

आयकर अपीलिय अधिकरण
मुंबई पीठ "एच"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.1262/मुं/2021 (नि.व. 2016-17)
ITA NO.1262/MUM/2021(A.Y.2016-17)

KYRA INVESTMENTS,
8/36, Grants Building,
Arthur Bunder Road,
Colaba, Mumbai – 400 005
PAN: AAGFK-3932-P

..... अपीलार्थी /Appellant

बनाम Vs.

Assistant Commissioner of Income Tax
Circle -17(2),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Swati Banwat

प्रतिवादी द्वारा/Respondent by : Shri Azhar Zain

सुनवाई की तिथि/ Date of hearing : 02/02/2022

घोषणा की तिथि/ Date of pronouncement : 02/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 03/05/2021 for the assessment year 2016-17.

2. The assessee in appeal has assailed the order of CIT(A) on three grounds:

- (i) Disallowance of Administrative Expenses - Rs.11,02,686/-
- (ii) Refund of Sewage Tax Rs.3,74,588/- considered as Income from Other Sources as against Business Income claimed by the assessee.
- (iii) Dividend income of Rs.15,000/- received from Zoroastrian Co-Op Bank offered to tax as 'Business Income' by the assessee considered As Income from Other Sources by the assessee.

3. Ms. Swati Banwat appearing on behalf of the assessee submitted that, the assessee had claimed Administrative Expenses aggregating to Rs.11,02,886/- in respect of its business. The Id.Authorized Representative of the assessee fairly admitted that during the period relevant to assessment year under appeal no business was carried out by the assessee. The assessee is a Developer and Builder. During the period relevant to the assessment year under appeal no project was developed by the assessee. However, the assessee had to maintain its office. Administrative Expenses were incurred to maintain minimum working of the office. The Assessing Officer disallowed office Administrative Expenses in full. The CIT(A) without appreciating the facts of case has upheld the assessment order. The Id.Authorized Representative of the assessee submitted that the assessee is maintaining minimum office staff, therefore, the expenditure claimed is fair and reasonable, hence, needs to be allowed.

3.1 In respect of ground No.2 the Id.Authorized Representative of the assessee submitted that during the Financial Year 2008-09, the assessee had paid Sewage Tax of Rs.3,75,588/- to MCGM and the same was claimed as business expenditure. During the period relevant to assessment year under appeal, the assessee received refund of aforesaid Sewage Tax. Since at the time of payment the Sewage Tax was claimed as business expenditure now

the refund of same would constitute business income. The Assessing Officer and the CIT(A) have erred in holding refund of Sewage Tax as Income from Other Sources.

3.2 In respect of ground No.3, the Id.Authorized Representative of the assessee submitted that during the period relevant to assessment year under appeal, the assessee had received dividend income from Zoroastrian Co-operative Bank. In the original return of income the assessee had claimed dividend income as exempt. Since dividend was not subject to Dividend Distribution Tax, in the revised return the assessee has shown dividend income as Income from Business. The Assessing Officer and the CIT(A) have erred in holding dividend income as Income from Other Sources.

4. Per contract, Shri Azhar Zain representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the documents furnished by the assessee in the paper book.

6. In ground No.1 of appeal the assessee has assailed disallowance of administrative expenses. The assessee is a developer and builder. Undisputedly, assessee has not carried out any business activity during the period relevant to assessment year under appeal. However, the assessee is maintaining office for which some administrative expenses have been incurred and have claimed the same as business expenditure Rs.11,02,886/-. A perusal of the list of administrative expenditure reveals that substantial expenditure is towards depreciation, insurance for motor car, conveyance expenses, electricity charges and office expenses. The Assessing Officer has

disallowed the expenditure merely for the reason that the assessee has not offered any business income during the corresponding period. The CIT(A) has upheld the findings of the Assessing Officer. After examining the facts, we gather that the assessee has not shut down its business completely. The assessee is a partnership firm and is maintaining office with minimal staff. Hence, assessee is eligible to claim administrative expenditure for maintaining its office. In so far as genuineness of the expenditure is concerned, the Assessing Officer has not examined the same and disallowed the same at the threshold. In principle we are in agreement with the submissions of assessee that business loss is allowable and should be allowed to be set off in accordance with the provisions of section 71 of the Act . The ground No.1 of appeal is restored to the Assessing Officer for ascertaining genuineness of the expenditure and setting off of business loss in accordance with law. The ground No.1 of appeal is thus, allowed for statistical purpose.

7. In ground No.2 of appeal, the assessee has assailed change of head of income of the refund of Sewage Tax received from MCGM. The assessee has offered the said refund as 'Business Income'. The Assessing Officer has held that the refund is assessable as 'Income from Other Sources'. We do not concur with the findings of Assessing Officer/CIT(A). Once, payment of Sewage Tax was claimed as business expenditure, refund of same would be liable to be assessed under the head 'Business Income'. The ground No.2 of appeal is thus, allowed.

8. In ground No.3 of appeal, the assessee has assailed change of head of income in respect of dividend income received from Zoroastrian Co-operative Bank. The assessee has not claimed dividend income as exempt from tax. Since, the said dividend income was not subject to Dividend Distribution Tax

the assessee has offered dividend income to tax as Business Income. The Assessing Officer has held the same as 'Income from Other Sources'. Taking into consideration the nature of activities carried out by the assessee, dividend income received cannot be held to be business income of the assessee. Therefore, in our considered view the authorities below have rightly assessed dividend income as 'Income from Other Sources'. The Ground No.3 of appeal lacks merit, hence, dismissed.

9. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open court on Monday the 2nd day of March, 2022.

Sd/-

(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 02/05/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai