

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6723/Mum./2019
(Assessment Year : 2013-14)

M/s. J. Kantilal & Co.
B-100, 1st Floor
Mangaldas Building No.2
Shamaldas Gandhi Marg
Mumbai 400 002 PAN – AAAFJ4918N

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-18(1), Mumbai

.....Respondent

Assessee by : Ms. Dinkle Hariya
Revenue by : Shri Ajeya Kumar Ojha

Date of Hearing – 30/06/2022

Date of Order – 26/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/08/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-29, Mumbai, [*learned CIT(A)*], for the assessment year 2013-14.

2. In its appeal, the assessee has raised following grounds:

"1. NATURAL JUSTICE

The Leaned Commissioner of Income-tax (Appeals)-29, Mumbai "Ld. CIT(A)" erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order 1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

- (i) The same is framed in breach of the principles of natural justice, and*
- (ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.*

WITHOUT PREJUDICE TO THE ABOVE

2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in computing bank FD interest income of Rs. 13,06,581/- under the head "Income from Other Sources" as against the head "Profits & Gains of Business or Profession" as computed by the Appellant.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, no such change of head was required.

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. erred in making disallowance of Rs. 7,83,950 out of the remuneration paid to the partners.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

4.1 The Ld. CIT (A) erred in confirming the action of the A.O. erred in making adhoc disallowance of Rs.52,092/- to the extent of 10%, out of travelling expenses, sale promotion expenses, telephone expenses and vehicle expenses.

4.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

4.3 Without prejudice to the above, in the alterative, assuming-but not admitting-that some disallowance was called for, the quantification thereof is not in accordance with the law, is arbitrary and excessive."

3. The issue arising out of grounds no.2.1 and 2.2, raised in assessee's appeal, is pertaining to treating the interest income arising from Bank Fixed Deposit (F.D) as "Income From Other Sources".

4. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is a firm and is engaged in the business of dealing in pharmaceutical raw materials, fine chemicals and laboratory chemicals. For the year under consideration, the assessee filed its return of income on 20/09/2013, declaring total income of Rs.21,94,500. During the course of assessment proceedings, it was observed that the assessee has credited in Profit & Loss Account Bank F.D. interest income of Rs.13,06,581. It was also observed that for calculation of book profit and remuneration to partners, the assessee has considered Bank F.D. interest as "*Business Income*". Accordingly, the assessee was asked to show cause as to why the Bank F.D. interest of Rs.13,06,581, be not treated as "*Income From Other Sources*" and also why the book profit and remuneration to partners should not be calculated accordingly. In reply, the assessee submitted that the interest was earned by the assessee on Bank F.D. kept for business purpose. It was further submitted that the assessee has obtained overdraft facility against the Bank F.D. and the balance in Bank F.D. is kept to meet the liquidity of business. It was also submitted that the Bank F.D. is given as security to Bank for business purpose. The Assessing Officer, vide order dated 29/01/2016, passed under section 143(3) of the Act did not agree with the submissions of the assessee and treated the interest income earned from Bank F.D. as "*Income From Other Sources*" under section 56 of the Act. Accordingly, the Assessing Officer held that the same cannot be included for the purpose of working of book profit of the firm and, therefore, cannot be considered for allowability of remuneration to partners.

5. In appeal, the learned CIT(A), vide impugned order dated 29/08/2019, dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, the learned Authorised Representative ("*learned A.R.*") submitted that surplus funds of the assessee were invested in Bank F.D. and interest was earned on the same. The learned A.R. further submitted that the Bank F.Ds were given as security for conducting the business. Accordingly, it was submitted that the interest arising from Bank F.D. is in the nature of business income.

7. On the other hand, the learned Departmental Representative ("*learned D.R.*") vehemently relied upon the order passed by the lower authorities.

8. We have considered the rival submissions and perused the material available on record. From the perusal of the Profit & Loss Account of the assessee forming part of the paper book, we find that the assessee has earned interest on Bank F.D. amounting to Rs.13,06,581. The assessee has also paid Bank interest as well as interest to partners. It is the plea of the assessee that F.Ds were kept for business purpose and also to maintain the liquidity of the business. It is also submitted that the Banks have granted overdraft facility against the F.Ds of the assessee. In this regard, reference was made to a letter dated 23/02/2016, from Saraswat Bank, wherein the Bank has accepted that the assessee had fixed deposit with it and that on same overdraft facility was granted to the assessee in the relevant financial year. At Page-55 of the

paper book, the overdraft application for Rs.1,12,54,500, is also placed on record. In the said application, we find that the overdraft facility was given at a security of F.D. of the assessee and at the rate of interest of 10.75% per annum.

9. We find that the Co-ordinate Bench of the Tribunal in Total Commodities India Pvt. Ltd. v/s ITO, ITA no.1549/Mum./2011, for A.Y. 2006-07, etc., vide order dated 25/04/2017, after taking note of various judicial precedents held that where out of business necessity, if funds are deployed by the assessee in fixed deposits for opening Letter of Credit / procuring Bank Guarantee / margin money, etc., as a necessity of business, then, in that eventuality, the interest earned on such funds is to be taxed under the head "*Income From Business*" and not under the head "*Income From Other Sources*". We also find that interest on Bank F.D. was also earned by the assessee in the assessment year 2012-13 and 2014-15, however, no addition in this regard was made by the Assessing Officer while passing order under section 143(3) of the Act. In the present case, it has not been disputed by the Revenue that overdraft facility availed by the assessee was for the purpose of its business. The said interest income has been earned by the assessee in the course of its business and also to raise funds for running the said business, hence, the said interest income is linked to the business activities of the assessee. Therefore, we are of the considered view that interest earned on Bank F.D. is in the nature of income from business. As a result, grounds no.2.1 and 2.2, raised in assessee's appeal are allowed.

10. The issue arising in grounds no.3.1 and 3.2, raised in assessee's appeal, is pertaining to disallowance of Rs.7,83,950, out of remuneration paid to the partners.

11. As noted above, the Assessing Officer treated the interest earned on Bank F.D. as "*Income From Other Sources*" and accordingly, excluded the same for the purpose of working of book profit of the firm. As a result, the Assessing Officer disallowed remuneration of Rs.7,83,950, and added the same to the total income of the assessee. Since we have allowed ground no.2.1 and 2.2, raised in Assessee's appeal and have held that the interest on Bank F.D. is in the nature of Income From Business, therefore, the Assessing Officer is directed to delete the disallowance of Rs.7,83,950, out of remuneration paid to the partners. As a result, ground no.3.1 and 3.2, raised in assessee's appeal are allowed.

12. The issue arising in ground no.4.1 and 4.3, raised in assessee's appeal is pertaining to ad-hoc disallowance of Rs.52,092.

13. The brief facts of the case pertaining to the issue, as emanating from the record, are: During the course of assessment proceedings, it was observed that the assessee has debited various expenditures in the nature of travelling expenses, sales promotion, telephone expenses and vehicle expenses. Since these expenditures were not fully supported by proper bills / vouchers and certain expenses were incurred through self-made vouchers in cash, the Assessing Officer, vide order passed under section 143(3) of the Act disallowed

15% of these expenses by treating the same as not verifiable or having personal element in use.

14. In appeal, the learned CIT(A), vide impugned order, reduced the disallowance of these expenses to 10%, in the absence of any supporting material.

15. We have considered the rival submissions and perused the material available on record. We find that even now, the assessee has not substantiated by way of any cogent evidence that these expenses were entirely incurred for the purpose of business. Accordingly, we find no infirmity in the impugned order passed by the learned CIT(A). As a result, ground no.4.1 to 4.3, raised in assessee's appeal are dismissed.

16. Grounds no.1.1 and 1.2, are not pressed, therefore, they are dismissed as not pressed.

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

Order pronounced in the open Court on 26/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 26/09/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai