandoned its business which is not sustainable in the eyes of law. Moreover, it is settled principle of law that expenses incurred by the assessee in order to preserve the business assets are expenses incurred for the purpose of business.

11. In view of the matter, we are of the considered view that the issue is required to be remitted back to the Assessing Officer to decide afresh after providing opportunity of being heard to the assessee in the light of the settled principles laid down by the Hon'ble apex court of India in the case cited as CIT Vs. Vikram Cotton Mills Ltd. (1988) 169 ITR 597 (SC); CIT Vs. Malayalam Plantation Ltd. 53 ITR 140 (SC) and CIT Vs. Birla Cotton Spinning & Weaving Mills Ltd. 82 ITR 166 (SC).
12. Resultantly, both the appeals filed by the assessee company are set aside and allowed for statistical purposes.

Order pronounced in the open court on : 22/12/2021.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated : 22/12/2021.

MEHTA

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	13.12.2021
Date on which the typed draft is placed before the dictating member	13.12.2021
Date on which the typed draft is placed before the other member	17.12.2021
Date on which the approved draft comes to the Sr. PS/ PS	17.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	17.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	22.12.2021
Date on which the final order is uploaded on the website of ITAT	22.12.2021
date on which the file goes to the Bench Clerk	22.12.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	