

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER  
AND  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.256/PUN/2020  
निर्धारण वर्ष / Assessment Year : 2015-16

The Mula Pravara Electric  
Co-operative Society Ltd.,  
Ward No. 7, Shrirampur,  
Belapur Road, Ahmednagar - 413709

PAN : AAAAT3309A

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,  
Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhay Sastri  
Revenue by : Shri Naveen Gupta

सुनवाई की तारीख / Date of Hearing : 11-10-2022

घोषणा की तारीख / Date of Pronouncement : 08-12-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 13-01-2020 passed by the Commissioner of Income Tax (Appeals)-2, Pune ['CIT(A)'] for assessment year 2015-16.

2. The assessee raised seven grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in

confirming the order of AO in determining the income of the assessee at Rs.6,49,12,471/- as against Nil income.

3. We note that according to the AO the assessee is a Co-operative Society (AOP) and derives income from rent and other income. Further, the assessee filed return of income declaring a total current year income at Rs.42,96,82,992/- but however shown total income at Nil after claiming set off of brought forward losses. Under scrutiny, notices u/s. 143(2) and 142(1) of the Act were issued to the assessee and in response to the said notices, the assessee filed details on points emerged for consideration. Further, he observed in para 3.1 of the assessment order that the assessee has shown rent income at Rs.5,73,565/- against which claimed depreciation, establishment expenses, interest on loan aggregating to Rs.5,30,10,197/- ( depreciation of Rs.4,63,50,607/- and establishment expenses of Rs.66,59,690/-). The AO show caused vide order sheet entry why such rental income should not be taxed under the head of "Income from other sources" and the claim of business loss and depreciation should not be disallowed since no business activity was carried out during the year under consideration, the assessee given its submissions which was reproduced by the AO from pages 4 to 9 of the assessment order. According to the AO, the assessee failed to prove the commencement of business, no possibility of resurrection of business and the assessee handed over the entire infrastructure to MSEDCL. By holding so, the AO held that the assessee is not entitled for deduction of expenses claimed under the head "Depreciation, Establishment and General Expenses and Interest on Loan" totaling to Rs.5,30,10,297/- and added the said amount to the total income of the assessee and denied carry forward of loss or depreciation for the year under consideration.

4. The CIT(A) in the impugned order discussed the issue in detail about the commencement of business of assessee's intention in carrying out its existing business from paras 6.2 to 6.2.1. According to the CIT(A) that Maharashtra Electricity Regulatory Commission (MERC) directed the assessee to hand over the entire infrastructure of electricity distribution and power system including electrical system, sub-stations, overhead lines, service lines, office and associated facilities like lands, building, works, material, stores and plants in the area of its operation vide its order dated 27-01-2011 to Maharashtra State Electricity Distribution Company Ltd. (MSEDCL). He held, that no business as existed from 31-01-2011 to the assessee in respect of distribution of electricity. Further, he observed the assessee could not produce any evidence to prove the restoration of renewal of license for distribution of electricity. Further, he observed the assessee was received the user charges for the use of its assets which were handed over by the assessee to the MSEDCL. He confirmed the order of AO in assessing the rental income as income from other sources and the said rental income is received by the assessee as the owner of the said property, resultantly, confirmed the disallowance totaling to Rs.5,30,10,297/- and denied carry forward losses.

5. Before us, the ld. AR, Shri Abhay Sastri submitted that the application of assessee for continuation of its business is pending before the competent appellate authority, but however, he could not place on record any evidence showing that the assessee's application is pending i.e. copy of application, date of hearing, etc. As it observed from the impugned order, the same contentions were raised before the CIT(A) and we note the CIT(A) found the said contentions are not acceptable in the absence of any

evidences in that regard. Admittedly, the assessee claimed set off of brought forward losses in the year under consideration by showing total income at Rs. Nil claiming current year income at Rs.42,96,82,992/-. Further, the assessee claimed deduction under the head “Depreciation, Establishment and General Expenses and Interest on Loan” which were denied by the AO for the failure of assessee’s in proving existing business. The AO clearly observed in its order there was no chance for restoration of business to the assessee as the assessee handed over its entire infrastructure to MSEDCL. We note that before the CIT(A), it was claimed that the assessee still intends to continue the business of distribution of electricity, but however, there was no evidences were shown before the CIT(A) as the assessee has every chance in continuing its business operations. Further, we note that the CIT(A) clearly held that the assessee is not entitled to claim depreciation, establishment and general expenses and interest on loan as the assessee handed over electricity distribution and power system including all electrical system, sub-stations, overhead lines, service lines, office and associated facilities like lands, building, works, material, stores and plants in the area of its operation to MSEDCL w.e.f. 01-02-2011 which means the assessee has no business existed as on the end of F.Y. 2011 itself. The only contention has been made from 2011 to the year under consideration i.e. 2015-16, even before us, that the assessee’s renewal application is pending before the competent appellate authority. When there is no business existed, in our opinion, the assessee is not entitled to claim deduction under the head “Depreciation, Establishment and General Expenses and Interest on Loan” and resultantly, carrying forward losses. For ready reference, let us examine the reasons recorded by the CIT(A) at para 7.2 of the impugned order is reproduced as under :

“7.2 I have perused the submission of the appellant as above carefully and also the contention of the AO in the assessment order. I am not inclined to agree with the appellant regarding disallowance of depreciation of Rs.4,63,50,607/- when appellant submits that even if it is assumed that the business was closed, the assessee was entitled to claim the depreciation. Once the business is held to have been closed, in my opinion, the appellant cannot claim the depreciation u/s. 32(1) which could only be allowed if the business had been running or was in existence. Here again in the submission, the appellant has re-iterated its intention of carrying on its business. While deciding ground nos. 1 to 4, regarding the intention of carrying on the appellant's electricity distribution business, a detailed discussion has been made by the undersigned with cogent reasons as to why such intention could not be taken into consideration of continuation of business, when all other circumstantial evidences made such business operation closed. The appellant here also referred to the decision of the Vikram Cotton Mills Ltd. of the Hon'ble Supreme Court emphasizing upon the intention of the appellant for continuing the business. Various other decisions were also cited in this regard, relying on the said "intention" of the appellant. For the identical reasons as discussed while adjudicating Ground Nos. 1 to 4, I hold that mere intention of the appellant could not be the ground for allowing the depreciation on assets claimed by the appellant, as there was no existence of the business which was established by the AO to have been permanently closed and hence such depreciation was not allowable u/s. 32(1) of the Act. Further, for the identical reasons, the Establishment and General Expenses and Interest on Loans etc. claimed by the assessee appellant of Rs. 66,59,690/- was also not allowable as business expenses u/s. 37(1) of the Act as claimed by the appellant. In this connection, reference may be made to the case of S.P.V. Bank Ltd. v. CIT [1980] 126 ITR 773 (Ker) wherein the Hon'ble Kerala High Court held that in order to sustain a claim for deduction by way of business, expenditure must have been incurred for the purposes of business which was in existence in the year of account, the profits of which are under assessment. If during the relevant period, there was, in fact, no business no question of computation of its income after deduction of expenses can possibly arise. The appellant has further sought for allowing the set off and carry forward of the depreciation loss 1 business loss, which could also not be allowed for the same reason as stated above. In this connection, the decision of the Hon'ble Delhi High Court in the case of Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi) may be referred to, ratio of which can be applied since the business had been discontinued in the case of the appellant under consideration, wherein it was held that if a partnership firm was dissolved and the takeover of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance, the carry forward of losses of the firm by the sole proprietor was not allowable. Therefore, the AO had rightly disallowed the carry forward and set off of depreciation / business loss in the case of the appellant. No interference in AO's order on all the above matters is called for. The disallowance and addition made of Rs.4,63,50,607/- and on account of general expenses of Rs. 66,59,690/-, totaling to Rs. 5,30,10,297/- is therefore **confirmed**. Ground Nos. 5 & 6 raised by the appellant are accordingly **dismissed**.”

6. In the light of the reasons recorded by the CIT(A) along with our discussion made here-in-above, we totally agree with the finding of CIT(A) in confirming the order of AO in denying deduction claimed by the assessee. Therefore, we do not find any infirmity in the order of CIT(A) and it is justified. Thus, the grounds raised by the assessee are dismissed.

7. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 08<sup>th</sup> December, 2022.

Sd/-  
(G.D. Padmahshali)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 08<sup>th</sup> December, 2022.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune