

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No.1478/Mum/2020
Assessment Year: 2016-17

Vasant Investment Corporation Ltd.,
1017, Raheja Chambers, 213, Free Press
Journal Marg, Nariman Point, Mumbai 400021
[PAN: AABCV3823A]

..... **Appellant**

Vs.

Income Tax Officer-Ward 3(3)(4)
Mumbai

.....**Respondent**

Appearances:

Pradip Kapasi for the appellant

Milind Chavan for the respondent

Date of concluding the hearing : March 11, 2022

Date of pronouncement the order : June 09, 2022

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 28th January 2020 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961 for the assessment year 2016-17.

2. Grievances raised by the appellant are as follows:-

I. Assessing part of Business Income of Rs. 45.06,310 (interest) as Income from Other Sources

a. The Ld. CIT(A) erred in law and in facts in confirming the action of AO of assessing the business income (interest) of Rs. 45,06,310 from fixed deposits with banks under the head Income from Other Source and not as Income from Business or Profession.

b. Your appellant submits that it is an investment company engaged in the business of making investments in various channels and regularly earns income there from like interest, dividend,

profit on sale of investments etc. In the ordinary course of business, the appellant has made investments in Fixed Deposits with banks on which it earned interest which was examined and accepted in scrutiny assessments as its income from business and profession in preceding previous years.

c. Your appellant prays that the interest income of Rs. 45,06,310 from fixed deposits with bank be assessed as Income under the head 'Profits and Gains from Business or Profession'.

II. Disallowance of Business Expenditure of Rs. 50,07,806 debited to Profit & Loss Account and claimed as deduction

a. The Ld. CIT(A) erred in law and in facts in confirming the action of AO in disallowing the expenditure of Rs. 50,07,806 including depreciation debited to Profit & Loss Account and claimed as deduction by the appellant.

b. Your appellant submits that the expenses including depreciation are on account of net increase and decrease in share value, employee benefit expenses, depreciation and amortization expenses and other expenses which it being a corporate body must carry on some legal responsibilities and hence incur necessary expenditure.

c. Your appellant prays the said expenditure and depreciation debited to Profit & Loss Account and claimed as deduction be so allowed.

3. So far as first grievance of the assessee is concerned, the short cast of the assessee is that as the assessee is an investment company, and in the light of the co-ordinate bench decision in the case of Chandrali Investments Pvt. Ltd. vs ITO (ITA No. 301/M/2010; order dated 22.10.2010), the interest on fixed deposits is required to be treated as business income. The Assessing Officer rejected this plea on the basis of the following reasoning:-

5.4. The nature of receipts being interest income on Bank FDs of Rs.45,06,310/- on which TDS was deducted by Syndicate Bank and Ratnakar Bank Ltd., to the extent of Rs.4,50,631/ u/s 194A and the assessee having claimed credit for the said TDS, the said receipt cannot be treated as business receipt and the business expenditure claimed by the assessee cannot be allowed against the same. However, the business loss determined by assessee in the computation of income is set off against the income arrived in the assesement order.

4. In appeal before the CIT(A), the assessee appellant *inter alia* submitted as follows:-

1) The appellant is a limited company by shares formed, as the name suggests, an investment company. Its objects include inter alia to carry on business of investment company. The main objects inter alia include:

To carry on business of investment corporation i.e.:

- i. Borrowing, raising or taking up of money and lending or advancing of money.*
- ii. Drawing, accepting, discounting, buying, selling dealing in bills of exchange, hundis, etc.*

- iii. *Acquisition by purchase, lease exchange, etc of any property movable or immovable or any rights or privileges, etc.*
- iv. *To deal in Shares, Stocks, Government Papers, Debentures, Debenture Stocks or Securities of all kinds.*

Thus the Appellant's business is to make investment in various assets and earn income by dealing in such investment or earn income by way of interest, dividend, etc. It is submitted that Fixed Deposits in bank is also appellant's investment with a view to earn interest.

The appellant in the past had given loans and earned substantial interest, however then its experience in recovering interest and principal was very bitter and only after long drawn legal battle it could recover interest and principal that too by instalments. This discouraged the appellant from giving loans to private parties. Also due to volatility in shares and bond markets we decided not to make new investments in these types of investments as of now and we preferred safer investments in bank fixed deposits all out of our own funds. It is submitted that investing moneys in bank fixed deposits is also appellant's investment activity and is part of business for which the company is formed and income arising there from is business income. These deposits are not deployment of temporary surplus funds generated out of some other activity say like trading or manufacturing.

These investments are well considered and is a conscious decision.

2) The appellant's investments activities are carried on with a view to earn or gain income there from. The appellant has no other activity conducted for gain. Our investment are not made by way of deploying surplus funds gained from other activity but investing funds for gaining income is activity for which the appellant company is formed. Thus income arising from investment activities and giving loans which are objects for which the appellant company is formed. So the company is formed with a view to earn income by conducting business of investments.

3) The appellant is assessed to Income Tax for last several years and its income from investment is always assessed as business income consistently. Even where the assessments are completed by scrutiny u/s 143(3) this view has been consistently taken by all preceding assessing officer. There is no change in the business activity neither the source of income thus it is submitted that there is no change in the facts and circumstances as compared to earlier years and hence there is no reason why view taken in earlier assessment that income from investment is to be assessed under the head "Income from business or profession" be changed. In fact in appellant's own assessment for the assessment year 2009-10 and later in the assessment year 2014-15, this question was specifically raised and on our explaining the nature of own business, the then learned Assessing officers accepted our contention that our income from investments is income from business. The income so assessed also includes interest on fixed deposit with bank. The learned Assessing officer has not given any reasons for deviating from earlier view that appellant's income is assessable under the income head "Profit and Gains of Business or Profession."

5. Learned CIT(A) rejected this plea by stating as follows:-

5.1.5 I find that the appellant has not substantiated the reason for which the funds were deposited in the bank. All the judicial decision pertaining to this issue revolves around the justification for parking the funds in the fixed deposits in the bank. In the case of Tuticorin Alkali

Chemicals, the company had surplus funds and in order to earn interest income, it parked that surplus funds in fixed deposit. The Hon'ble Apex Court decided the issue in the favour of the department. The moot question in deciding whether the interest should be treated as income from other sources or not depends upon the fact that as to whether the funds which are parked to earn interest income are out of surplus funds or whether they are kept as a condition precedent to carry out an contract. In this case, I am of the opinion that the appellant was not able to substantiate that the excess funds are parked during the course of business. Therefore, it is to be assumed that surplus funds are parked for the earning of interest income.

6. The assessee is aggrieved as in appeal before us.

7. Having heard the rival contentions and having perused the material on record, I find that the issue in appeal is covered by a co-ordinate bench decision in the case of Chandrali Investments Pvt. Ltd. (supra) wherein it has been held as follows:-

4. I have perused the records and considered the rival contentions carefully. The assessee in this case has received interest income from banks and inter corporate deposits, and the same has shown as income from business. Whether the interest income should be assessed as business income or income from other sources will depend upon the facts and circumstances of each case. In this case as per the memorandum of association one of the main object of the assessee company was to carry out activity of investment company and therefore the investment was the business activity of the assessee. In the earlier years also the interest income has been accepted as business income by the department. Though the earlier assessments were made under section 143(1) (a) but the fact is that the interest income stood accepted as business income by the department. Considering the fact that the assessee is an investment company and the interest income has already been accepted as business income in the earlier year in our view it will not be appropriate to deny the claim of the assessee in the subsequent year. We therefore set aside the order of CIT(A) and hold that the interest income on the facts of the case has to be assessed as business income and the assessee will be entitled to set off of business loss.

8. Respectfully following the view so taken by the co-ordinate bench, I uphold the plea of the assessee and direct the Assessing Officer to treat, on the peculiar facts of this case, bank interest income of Rs. 45,06,310/- as business income. The assessee gets relief accordingly.

9. As far as second grievance of the assessee is concerned, learned representatives fairly agree that this issue is also covered by a decision of the Tribunal in the case of ITO vs Mokul Finance (P) Ltd. [(2008) 110 TTJ 445 (Del)] wherein it has been held as follows:-

Having given our careful consideration to the rival contentions and the material on record, we are inclined to uphold the conclusions arrived at by the CIT(A). As Dr. Gupta rightly contends, the assessee being an artificial juridical person, it needs to incur certain expenditure to keep itself afloat and have its continued existence. Unlike a natural person, a company can only operate through other natural persons—whether employees or others. It is not the case of the Assessing Officer that the expenditure of the assessee company are excessive or unreasonable vis-a-vis its legitimate business requirements. The Hon'ble High Courts have consistently held that in

the case of the corporate assesseees such expenses have to be allowed as deduction irrespective of whether or not the assessee is engaged in active business and even if assessee has only passive incomes. The CIT(A) was, therefore, justified in his conclusions. That is, however, not the only reason why the disallowance made by the Assessing Officer was unsustainable in law. We agree with Dr. Gupta's second line of argument as well. We find that the whole cause of action of disallowance of expenses is in the background of Assessing Officer's observation that the assessee did not carry out any business transactions which at best was Assessing Officer's finding about an activity of business not being functional in the relevant previous year. In our opinion, not carrying on business activity in a particular period cannot be equate with closure of business as it takes an unsustainably narrow view of the scope of cessation of a business. In the case of LVE. Vairavan Chettiar v. CIT [1969] 72 WR 114, their Lordships of Hon'ble Madras High Court were in seisin of a situation where the assessee had obtained an import licence for doing arecanut business but due to adverse conditions in market, he temporarily suspended the arecanut business for the assessment year in question. Nevertheless, he was maintaining the establishment and was waiting for improved market conditions in arecanut. It was thus an admitted position that no activities were carried out so far as this part of the business was concerned. On these facts, their Lordships took note of the position that "There is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of accounts". It was then observed that the question whether the business is being carried on must depend in each case on its own facts and not on any general theory of law. Their Lordships then referred to, with approval, Lord Summer's observation in IRC v. South Behar Railway Co. Ltd. [1925] 12 Tax Cases 657 that business is not confined to being busy; in many businesses long intervals of inactivity occur. ..."The concern is still a going concern though a very quiet one." After elaborate survey of judicial precedents on the issue, their Lordships concluded, in the light of, as noted above, the factual position that "there is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of account," that the loss in arecanut business, in which admittedly no activity was carried out during the relevant previous year, was to be set off against assessee's business income in the year. As the ratio of the aforesaid judgment is summed up in the ITR headnotes at p. 115 of the report, "as the assessee was maintaining the establishment and waiting for the improved market conditions in arecanuts and there was nothing to show that he completely abandoned or closed the business forever, the business must be deemed to be continuing". In the light of this legal position, it would follow that unless there is some material on record to show that the assessee has completely abandoned the share dealing business, merely because there are no business transactions in the relevant previous year cannot be reason enough to come to the conclusion the business has come to an end. It could not thus be said; as was the case before the Hon'ble Madras High Court, that the assessee had "completely abandoned or closed the business forever". Unless the business is abandoned or closed and even if business is at a dormant stage waiting for proper market conditions to develop, the expenditure incurred in the course of such a business is to be allowed as deduction. For this reason also, the disallowance made by the Assessing Officer was not justified, and the CIT(A) rightly deleted the same.

10. Respectfully following the views of the division bench, I uphold the plea of the assessee and direct the Assessing Officer to delete this disallowance of Rs.50,07,806/- as well. The assessee succeeds on this point as well.

11. In the result, the appeal is allowed. Pronounced in the open court today on the 09th day of June 2022.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 09th day of June 2022.

Copies to:

(1)	<i>The Appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*