

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 1408/HYD/2019 Assessment Year: 2016-17		
Dy. Commissioner of Income-tax, Circle -16(2), Hyderabad.	Vs.	Palred Technologies Ltd., Hyderabad. PAN - AAACF 4464A
(Appellant)		(Respondent)
Assessee by:		Shri Laxminiwas Sharma
Revenue by:		Shri Rohit Mujumdar
Date of hearing:		10/03/2022
Date of pronouncement:		17/03/2022

ORDER

PER BENCH:

This appeal filed by the assessee is directed against CIT(A) - 4, Hyderabad's order, dated 18/06/2019 for AY 2016-17 involving proceedings u/s 143(1) of the Income Tax Act, 1961; in short "the Act" on the following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the business

expenses and depreciation disallowance by the AO even when the company had discontinued or closed his business before the commencement of the previous year.

2. Any other ground that may be raised at the time of hearing.”

2. Briefly, the facts of the case are that the assessee, engaged in e-commerce business, filed its return of income for AY 2016-17 on 30/09/2016 admitting loss income at Rs. 2,12,81,762/-, which was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and accordingly, statutory notices were issued to the assessee, in response to which, the assessee furnished the information as called for.

2.1 The AO observed that in the P&L Account, the assessee admitted nil receipts from business and other income of Rs. 2,20,00,194 which represent dividend income. Further, he observed that the expenditure of Rs. 3,07,87,342/- was claimed and loss of Rs. 87,87,148/- was arrived and the expenditure claimed comprised of employees benefits, depreciation on buildings, furniture and plant & machinery and other expenses. Regarding the activities of the company, he noted that in the audit report it was mentioned under the head summary of significant accounting policies and explanatory information that the company had discontinued the online e-commerce portals

business from October, 2014 and during the FY ending 31st March, 2014, the company had transferred its transportation logistics software business and used the part of proceeds to refund it to the shareholders by way of dividends and reduction of share capital. Further, the company acquired investments in subsidiary company engaged in e-commerce activities.

2.2 In view of the above factual background, the AO observed that the assessee had discontinued its business activities and no fresh business was commenced during the previous year relevant to AY 2016-17. When questioned about the claim of expenditure in the absence of any business activity vide notice u/s 142(1), dated 01/12/2018, the assessee replied that prudent financial planning, effective resource allocation and tight financial controls were needed to safeguard the investments of the company in subsidiaries and mutual funds. Further, it was submitted that the company is a public limited company listed in BSE and NSE, and the company had to employ key management personnel and, therefore, the assessee argued that it had to incur salaries and wages, advertisement and professional/consultancy charges expenses and they have to be allowed.

2.3 The AO observed that even though the argument of the assessee is acceptable under companies act, the same is not

acceptable for the computation of income for Income tax purposes. As per the provisions of Income tax Act, it is necessary that the business in respect of which expenses are incurred should be carried on by the assessee during the previous year and the expenditure should have been incurred in connection with the business to avail the deduction of expenditure. Since the assessee is not engaged in any business activity during the previous year for earning taxable income, the expenditure claimed cannot be treated as expenditure incurred in connection with the business. The only source of income disclosed during the previous year is only dividend which is exempted income. Even if the assessee claims that the expenditure incurred is for business purposes, the same is treated as expenditure related to the exempted income since no other business is in existence and hence not allowable.

2.4 In view of the above observations, the AO issued notice u/s 142(1) dated 08/12/2018 to the assessee requesting to submit the details. After considering the submissions made by the assessee that the expenditure incurred for consultations in connection with searching of new business opportunities, the AO observed that since no new business is set up, the expenditure if any incurred before setting up of the business cannot be allowed. During the relevant assessment year, the assessee company had no business operations and also filed return of income with

dividend income only. Further, he observed that if business is closed or discontinued before the commencement of the previous year, no deduction in respect of such discontinued business is permissible. For this proposition, the AO relied on the decision of the Hon'ble Supreme Court in the case of L M Chhabda & Sons 651TR 638(SC). Finally, the AO held that the expenditure claimed cannot be charged to the P&L A/c and the same are disallowed since there are no corresponding business receipts during the year the year under consideration.

5. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A), who allowed the appeal of the assessee. Against the order of CIT(A), the revenue is in appeal before the ITAT.

6. Before us, the ld. DR submitted that the assessee company has discontinued its business from October, 2014 and during the FY ending 31st March, 2014 the company has transported its transportation and logistics software business and used the part of proceeds to refund it to the share holders by way of dividends and reduction of share capital and further, the company acquired investments in subsidiary company engaged in e-commerce activities. He submitted that it is necessary that the business in respect of which expenses are incurred should be carried on by the assessee during the previous year and the expenditure

should have been incurred in connection with the business to avail the deduction of expenditure. He submitted that since the assessee is not engaged in any business activity during the year the previous year for earning taxable income, the expenditure claimed has rightly disallowed by the AO. He submitted that the assessee's claim that the expenditure incurred is for business purposes, the same is treated as expenditure related to the exempt income, which is not allowable. He, therefore, prayed that the order of the CIT(A) is set aside and that of the order of the AO be restored.

7. The Id. AR, on the other hand, relied on the order of the CIT(A).

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. It is an undisputed fact that the assessee has discontinued its business from October, 2014 and during the FY ending 31st March, 2014 the company has transferred its transportation and logistics software business and used the part of proceeds to refund it to the share holders by way of dividends and reduction of share capital and further, the company acquired investments in subsidiary company engaged in e-commerce activities from which the assessee company has earned dividend income of Rs. 2,20,00,194/-, which is exempt from

tax. The assessee company has incurred expenditure to the tune of Rs. 3,07,87,342/- under different heads as per schedule No. 09, 10, 20 and 21 of financial statements, which is placed in the paper book. We find from the financial statements that the assessee has earned dividend income as per schedule 18 from non-trading investments. We also find from the schedule 11 of the financial statements that the assessee has invested its funds in its subsidiary companies and the dividend received by the assessee from them is exempt from the income tax. Once the assessee has incurred any expenditure towards earning exempt income, the same cannot be allowed as per the provisions of the Income Tax Act. With regard to the submission of the Id. AR of the assessee that assessee company is an artificial entity and some expenditure to be incurred towards statutory expenses and the same has to be allowed cannot be brushed aside . We also observe from the order of the Assessing Officer vide Para No. 4.4 in which the assessee's submissions have been incorporated by the AO, which are the details of the professional and consultancy charges paid to different professionals for rendering their services out of which some of the expenditure were incurred for acquiring of Software Service Company in Ireland and for acquiring a business in New Delhi, therefore, these expenses are in the nature of Preliminary Expenses and comes U/s 35D(1) (ii) and there might have been some other expenses incurred

simultaneously for setting up of new business/units. In respect of payments to KMP (Key Managerial Persons), no payment details and proper arguments were advanced to establish that the payments are necessary for its business. Neither the AO nor the assessee has worked out the details of the expenses which relate to setting up of new business/units. Further, the assessee has also not computed the expenditures related to statutory requirement, which are necessary to keep and maintain the company. The AO also disallowed the total expenditure claimed by the assessee by holding that there was no business carried out by the assessee during the impugned AY and no expenditure can be allowed against the exempt income earned. In view of the above observations and considering the totality of the facts and circumstances of the case, to meet the ends of justice, we remit this issue to the file of the AO with a direction to make de-novo assessment after providing opportunity of being heard to the assessee in the matter. The assessee is directed to appear before the AO with necessary documents to expedite the assessment by avoiding unnecessary adjournments. Accordingly, the grounds raised by the revenue are treated as allowed for statistical purposes.

9. In the result, appeal of the revenue is allowed for statistical purposes in above terms.

Pronounced in the open court on 17th March, 2022.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 17th March, 2022.

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Copy to :

1	<i>DCIT, Circle - 16(2), 2nd Floor, Income-tax Towers, AC Guards, Hyderabad - 500 004</i>
2	<i>M/s Palred Technologies Pvt Ltd., H.No. 8-2-703/2B, Road No. 12, Banjara Hills, Hyderabad - 500 034</i>
3	<i>CIT(A) - 4, Hyderabad</i>
4	<i>Pr. CIT - 4, Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	

:- 10 :-

*ITA No. 1408/Hyd/2019
M/s Palred Technologies Pvt Ltd.,
Hyderabad*

10	Date of Dispatch of order	
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