

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

I.T.A. No. 7565/Mum/2019
(Assessment Year 2014-15)

Bijul Pharmachem Pvt.Ltd. 3 rd Floor, Suri Building 74/80, Babugenu Road Kalbadevi, Mumbai-400 002 PAN : AABCB3518N (Appellant)	Vs.	DCIT, Circle-2(1)(1) Room No.637A, Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent)
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Assessee by	Shri Subhodh Ratnaparkhi
Department by	Shri Abhirama Karthikeyan, CIT-DR
Date of Hearing	16.12.2021
Date of Pronouncement	01.03.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-9 dated 09.10.2019 and pertains to assessment year 2014-15.

2. Grounds of appeal read as under:-

1. The Hon. CIT(A) erred in confirming the addition of Rs. 28,62,160/-, on account of disallowance of expenses debited to Profit and Loss account holding that the appellant was not engaged in any business activity during the year and therefore the concerned expenses were not allowable as revenue expenditure,
3. Brief facts of the case are that on perusal of the Profit & Loss Account, the AO observed that the appellant had claimed expenses of Rs. 29,62,207/- though it had not carried out any business activity during the years. The appellant had earned only

interest income, which was shown as business income. The AO was of the opinion that the interest earned by the appellant ought to have shown under the head income from other sources and the expenses debited to P & L Account were required to be disallowed but for a few items of expenses. Therefore, the AO disallowed expenses of Rs. 28,62,160/- (total expenses claimed at Rs. 29,62,207/- less finance cost of Rs. 27,216/- + auditors remuneration of Rs. 65,731/- + legal & professional fees of Rs. 7,000/-) and added back to the total income of the appellant.

4. Before the Id.CIT(A), assessee made elaborate submissions, considering the same Id.CIT(A) observed as under:-

I have gone through the assessment order as well as the arguments made by the appellant. I find that the AO has disallowed expenses amounting to Rs. 28,62,160/- claimed by the appellant as business expenses during the year under consideration by making two observations as follows:

(i) There was no business activity during the year. Except for the expenses of Rs. 27,316/- for finance cost, Rs. 7,000/- for legal and professional fees and Rs. 65,731/- for auditors' remuneration, all other expenses were not eligible for deduction since, there was no business activity during the year.

(ii) Not a single bill for expenses claimed by the appellant was submitted or produced before the AO.

However, the appellant has challenged the observation of the AO that there was no business activity during the year, it has not challenged the observations made by the AO regarding non submission of bill/supporting evidences regarding the expenses disallowed by the AO.

5. Thereafter, Id.CIT(A) examined the expenditures and income of the assessee and found a number of anomalies in proportionality of the same. He observed and concluded as under:-

“It is evident from the breakup of the expenses listed above that these expenses /were such expenses which are generally incurred while running any business activity. It is also evident from the facts discussed above that the quantum of these expenses remained nearly constant, even after the primary activity of business got discontinued from the year 2009-10 and the secondary' activity of earning commission and services having nominal quantum got discontinued from year 2012-13. The claim of expenditure made under the head "employee benefit expenses" and "other expenses"

comes under the heavy cloud of suspicious because of the fact that the quantum of expenditure nearly remained constant even after the discontinuation of the business activity. These facts when considered along with the finding noted by the AO that no supporting evidences regarding the expenses were submitted during the appellate proceedings leads to a conclusion that the claim of expenses lacked genuineness.

Now, let us examine the appellant's argument that the expenditure of Rs. 28.34 lacs was incurred for the purpose of business. The appellant agreed that the primary activity of business was that of trading in pharma products which was discontinued in year 2009-10 and was never resumed till the year under consideration and also till the year 2019 when the appellate proceedings were going on. Though the appellant has earned a paltry amount of commission in year 2015-16 and year 2016-17, the activity of earning commission was not in existence during the period of 2013-14 to 2015-16. The appellant has relied upon various judgments which are mentioned in the written submission which is reproduced in earlier paragraph. The principle which emerges from these decisions is that the claim of expenses to be incurred for business has to be tested by examining whether there was any business activity going on during the period or whether the expenses were incurred for the revival of the business activity. In the appellant, it is abundantly clear that there was no business activity either in the form of trading in pharma products or earning commission and services. There are no evidences on record to prove that the expenses were incurred for the revival of the business. In such situation, the judgments relied upon by the appellant would not come to the rescue.

The appellant has taken an alternate argument by relying upon some decisions that the expenses for maintaining itself as corporate entity deserve to be allowed as deduction. I find that the AO had allowed expenses under the head finance cost, legal and professional fees and auditor's remuneration. Since, the AO has already allowed expenses for maintaining itself as corporate entity, there is no need for further allowance in this regard. The argument is therefore, rejected.

The appellant has also argued that the activity of earning interest is a business activity and the expenses are required to be allowed to be deducted against these activities. I find that the interest was earned by the appellant by investing the surplus fund available with it in different instruments. The activity of earning interest was neither part of ongoing business nor it was incidental to its business. The appellant was also not into the business of financing. Therefore, the AO has rightly considered the income from interest as income from other sources.”

6. Against the above order, assessee is in appeal before ITAT.
7. I have heard both the parties and perused the records. Ld. Counsel of the assessee summarized his submissions as under:

“The appellant submits that the business of the appellant of dealing in pharma products and allied activities is not closed. It is to be appreciated that the appellant is private limited company incorporated in the year 1991 and has been regularly carrying on business for past more than 22 years. In the year under appeal, there is no transaction of sale of pharma product or commission from such sale due to certain peculiar circumstances. However, this is not to be interpreted that the business of the appellant company has closed down. In fact, the interest income of Rs.44,45,157/- (Rs.44,44,053/- + Rs.1,104/-) credited to the profit and loss account as "other income" (schedule 16 of the financial statements) is offered to tax as business income and also assessed by the Id AO as business income. The AO in the asst. order at para 3.4/pg no. 4 has stated that such interest income is income from other sources but in the final computation has assessed the concerned interest income of Rs.44,45,157/- (Rs.44,44,053/- + Rs.1,104/-) as business income only. This fact was pointed out to the Hon. CIT(A). It is thus the case that the say of the Id AO/ Hon. CIT(A) that there is no business income of the appellant is factually incorrect.

As explained to the Id AO, the appellant faced major setback on account of all its funds getting locked up in litigation with M/s. Elder Pharmaceuticals Ltd. This robbed the appellant of sufficient funds for deployment in business, resulting in no trading activity in the year. In support, the details of funds locked up with the M/s. Elder Pharmaceuticals Ltd. and the order of the Hon. Bombay High Court dt. 11.12.2014 (as submitted to the Id AO during asst. proceedings) is enclosed at pg nos. 20 to 25 of the paperbook.

The appellant therefore reiterates that the business activity is not closed. The appellant does not have any income from trading in pharma product but has interest income which is assessed as business income. It is further important to appreciate that from A.Y. 2016-17 onwards, the appellant has regular commission business income, apart from interest income as reflected by the audited Balance Sheet and Profit and Loss account for A.Y. 2016-17, 2017-18 & 2018-19 enclosed at pg nos. 75 to 80 of the paperbook. It is to be appreciated that a temporary lull in business should not be equated with closure of business.

Further, the Hon. CIT(A) in the course of appeal proceedings sought from the appellant contemporary evidences in respect of activities undertaken by the appellant in the previous year relevant to asst. year 2014-15. These were placed on the record of the Hon. CIT(A) vide submission dt. 02.07.2019 (pg nos. 11 & 12 of the paper book). Copies of such documents stand enclosed at pg nos. 67 to 73 of the paperbook. These documents indicate that the appellant company was undisputedly engaged in actively soliciting business. Subsequently, commission for sale of pharma products was earned by the appellant co. for A.Y. 2016-17, 2017-18 & 2018-19.

The appellant further supports its case on the basis of under mentioned decisions.

(i) <i>CIT-vs-Vellore Electric Corporation, 243 ITR 529 (Mud)/ 113 Taxman 236 (Madras)</i>	03&04
(ii) <i>CIT-vs-Anita Jain, 182 Taxman 173, (Delhi)</i>	05&06
(iii) <i>Atul Babubhai Shah-vs-JCIT, 116 taxmann.com 966</i>	07 to 19
(iv) <i>Mula Pravara Electric Co-operative Society Ltd. -vs-DCIT, 1731TD 313 (Pane)/ 98 taxmann.com 419 (Pane - Trib.)</i>	20 to 42

The appellant accordingly submits that as the business of the appellant company is not closed or discontinued, expenses debited to P&L accounts being business expenses are required to be allowed in its entirety in computing the total income in the year under appeal.”

8. Per contra Id. DR relied upon orders of the authorities below.

9. Upon careful consideration, It is firstly noted that the assessee has not produced the necessary supporting vouchers for the expenditure before the AO. Without submissions of the necessary vouchers, assessee cannot claim allowance of the expenditure. Moreover, assessee's plea is that, there is a temporary lull in the assessee's business. That assessee is locked up in litigation with M/s. Elder Pharmaceuticals Ltd and it is reiterated that the assessee's business has not closed. I note that this aspect of the assessee's contention that assessee has not actually closed business and the lull in the business is on account of litigation with M/s. Elder Pharmaceuticals Ltd has not been properly examined by the authorities below. The AO & Id.CIT(A) have summarily rejected the same. The examination by the Id.CIT(A) of the proportionality aspect of expenditure, *vis-a-vis* income generated can lead to further examination, but cannot be *ipso facto* reason that expenditure has to be disallowed. I find that in the interest of the justice, this issue needs to be remitted to the file of the AO. The AO is directed to consider the issue afresh in light of the observation hereinabove.

10. In the result, this appeal by the assessee stands allowed for statistical purpose.

Pronounced in the open court on 01.03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01 .03.2022

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