

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1072/Ahd/2023  
(Assessment Year: 2014-15)

S.B. Cotton Pvt. Ltd., S/6, Fountain Place Compelx, Rasala Marg, Mithakhali Six Roads, Navrangpura, Ahmedabad-380009	Vs.	Deputy Commissioner of Income Tax, Circle-4(1)(1), Ahmedabad
[PAN No.AACCS1091G]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Manish J Shah, A.R.
<b>Respondent by:</b>	Shri Ravindra, Sr. DR

<b>Date of Hearing</b>	09.05.2024
<b>Date of Pronouncement</b>	20.05.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short òLd. CIT(A)ö), National Faceless Appeal Centre (in short òNFACö), Delhi vide order dated 30.11.2023 passed for Assessment Year 2014-15.

2. The Assessee has taken the following grounds of appeal:-

“1. The Ld. CIT(A) has erred in law and on facts of the case in confirming the action of Assessing Officer of disallowing the business expenditure/business loss of Rs.25,66,699/- u/s. 37/28 of the I.T. Act, 1961.

2. The Ld. CIT(A) has erred in law and on facts of the case in confirming the action of Assessing Officer of treating interest income earned on fixed deposit of Rs.56,74,209/- as income from other sources without appreciating the facts and law of the case properly.

3. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, in need arise.”

3. The brief facts of the case are that the assessee is a trader of cotton and it filed its return of income declaring income of Rs. 30,95,620/-. During the year under consideration, the assessee earned interest income of Rs. 54,64,653/- earned on FDRs placed with Nationalized Banks and other interest income of Rs. 2,09,556/- were disclosed by the assessee. No other revenue earned was reported during the year under consideration. The assessee claimed following expenditure against such income:

<i>Sl. No.</i>	<i>Nature of Expenses</i>	<i>Amount</i>
1	<i>Employee Benefit Expenses (Being Remuneration paid to Directors)</i>	<i>780000</i>
2	<i>Financial Cost (Include Bank Charges, Bank Interest and Interest paid on Deposits)</i>	<i>1649504</i>
3	<i>Depreciation</i>	<i>30501</i>
4	<i>Administrative Expenses</i>	<i>106694</i>
	<i>Total Expenses Claimed</i>	<i>2566699</i>

4. Assessment order under Section 143(3) of the Act was passed on 21.10.2016 by treating the full interest income of Rs.56,74,209/- as income from other sources and after making disallowance of Rs.25,66,699/- towards remuneration paid to Directors payment of finance cost, depreciation and administrative expenses.

5. While passing the order, the Assessing Officer made the following observations:-

*“1. It is not disputed by the Assessee that during the year consideration, no business was carried on by the assessee company citing the reason that it could not procure export quota license .....*

*During the A.Y. 2014-2015, the assessee company has reported Interest Income on FDR at Rs.5464653/- and Interest from other parties of Rs.209556/-. This itself is sufficient to prove that there is not continuity in the business of trading of cotton by the assessee company.”*

6. The assessee filed appeal before the Ld. CIT(A) and submitted that the Assessing Officer has erred in facts and in law in holding that the assessee did not carry out any business during the impugned year under consideration and therefore, erred in treating the interest income as income from other sources and also erred in disallowing the entire expenses on the ground that no business was carried out by the assessee, during the impugned year under consideration.

7. The assessee submitted before Ld. CIT(A) that during the year under consideration, no operations were carried out by the assessee, since there was a temporary lull in the business of the assessee. The assessee submitted that in the year 2011 there was worldwide crisis in cotton business and therefore, the assessee was extra cautious in converting any business opportunity into actual business. The assessee submitted that it had furnished copies of email correspondences with brokers, prospective mill buyers and overseas buyers for probable orders from textile mills of South India asking for more than six months of credit, at the price for which even purchase price did not match, during the course of assessment proceedings. However, owing to the long period of credit demanded by the prospective buyers, the assessee did not carry out any business with these persons during the impugned year under consideration. However, necessary expenses to keep the company operational viz., remuneration to Directors, bank charges interest paid on deposits, administrative expenses etc. were incurred and claimed as business expenses. The assessee also placed reliance on the decision of Hon'ble ITAT in assessee's own case for A.Y. 2012-13, in which on identical facts the ITAT had held that the business of

the assessee had not ceased, and that there was only a temporary lull in the business of the assessee and therefore, the expenses should be allowed to the assessee. However, Ld. CIT(A), rejected the contentions of the assessee and dismissed the appeal of the assessee with the following observations:-

*“8.5 In the case of Totgars’ Co-operative Sale Society Ltd. vs. Income-tax Officer, Karnataka, the Hon’ble Supreme Court held that income accrued on parked surplus fund come under the category of ‘income from other sources’, it cannot be entertained as ‘operational income’. In the present case, the situation is same, the appellant has not done any business activities since FY 2012-13 to the FY under question and only earned interest income from parked surplus funds. So far as is concerned to the citation of the appellant that the ITAT has allowed his case for self-same issues in the favour of appellant for the AY 2012-13. It goes without saying that the decisions of Hon’ble ITATs & High Courts are persuasive in nature and not squarely binding over lower authorities. Under these facts & circumstances of the case & ratio laid down in the above judicial pronouncements, I find no merit in the contentions of the appellant and I have arrived at the considered decision that the AO was totally correct in treating income as income from other sources and not allowed business expenses of Rs. 25,66,699/- thereon. Accordingly, an addition of Rs. 25,66,699/- is confirmed and ground nos. 1, 2 & 3 are dismissed.”*

8. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). The first contention of the Counsel for the assessee was that the AO erred in considering interest income earned by the assessee of Rs. 56,74,209/- as income from other sources, during the impugned year under consideration. The assessee submitted that during the year under consideration, there was only a temporary lull in the business on account of worldwide crisis in the cotton industry. However, during the year under consideration, the assessee held four Board Meetings and scope of cotton trade with textile mills in South India was evaluated. However, credit terms of a very long period was offered, which was not accepted by the company as there was no guarantee on payment within the stipulated time. The assessee had furnished, during the course of assessment proceedings, copies of email correspondences with brokers, prospective mill buyers and overseas buyers with respect to probable orders, however, the same could

not materialize since the prospective buyers were asking more than six months credit and that too at a price for which even the purchase price did not match. However, in subsequent years to A.Y. 2015-16 onwards, the assessee has been making sale of cotton products on regular basis. Further, the Counsel for the assessee submitted that assessment order for A.Y. 2012-13 was passed taking the same view against the assessee as taken by the Assessing Officer for the impugned assessment year. On identical set of facts, the Tribunal allowed the appeal of the assessee and deleted all the disputed additions.

9. Further, the Counsel for the assessee submitted that the expenses which were incurred by the assessee during the impugned year under consideration were the essential / basic expenses to keep the company up and running. The said expenses were towards remuneration paid to Directors, bank charges, bank interest, interest paid on deposits, administrative expenses and depreciation. A perusal of the expenses would show that these expenses were essential for keeping the company operational and the genuineness of these expenses have not been disputed by the Department. Further, the Counsel for the assessee submitted that in the subsequent years the business of the assessee had picked up and there were considerable material purchases in the cotton business of the assessee. In fact, the gross receipts in subsequent years become high established that business of the assessee had not discontinued.

10. In response, the Ld. D.R. placed reliance on the observations made by the Ld. Assessing Officer and Ld. CIT(A) in their respective orders.

11. We have heard the rival contentions and perused the material on record.

12. On going through the facts of the instant case, we are of the considered view that the business of the assessee had not discontinued and there was only a temporary lull in the business of the assessee. We further note that on identical set of facts and in respect of identical additions / disallowances made by the Assessing Officer, the ITAT had allowed the appeal of the assessee in the assessee's own case for A.Y. 2012-13. It would be useful to reproduce the relevant extracts of the decision of ITAT for ready reference:-

*"7. We have considered the order passed by the Learned AO. We find that during the assessment proceedings the assessee duly explained the situation by and under a reply dated 29.10.2014 stating that during the relevant period when the trading of cotton was very risky the assessee could not carry out the business. Neither the company got export quota license from the Government as a result whereof no sale was affected. However, it was contended by the assessee that all along and although the assessee was engaged in the business of cotton trade but due to the reason mentioned above there was temporary lull in the business. The assessee sought to justify the continuity of business by stating that during the financial year 2012-13 & 2013-14 Company has affected sales and paid Vat thereon. It was further contended by the assessee that there is no compulsion that in each Financial Year the company has to affect sale even if the market condition is not favorable. The assessee by and under a further reply dated 20.11.2014 submitted the following:*

*"-----Further it is submitted that your honour has raised the question of non operative income during the year. It is submitted that there was active participation by all the Directors to conclude business in cotton during the year but it could not materialize on account of : [a] Excess credit demanded by the customers without any guarantee for repayment of dues and [b] the attempt to obtain export quota did not materialize. The Directors tries to obtain DEPB license for the exports of cotton concluded in the earlier year and its sale in the subsequent year is proof of the continuity of business in the current year. The business is always a continuous process even though there could be a temporary lull in the business activity for any reason. Section 2[13] of the Act nowhere defines that business must a continuous activity and goes further to include a solitary transaction after few years or an activity in the nature of enterprise as a business. We attach herewith Annexure "A" as a write up on "Dormant Business" duly supports by case laws to justify that even in case of temporary lull in the business activity , attempt to carry on any activity will be treated as ongoing business and all expenses for its establishment including expenses for exploration of new activities will be business expenditure allowable as business expenses u/s.28 r.w.s. 37(1) of the Act.*

3. Assessee is a Company assessee and a Company is incorporated with main object to carry on business. It has perpetual existence and therefore, no matter for what reason the actual trading activity was not earned on during a specific period, its existence to carry the business cannot be overlooked and any activity to explore a business, with or without success must be regarded as continuity of business. Assessee Company is not a Section 25 Company to take up nonprofit activity and hence Business must be treated as part of its very existence.”

In addition to the said reply reliance were made in the judgment passed by General Corporation Ltd.-vs-CIT, 3 ITR 350, CIT-Vs-Bharat Nidhi Ltd., 60 ITR 520 (PUNJ) & Inderchand Hariram-vs-CIT, 23 ITR 437 (ALL.).

However, the contention made by the assessee was not accepted by the Learned AO and he thereafter made the entire expenditure claimed by the assessee as deduction u/s 37(1) of the Act aggregating to Rs.24,20,798/- and the depreciation claimed u/s 32 of the Act at Rs.55,808/-; the entire amount of Rs.24,76,606/- were added to the total income of the assessee against which appeal was preferred before the Learned CIT(A) who in term confirmed the same with the following observation:

“4.2 I have considered the assessment order and the submissions made by the appellant A perusal of the same shows that the appellant has not carried out any business during the year under consideration. The AO has made the impugned addition of treating the business income of Rs.49,36,878/- as income from other sources since he was of the view that, as no business had been done during the year, interest income from FDRs could not be categorized as business income. The appellant, on the other hand, has contended that its business had discontinued during the year under consideration but was revived in subsequent year and hence it was continuing business. Therefore, it was claimed that the interest earned on FDRs could not be said to be income from other sources.

4.2.1 A perusal of the submissions made by the appellant shows that the claim of the appellant that the business has continued in subsequent year is factually incorrect. It is seen from the returns of income filed that no business activity has been carried on by the appellant in the two subsequent years i.e. Asst. Year 2013- 14 and 2015-16 as well. As such, the claim that the business is maintaining continuity cannot be accepted. Simply because the FDRs in banks have been made out of surplus available funds with it on account of discontinuation of business cannot imply that the interest earned on these deposits will be business income. In fact, it has been admitted by the appellant that the FDRs were placed with banks in order to earn interest income. It is also seen from the submissions and financial statements that even in earlier year i.e. Asst. Year 2011-12, interest on FDRs was shown by the appellant as income from other sources. Considering the facts of the case, I am of the view that the appellant company has not done any business activity during the year under consideration and even during the following two financial years, the action of the AO in disallowing the expenditure claimed by the appellant since the same has not been incurred wholly and exclusively for the purpose of business, is upheld. The action of the AO in treating the interest earned on FDRs of Rs.49,39,878/- as income from other sources is also confirmed.”

8. Further that it is evident from the documents placed on record including submissions made by the assessee that there was temporary lull in the business of the assessee and it was not a complete cessation of business activity fact of which was not considered by the authorities below in its proper prospective. The Assessing Officer disallowed the expenses incurred by

- 8 -

*the assessee for discontinuation of its business which deserves to be allowed; in fact the profit and loss of the subsequent years shows that there were considerable materials consumed by the assessee company in the said trading of cotton business. The gross receipt of the assessee became high during the subsequent years which establishes the fact of there being temporary lull in the business activity of the assessee during the year under consideration. More so, the reason which was shown by the assessee while replying the show-cause issued by the Assessing officer for such lull in the business seems to be justified which was again not attended by the Learned CIT(A). Taking into consideration the entire facts of the matter and the records placed before us, we are of the considered view that there was a temporary suspension and/or lull in the business of the assessee and thus the assessee is entitled to the claim of deduction u/s 37(1) of the Act, which was incurred by the assessee as narrated herein before as also the depreciation u/s 32 of the Act. We find no reason for disallowing the same and therefore we delete such addition made by the authorities below for the reason as discussed above.*

*9. In the result, assessee's appeal is allowed."*

13. Accordingly, looking into the facts of the assessee's case and the decision of the ITAT Ahmedabad in assessee's own case for A.Y. 2012-13 in ITA No. 2612/Ahd/2016 vide order 17.12.2018, the appeal of the assessee is hereby allowed.

14. In the result, the appeal of the assessee is hereby allowed.

<b>This Order pronounced in Open Court on</b>	<b>20/05/2024</b>
---	-------------------

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

Ahmedabad; Dated 20/05/2024

TANMAY, Sr. PS

**TRUE COPY**

**आदेश का प्रतिलिपि अर्पित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यक्ष / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. प्रभागीय प्रमुख, आयकर अपील अाधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपील अाधिकरण, अहमदाबाद / ITAT, Ahmedabad