

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 2606/Ahd/2016
Assessment Year 2012-13**

Annapurna Polymers Pvt. Ltd. (in Voluntary Liquidation) 103, Aakanksha, Shrimali Society, Navrangpura, Ahmedabad-380009 PAN No: AABCA 8452A (Appellant)	Vs	The DCIT, Circle-1(1)(2), Ahmedabad (Respondent)
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**Appellant by : Shri Bandish Soparkar & Parin Jain, A.R.
Respondent by : Shri Mukesh Jain, Sr. D.R.**

Date of hearing : 28-06-2022
Date of pronouncement : 26-09-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Pr. Commissioner of Income Tax (Appeals)-1, Ahmedabad, (in short referred to as CIT(A)), dated 30-08-2016, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2012-2013.

2. At the outset itself, it was pointed out that the solitary issue in the present appeal related to disallowance of expenses claimed by the assessee pertaining to municipal taxes paid amounting to Rs. 13,98,873/- and charges paid to security personnel amounting to Rs. 5,54,464/- which was disallowed on the ground that no business activity was carried out by the assessee.

2.1 The grounds raised by the assessee in this regard at 1 to 5 is as under:

“1. Ld. CIT (A) erred in law and on order dismissing the ground challenging validity of the order passed by AO in the name of the company that had gone into liquidation w.e.f. 25.03.2014. Ld. CIT (A) ought to have quashed order of AO being void ab initio, invalid and illegal in the eyes of law.

2. Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of Rs. 13, 98, 873/- municipal taxes paid for preserving the unit purchased during the last year on the ground that no business activity was carried out at the unit during the year. Ld. CIT (A) ought to have deleted disallowance since income earned from the unit is offered & taxed as business income.

3. Ld. CIT (A) erred in law and on facts in confirming view taken by AO that expenses are allowable only when incurred for the purpose of making or earning of income. Ld. CIT (A) ought to have deleted disallowance made by AO appreciating that expenses incurred for preserving the asset or for maintenance of the source is an allowable expense.

4. Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of Rs.5,54,464/- charges paid to security personnel to protect the asset from vandalism. Ld. CIT (A) ought to have deleted disallowance of expenses incurred to protect the source of earning of business income.

5. Ld. CIT (A) erred in law and on facts in confirming disallowance relying on judgment totally on different facts. Ld. CIT (A) ought to have allowed expenditure appreciating judgment submitted [199 ITR 94 (Cal)] directly on the point that expenses incurred to preserve the asset until the name of the establishment is truck off the register or it is disallowed.”

3. Drawing our attention to the facts of the case, it was pointed out that both these expenses had been incurred in relation to the Mafatlal Unit purchased by the assessee during the preceding year and since no business activity was carried out in the same expenses were disallowed. Our attention was drawn to para 3 & 4 of the assessment order as under: (A.O)

3. Disallowance of municipal tax

On verification .of the P&L A/c., it is noticed that the assessee has debited an amount of Rs. 13,98,873/- being municipal tax paid on the Mafatla! Unit purchased during the last year and no business activity on the same was carried out during the year. As such, during the course of assessment proceedings, the assessee was required to explain as to why the amount of Rs. 13,98,873/- claimed should not be disallowed as during the year no business activity carried out by the company. The assessee did not submit any reply. The facts remain that the expenditure incurred is not for the purpose of business. It is also a fact that the assessee has also not claimed any depreciation on the plant & machinery newly purchased, in view of the above, the claim of the assessee for municipal tax of Rs. 13,98,873/- is disallowed treating the same is not incurred for the purpose of business.

4. Security charges

From the P&L A/c., it is noticed that the assessee has claimed security charges of Rs. 5,54,464/- during the year as against Rs. Nil in the previous year. The expenditure incurred for security charges in relation to new unit purchased. As no business activity in respect of new unit purchased is started by the assessee during the previous year, during the course of assessment proceedings the assessee was requested to explain as to why the expenditure of Rs. 5,54,464/- should not be disallowed treating the same is not incurred for the purpose of business. The assessee did not submit any reply. The facts remain that the assessee has purchased new manufacturing unit from Mafatlal &. Co. and kept the same ideal during the whole year and the security was deployed to protect the unit. As the assessee has not started the business of the new unit purchased during the last previous year, the claim of the assessee for expenses related to

the new business is not allowable in computing the income of the assessee. In view of the above, the claim of the assessee for security charges of Rs. 5,54,464/- is disallowed and added to the total income.

4. The Id. CIT(A) noted that assessee company was in voluntary liquidation by resolution passed in its general meeting dated 25.03.2014. Accordingly, he held that the case of the assessee was squarely covered by the decision of Hon'ble Apex Court in the Vijaylaxmi Sugar Mills Ltd. Vs. CIT [1991] 191 ITR 641 wherein it had been categorically held that expenses incurred when the assessee was in liquidation had nothing to do with the business of the assessee. The assessee could not be said to be carrying on any business and therefore the expenses were not allowable. The relevant findings of the CIT(A) at para 4.3 to 4.5 of the order as under:

4.3 The facts of the case have been considered. The appellant company is in voluntary liquidation by resolution passed in its general meeting dated 25.03.2014. The assessee company has claimed deduction of the expenses on municipal taxes and security charges of Rs. 13,98,8737- and Rs. 5,54,4647- respectively. The expenditure claimed by the assessee was not allowed by the AO as allowable expenditure under the IT Act. The AO has held that as the assessee company has not carried on any business activity during the previous year and therefore, income earned is taxable under Section 56 under the head 'Income from other sources'. The expenditures incurred by the appellant company have not been incurred for the purpose of earning of the interest. In view of the above, the assessee's claim for expenditure were disallowed and added to the total income.

4.4. The appellant has submitted that the Company is still continuing in its own name and the name of the company is not struck off from the Register of Companies. In this regard various judgments are cited by the appellant where in it is held that even in a case where the company does not carry on any business activity and it has only income from other sources, expenses incurred to maintain the status of a company are allowable. Reference is made to the judgment in the case of CIT v/s Ganga Properties 199 ITR 94 (Cat) in which it is held that expenses

incurred by a company even if it does not carry on business to maintain establishment and statutory obligation until its name is struck off the register or is dissolved are allowable as deduction. However, in the instant case of appellant Municipal Tax is paid to preserve the assets as otherwise the property would be auctioned and sold by Municipal Authorities. Income is a/so taxed as shown by appellant and hence no disallowance could be made of Municipal tax. The disallowance of Rs. 13,98,873/- be deleted. For the reasons and submissions stated above, the disallowance of Security Charges is not justified as the same is to protect and preserve the company's assets and to prevent any stress passing and theft. The disallowance of Rs. 5,54,464/- be deleted.

The appellant has submitted that without Municipal tax payment, the appellant Company could not preserve its assets and existence to earn any income which is taxed by AO. The A.R. of the appellant company has further submitted that the order of Hon'ble supreme court in the case of Vijaylaxmi Sugar Mills vs. CIT (Supra). Assessing officer has misunderstood the facts as contention in the order of Hon'ble Supreme Court is related to the expenses which are not similar expenses claimed u/s. 57(7/7) in our case. Expenses claimed by us from the interest income u/s. 57(iii) in our case are quite different than to the expenses referred in Vijayalaxmi Case and having direct nexus to the interest income earned and having statutory force. The AR of the appellant has further submitted that Company Court Rules 291, 309, order of J.J. K.A. Puj and order of J.J. S.B. Majmudar justice of Hon'ble High Court of Gujarat and provisions of Section 57(\\) of the Income Tax Act, 1961, it clearly indicates that expenses claimed as transfer and central government fees have direct nexus to the earning of interest income by the official liquidators in concerned companies (In Liqn.) and hence allowable expenditures,

*4.5. The issue of taxability of interest during the process of liquidation has been settled by the Hon'ble Supreme Court in the case of Vijaya Laxmi Sugar Mills Ltd. vs. Commissioner of Income-tax[1991] 59 Taxman 22 (SC)/[1991] 191 ITR 641 (SC)/[1991] 97 CTR 257 (SC)[06-08-1991]. The Hon'ble Court has held as under;-
"The company before its liquidation was engaged in the manufacture of sugar. The records did not disclose that the liquidator was carrying on the business of manufacture of sugar or any trading activity for the purpose of facilitating the winding up. The statement of facts on record showed that the liquidator realised certain amount by way of sale of the assets of the company in liquidation and it were those sale proceeds that were invested in fixed deposit which earned the*

interest. The liquidator in merely realising the assets of the company could not be considered as carrying on any business of the company. The activity of realising the assets and banking them in fixed deposit was in the course of winding up and it was not in furtherance of any business activity carried on by the company before its winding up. The assessee, therefore, could not be said to have carried on any business to bring the interest income within the meaning of section 28 and, therefore, the interest income was liable -to be assessed only under the head 'Income from other sources'.

The next submission of the learned counsel for the assessee was that in the of effecting the winding up of the assessee-company the Liquidator has been incurring expenses on items such as, salaries, legal fees, travelling expenses and other liquidation expenses and that those expenses are allowable deduction from income earned by way of interest from fixed deposits in the relevant year. In computing the income chargeable under the head 'Income from other sources', section 57(iii) provides that deduction is to be made in respect of expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The question for consideration, therefore, is whether the expenses of the type incurred by the Liquidator in this case can be said to have been incurred solely for the purpose of earning the interest income. It is true that the connection between the expenditure and the earning of income need not be direct and it may be indirect. But since the expenditure must have been incurred for the purpose of earning that income, there should be some nexus between the expenditure and the earning of the income. There is not even some sort of an evidence to show that the expenses incurred by the Liquidator were to facilitate the earning or at least for protecting of the income. The interest accrues sui generis. The interest is payable by the bank, whether it is claimed or not and whether there is any establishment or not. Normally there was no necessity for spending anything separately for earning the interest. However we may hasten to add that if any expenditure was incurred like commission for collection or such similar expenditures which may be considered as spent solely for the purpose of earning that income, the position may be different. But that was not so in this case. It could not a/so be said that the expenditure incurred was to preserve or acquire the asset. Nor could it be said that the expenses were incurred for the purpose of maintenance of the source. The requirement under section 57(111) that the expenditure should have been incurred 'for the purpose of making or earning such income' shows that the object of spending or the end or aim or the intention of such spending was for earning the interest income. There could be no

doubt that the expenditure incurred by the Liquidator in this case can by no stretch be said to have been incurred with the object or for the purpose of earning the interest income. The Tribunal was, therefore, right in holding that the expenses claimed are not related to the interest income and was not a deductible expenditure under section 57".

The Hon'ble Supreme Court had held that expenditure cannot be allowed as per the provisions of sec. 57(iii) of the I.T. Act. It is clearly held by the Hon'ble Supreme Court that for the allowance of expenditure, the expenditure should have been incurred for the purpose of making or earning such income. The case of the appellant is wholly and squarely covered by the above-mentioned case. The laws laid out by the Supreme Court are the law of the land. It is also seen that this decision is not revised/alterd in subsequent time by the Supreme Court and no other contrary decision has come on this issue. The expenses claimed as Municipal tax and security charges have no direct nexus to the earning of interest income by the official liquidators in concerned companies (In Liqn.) and hence these are non-allowable expenditures. Accordingly, as per the provisions of sec. 57 (Hi) and as per the ratio of Vijaylaxmi sugar Mills vs CIT (supra) the appellant is not entitled to claim these expenses against the income. In view of the above facts, I am inclined to agree with contentions of the A.O. accordingly, disallowance of Rs. 13,98,873/- on Municipal tax and Rs. 5,54,4647- on security charges are is confirmed. These grounds of appeal are dismissed.

5. Before us, Ld. Counsel for the assessee made the following contentions against the disallowance of municipal taxes and security charges:

(i) that the assessee company was into business and had reflected revenue from operations of Rs. 17.23 crores and had incurred expenses also in the course of business under various heads including cost of material consumed, employee benefit expenses, finance cost and depreciation and other expenses. That out of other expenses incurred of Rs. 76,08,169/-,the A.O. had disallowed only above two expenses relating to municipal taxes paid and security charges ,while the others had all been allowed. In this regard, he drew our attention

to the Audited annual Accounts of the assessee company placed before us at paper book page no. 5 to 30.

(ii) That in any case, the Mafatlal unit of the assessee in which no operation were being undertaken was a part of the whole business of the assessee only and could not be separately considered for the purposes of disallowing any expenses that being a part of the business of the assessee. These expenses had to be necessarily incurred for maintaining the status of the Mafatlal Unit.

(iii) That the decision relied upon by the Id. CIT(A) was not applicable in the facts of the present case since in the facts of that case expenses were incurred during the course of liquidation proceedings being undertaken on the assessee ,while in the present case as per the fact noted by the Id. CIT(A) himself the liquidation proceedings were not initiated in the impugned year i.e A.Y. 2012-13 but in A.Y. 2014-15 vide resolution passed by the assessee company in its general meeting dated 25.03.2014. Ld. Counsel for the assessee therefore contended the disallowance made was bad in law and need to be deleted.

6. Ld. D.R. on the other hand relied on the order of the authorities below.

7. We have heard both the parties carefully and gone through the orders of the authorities below. The issue relates to disallowance of municipal taxes and security charges claimed by the assessee for computing its income from business and profession amounting to Rs. 13,98,873/- and Rs. 5,54,464/-.The disallowance being made for the reason that the assessee company had carried on no business during the previous year and hence the expenses were not incurred for the purpose of business of the assessee. The Ld.CIT(A) has upheld the disallowance on the ground that

the assessee company being in liquidation ,the said expenses were not for purpose of business of the assessee.

8. The facts as brought to our notice from the audited financial statements of the assessee placed before us at P.B 5-13 however are contrary to the finding of the AO that there was no business being carried out by the assessee. The Profit and Loss account show Revenue from Operations earned during the impugned year of Rs. 17,23,77,975/- which includes sale of products alone of Rs.16,61,87,101/- and other operating Revenue. The statement also reflects expenses claimed against the said Revenue totaling in all Rs.15,98,83,984/- including material cost of Rs.14.94 crores and employee, finance and depreciation cost also. Thus the facts before us demonstrate that the assessee was carrying on business during the year. Also as noted above by us above, the assessee has incurred several expenses during the year. Why then only security charges and municipal charges have been disallowed, we fail to understand. And the fact that other expenses incurred by the assessee, evidently in the course of business itself, have not been disallowed, contradicts the finding of the Revenue authorities that no business was being carried on by the assessee. Further the basis with the Ld.CIT(A) for disallowing the expenses is incorrect on facts itself. The Ld.CIT(A) has upheld the disallowance holding that expenses incurred during liquidation are not incurred for carrying on business and hence not allowable. His finding is based on the fact noted by him that the assessee company went into voluntary liquidation vide Board resolution passed on 25-03-2014. The impugned year before us is A.Y 2012-

9. Clearly as per the facts noted by the Ld.CIT(A) the assessee company was not into liquidation in the impugned year but in later year. Therefore the proposition and logic applied by the Ld.CIT(A) for disallowing the expenses fails miserably on facts itself.

10. In view of the above, we hold that the disallowance of municipal expenses and security charges of Rs.13,98,873/- and Rs. 5,54,464/- is not sustainable in law. The same is directed to be deleted.

Grounds raised by the assessee are allowed.

11. In effect appeal of the assessee is allowed.

Order pronounced in the open court on 26-09-2022

**Sd-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**