

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.4013/Mum/2019  
(Assessment Year :2012-13)**

M/s. Strategic Capital Corporation Pvt. Ltd., 44, Mint Road Fort, Mumbai – 400 001	Vs.	ACIT-Circle 2(3)(2) Mumbai Room No.552, Ayakar Bhavan, Maharshi Karve Marg, Mumbai- 400 020
<b>PAN/GIR No.AAACS5283Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vimal Punmiya
Revenue by	Ms. Kanupriya Damor
<b>Date of Hearing</b>	<b>08/08/2022</b>
<b>Date of Pronouncement</b>	<b>23/08/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.4013/Mum/2019 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No.CIT(A)-6/IT-58/2017-18 dated 01/05/2019 (Id. CIT(A) in short) against the order of assessment passed **u/s.143(3)** of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 06/12/2017 by the Id. Asst. Commissioner of Income tax, Circle-2(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming and assessing the interest income amounting to Rs 9,54,395/- (937165+17230) under the head 'income from other sources' instead of 'income from business'. The inter connected issue involved therein to be decided is as to whether the Id. CIT(A) was justified in directing the Id. AO to factually verify the nature of receipt of interest income of Rs 54,32,259/- and grant relief to the assessee in accordance with law, in the facts and circumstances of the case.

2.1. We have heard the rival submissions and perused the materials available on record. The assessee is a Non-Banking Finance Company (NBFC) engaged in the business of financing. We find that the assessee during the year under consideration had derived interest on fixed deposits amounting to Rs 9,37,165/- and other interest income of Rs 17,230/-, both totaling to Rs 9,54,395/-. We find that the said interest income was offered to tax by the assessee under the head 'income from business' in the return of income. We find that the Id. AO had shifted the taxability of the said sum to 'income from other sources'. While doing so, the Id. AO did not reduce the said sum under the head 'income from business' and simply proceeded to add the same again under the head 'income from other sources' thereby resulting in double addition. The Id. AR merely requested for direction to be given to the Id. AO to reduce the same sum of Rs 9,54,395/- from business income. Per contra, the Id. DR vehemently relied on the orders of the lower authorities. We find that the claim of the Id. AR is very fair and we direct the Id. AO to reduce the sum of Rs 9,54,395/- while computing business income as it would avoid double taxation. In our considered opinion, this would meet the ends of

justice. Accordingly, the first part of Ground No.1 raised by the assessee is allowed.

2.2. With regard to interest income of Rs 54,32,259/- earned by the assessee from securities, the assessee had claimed during the course of assessment proceedings that the same is not chargeable to tax. But the Id. AO applied the decision of Hon'ble Supreme Court in the case of Goetze India Ltd reported in 284 ITR 323 (SC) and denied the plea of the assessee. The Id. CIT(A) appreciated the contentions of the assessee and directed the Id. AO to verify the fact as to whether the said interest income earned from securities in the sum of Rs 54,32,259/- is exempt from tax or not and decide the issue in accordance with law. The Id. AR submitted that the Id. AO is not giving effect to the said directions of the Id. CIT(A) and hence prayed for similar directions to the Id. AO. This was fairly agreed by the Id. DR. Accordingly, we direct the Id. AO to give effect to the directions of the Id. CIT(A) to examine the taxability of interest on securities in accordance with law, while giving effect to this order of tribunal. The second part of Ground No. 1 is disposed of accordingly.

3. The second issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of fees and subscription expenses of Rs 2,20,567/- u/s 37 of the Act in the facts and circumstances of the case.

3.1. We have heard the rival submissions and perused the materials available on record. The Id. AR submitted that assessee apart from the business of financing, decided to get into a new line of business by way of opening a book store catering to high net worth individuals and foreigners

and also venture into food business. He stated that this book stall has books mostly of international authors and most of the patrons are high net worth individuals and foreigners and the assessee company decided to diversify into different business such as opening a book store and food business, as the existing financing business was not yielding profits to them. The Id. AR stated that assessee did not incur any major traditional advertising expenses by giving advertisement in print media. However, the Managing Director of the assessee company had made possible efforts to reach out to customers through clubs to promote the new business of assessee company of opening a book store. Accordingly, the assessee company took membership in two clubs namely – Young President Organization (YPO) and United Service Club. The Id. AR submitted that YPO is an organization where the assessee had taken membership and this organization has got CEOs, promoters of various corporate and major High Net Worth individuals. Accordingly, the MD of the assessee company by visiting this club had developed contacts with High profile individuals which would in turn promote the business of assessee. Accordingly, the assessee paid membership fees and subscription to this club. Similarly in respect of United Service Club, the assessee company took membership in this club which was established in 1937, which also catered to High Net Worth Individuals. Accordingly, the assessee paid membership fees and subscription to this club. These submissions were not found to be false by the revenue. The assessee had duly furnished the entire bills with supporting evidences with regard to payments made to these two clubs and other fees and subscriptions totaling to Rs 2,20,657/-. We find that the nature of payment made by the assessee is not disputed by the revenue. The only grievance of the revenue is that the business of running a book store did not commence during the year under consideration and hence the above expenditure

incurred by the assessee could not be construed to have incurred for business purposes. We are unable to persuade ourselves to accept to this proposition of the revenue. When a new product is launched or a new book store is being opened by the assessee, it is the duty of the assessee to first bring to the knowledge of the general public about the store and the quality of books that would be available thereon. This is nothing but pure marketing expenditure incurred by the assessee. The Id. AR also placed on record various advertisements in the form of written articles being published in the monthly magazines of the aforesaid clubs about the book store of the assessee. Though no revenue has been generated by the assessee from book store during the year under consideration, we find that the book store had generated revenue of Rs 27,81,155/- in Asst Year 2016-17 ; Rs 59,65,810/- in Asst Year 2017-18 and Rs 60,09,405/- in Asst Year 2018-19. Hence we hold that the expenditure incurred on fees and subscription in the instant case would have to be construed as incurred wholly and exclusively for the purpose of business and accordingly allowable as deduction. Accordingly, the Ground No. 2 raised by the assessee is allowed.

4. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of professional fees paid to Mr Pradeep Nair as not incurred for business purposes in the facts and circumstances of the case.

4.1. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee company had paid a sum of Rs 12,00,000/- as professional fees to its Director Mr Pradeep Nair. The assessee during the course of assessment proceedings had stated that this was paid for rendering of services by Mr

Pradeep Nair for designing / layout of the structure of book store ; for giving opinions, registration work, drafting /documentation of various departments, legal work , compliance of formalities with BMC , Excise department, Weight & Measure department , meeting with various books publishers and vendors, conducting events for starting new business of Book store. The Id. AO observed that since no revenue has been generated from Book store during the year under consideration, the aforesaid expenditure requires to be capitalized and hence not allowable as deduction u/s 37 of the Act. This action of the Id. AO was upheld by the Id. CIT(A).

4.2. Before us, the Id. AR vehemently argued about the capabilities of Mr Pradeep Nair stating his credentials and his contributions to the assessee company in the past and for the overall Strategic Group. He also submitted that in immediately preceding assessment year i.e Asst Year 2014-15, the same sum of Rs 12 lacs paid towards professional fees to Mr Pradeep Nair was allowed as deduction by the Id. AO. We find that the lower authorities had grossly erred in stating that the said expenditure would be fully capital in nature as it is incurred for services for designing / layout of structure of the book store. Eventhough book store business started generating revenue from Asst Year 2016-17 onwards, the assessee had set up the said business during the year under consideration. Moreover, we find that the professional fees is paid to Mr Pradeep Nair for rendering other services also in addition to designing /layout of structure of book store. Hence reading the explanation of the assessee partially and reaching to wrong conclusion by the lower authorities, is not in order. We find that the main grievance of the revenue is only that the assessee had not furnished the qualifications of Mr Pradeep Nair which would enable him to render the aforesaid services

to the assessee company. This grievance of the revenue certainly requires to be appreciated and in our considered opinion, is a genuine concern. The Id. AR also fairly agreed before us for examination of this issue by the Id. AO. Hence we deem it fit and appropriate to remand this issue to the file of Id. AO for limited purpose of verification of qualification of Mr Pradeep Nair and his capabilities to render the aforesaid services to the assessee company. The assessee is at liberty to furnish fresh evidences, if any, in support of its contentions. We further hold that, on verification, if it is found that Mr Pradeep Nair is certainly capable of rendering the aforesaid services to the assessee company by taking into account his services rendered in the past and future, then the Id. AO has to allow deduction of Rs 12,00,000/- towards professional fees in the year under consideration. Accordingly, the Ground No. 3 is allowed for statistical purposes.

5. The Ground No. 4 raised by the assessee was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly Ground No. 4 is hereby dismissed as not pressed.

6. The Ground raised challenging the chargeability of interest u/s 234A, 234B and 234C of the Act is consequential in nature and does not require any specific adjudication.

7. The Ground raised challenging the initiation of penalty proceedings u/s 271(1)(c) of the Act would be premature for adjudication at this stage and hence dismissed.

8. The last ground raised by the assessee is general in nature and does not require any specific adjudication.

**9. In the result, the appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 23/08/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(RAHUL CHAUDHARY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 23/08/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai