

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 2164/DEL/2016
Assessment Year: 2012-13**

Isolux Corsan Power
Concession India Pvt. Ltd.
2nd Floor, Block – Two,
Vatika Business Park,
Sector-49, Sohna Road,
Gurgaon-122001
PAN- AACCI4322C

APPELLANT

Vs Income-tax Officer,
Ward-2(1), Gurgaon.

RESPONDENT

Assessee represented by None
Department represented by Shri Anuj Garg, Sr. DR

Date of hearing 28.02.2023
Date of pronouncement 28.02.2023

ORDER

PER N.K. CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee against the order dated 12.02.2016 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)- 1, Gurgaon, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2012-13.

2. Notice of hearing for 28.2.2023 was sent to the Assessee at the address mentioned in form no. 36, however, the same has been returned back by the postal department as unserved. We observe that the notices sent earlier, have also been returned back by the postal department with the remark "addressee left". We further observe from the Report/letter dated 4.1.2022 submitted by the AO, who through Inspector, also made efforts to serve the notice upon the Assessee, however, the service of the notice could not be effected, as no such entity in the name of Assessee, is available at the given address. Further, as there is no signboard in the name of M/s Isolux Corsan Power Concession India Pvt. Ltd., anywhere at the given address.

Considering the peculiar facts and circumstances and the Report dated 4.1.2022 along with Inspector's report dated 4.11.2022 submitted by the learned DR, also goes to show that at the address mentioned in form no. 36 the Assessee is not available and no alternative address is available on record to serve the notice upon the Assessee, hence we are constrained to decide this appeal as ex parte.

3. In the instant case the Assessee declared total loss of Rs. 12,18,787/- by filing its return of income u/s 139 of the Act on 26.09.2012, which was selected for scrutiny. Consequently notice

u/s 143(2) of the Act was issued to the Assessee, in response to which the Assessee filed all the details/documents/explanation as required by the AO and ultimately the AO vide order dated 20.02.2015, completed the assessment u/s 143(3) of the Act, whereby the income of the Assessee was determined at Rs. 48,03,984/- by disallowing the interest income. The AO subsequently vide order dated 10.3.2015 passed u/s 154 of the Act, revised the assessment order dated 20.2.2015 and determined the income from interest at Rs. 18,07,793/-.

4. The Assessee being aggrieved challenged the said addition before the learned Commissioner, who vide impugned order affirmed the addition under consideration by concluding as under:

"In the present case, the appellant has miserably failed to demonstrate that during the year under consideration the business has been set up against which the claimed expenses could be allowed. Under the circumstances, the assessing officer was fully justified in concluding that the business has not been set up in the interest received during the year has to be treated as income from other sources. Now, since there is no setting up of business by the appellant for the year under consideration, the Assessing Officer was correct in treating the income of Rs. 18,07,793/-

as income from other sources and at the same time disallowing the business loans claimed by the appellant.”

5. We have given thoughtful consideration to the facts and circumstances of the case and observe that both the authorities below have given concurrent findings that deduction can be claimed only after the business has commenced. Till such time the coming into existence of new sources of income, whole expenses whether revenue or capital, connected with setting up of such business would be capital expenditure and, therefore, not allowable as deduction. The learned Commissioner specifically held that since there is no setting up of business by the appellant/Assessee for the year under consideration, the Assessing Officer was correct in treating the income of Rs. 18,07,793/- as income from other sources and at the same time disallowing the business loss claimed by the Assessee. The Assessee before us, failed to controvert the findings of the authorities below and even otherwise we also do not find any reason/material to controvert such findings, hence are inclined not to interfere in the conclusion drawn by the learned Commissioner. Consequently, appeal filed by the Assessee is liable to be dismissed.

6. In the result, appeal filed by the Assessee stands dismissed.

Order pronounced in open court on 28.02.2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI