

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 505, 506 & 507/CHNY/2023
निर्धारण वर्ष /Assessment Years: 2012-2013, 2013-2014 & 2014-2015.

M/s. Coastal Energen Private
Limited,
No. 5, Buhari Building,
Moores Road, Egmore,
Chennai 600 006.

v.

The Assistant Commissioner of
Income Tax
Central Circle 1(1)
Chennai
(Previously The Deputy
Commissioner of Income Tax,
Corporate Circle 1(2)
Chennai.)

PAN: AADCC 0886G
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri B. Ramakrishnan, C.A.
: Shri N. Balakrishnan, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 14.03.2024
घोषणा की तारीख/Date of Pronouncement : 12.06.2024

आदेश /ORDER

PER MAHAVIR SINGH, VP:

These appeals by the assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA Nos.390, 157 & 391/17-18 dated 24.02.2023. The assessment orders were framed by the Deputy Commissioner of Income Tax, Corporate Circle 1(2), Chennai for the

assessment years 2012-2013, 2013-2014 & 2014-2015, u/s.143 (3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide orders dated 30.03.2015, 29.01.2016 and 17.11.2016.

2. Since, the issues raised and the facts and circumstances in all these three years are exactly identical and admitted by Id. Counsel for the assessee as well as the Id. CIT-DR, these appeals are heard together and are disposed off by this common order. Since the facts and circumstances are exactly identical and grounds raised are also identically worded, we will take the facts and grounds from assessment year 2012-2013 in ITA No.505/CHNY/2023 and will decide the issues.

3. The first common issue in these three appeals of assessee is with regard to the order of the Id. CIT(A) confirming the action of the Id. Ld. Assessing Officer in disallowing the expenses claimed and debited in the profit and loss account. The relevant grounds raised by the assessee in assessment year 2012-2013 reads as under:-

"2. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of expenses claimed amounting to Rs. 15,67,97,013/- without appreciating the facts and circumstances of the case.

3. For that the Learned Commissioner of Income Tax (Appeals) erred in upholding the Order of Assessing Officer without appreciating the fact that the appellant had commenced its business activities and thus any expenditure claimed were to be allowed as revenue expenditure.

4. For that the Learned Commissioner of Income Tax (Appeals) had mechanically without application of mind followed the decisions relied upon by the Assessing Officer without considering that the decisions were factually distinguishable from that of the appellant”.

4. The brief facts of the case are that assessment was framed by the Id. Assessing Officer u/s.143(3) of the Act for assessment year 2012-2013 vide order dated 30.03.2015. The assessee company was engaged in the business of power generation and distribution of power. The Id. Assessing Officer on verification of the audited balance sheet noted that assessee company has not commenced its business yet. As per the audited books of accounts, the assessee company does not have requisite turnover u/s. 44AB of the Act. The Id. Assessing Officer noted that the activities of assessee company has not yet started and hence, no deduction was allowed and loss claimed by the assessee of Rs.13,91,10,390/- was ignored. Aggrieved, assessee moved in appeal before the Id. CIT(A).

5. The Id. CIT(A) also confirmed the action of the Id. Ld. Assessing Officer by observing at para 9.2 as under:-

“9.2 With reference to disallowance of expenses debited in the profit and loss account, it is seen that the assessee company has been incorporated for the business of power projects, generation and distribution of power. The business has not commenced and no revenue generated from the said business. Expenses debited need to be either treated as pre-operative expenses or to be capitalised depending upon their nature as business has not commenced, and they are not allowable as loss for the impugned

years. The assessee has not given any analysis as to how the facts and circumstances of its case are exactly identical to the facts and circumstances of the cases relied upon by it. The AO relied on the decisions of the Hon'ble jurisdictional ITAT decisions in the cases of Orient Cosmetics Ltd., vs. DCIT and M/s. Madras Fertilizers Limited vs CIT (209 ITR 174) which are binding on the undersigned and so, respectfully following the same it is held that there is no room to interfere with the decision of the AO. Therefore, the grounds of the assessee in this regard are dismissed”.

Aggrieved, assessee preferred an appeal before us.

6. We have heard rival contentions and gone through facts and circumstances of the case. The facts of the case are that assessee company is engaged in the business of power projects, generation and distribution of power. Assessee company filed its return of income on 30.09.2012 for assessment year 2012-2013 and subsequently filed revised return on 14.12.2012 claiming loss of Rs.13,91,10,390/-. Ld. Counsel for the assessee contended that it was incorporated mainly to establish thermal power projects for distribution and sale of electricity to various electricity boards throughout the country and also engaged in trading and maintenance of power by setting-up of power plants including captive power plants and generate electricity to electricity boards to erect install, commission, service, maintain and operating. Further, Ld. Counsel of the assessee stated that assessee has acquired land and was in the process of commencing the business and it has set up business and claimed expenses for the

administrative expenses like recruitment and training expenses, rent, printing, telephone, telex, office maintenance, travelling expenses etc. Ld. Counsel for the assessee argued that assessee have set up the business and have necessary agreement entered into, key personnel had been recruited and the assessee has started making necessary infrastructure like office premises, office equipments and assessee company was ready to commence business operations as on the date of incorporation. Ld. Counsel for the assessee on the given facts and circumstances relied on the decision of *Hon'ble Delhi High Court in the case of CIT vs. Samsung India Electronics Ltd, (2013) 37 Taxmann.com 239 (Delhi)* wherein on identical facts the Tribunal has categorically recorded the findings that the business has not been set-up. The Hon'ble High Court has affirmed the order of the Tribunal wherein there is a finding that business has been setup and assessee is eligible for deduction and held at paras 6 to 8 as under:-

"6. We have examined the factual findings recorded by the tribunal in para 6. The same cannot be categorized as perverse. The tribunal before recording the said findings examined the case law on the subject and has referred to the contentions of the parties on the said issue which have been recorded para 3 onwards. The assessee company was set up to carry on its business of manufacturing and trading in consumer durables. The date of commencement of business was certified as 9th August, 1995, though the date of incorporation was 3rd August, 1995. Tribunal has referred to various facts as to what was required to be done before the first actual sale invoice to a customer was issued. It included recruitment of employees, their training and establishment of

showrooms by taking places on rent etc. Advertisements had also been issued and in fact M/s Reasonable Computer Solutions Private Ltd., the joint venture partner on 25th July, 1995 had appointed M/s Mudra Diversified Limited as their Public Relations Consultant for the period 15th August, 1995 onwards.

6A. In Western India Vegetables Products Ltd v. CIT (1954) 26 ITR 151 Bombay High Court has examined the concept and noticed the difference between “commencement” and “setting up” of a business and, inter alia, observed as under:-

“The important question that has got to be considered is from which date are the expenses of this business to be considered permissible deductions and for that purpose the section that we have got to look to is section 2(11) and that section defines the „previous year” and for the purpose of a business the previous year begins from the date of setting up of the business. Therefore it is only after the business is set up that the previous year of that business commences and in that previous year the expenses incurred in the business can be claimed as permissible deductions. Any expenses incurred prior to setting up of a business would obviously not be permissible deductions because those expenses would be incurred at a point of time when the previous years of the business would not have commenced.

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It seems to us, that the expression „setting up” means, as is defined in the Oxford English Dictionary, „to place on foot” or „to establish”, and in contradistinction to „commence”. The distinction is this that when a business is established and is ready to commence business then it can be said of that business that it is set up. But before it is ready to commence business it is not set up. But there may be an interregnum, there may be an interval between a business which is set up and a business which is commenced and all expenses incurred after the setting up of the business and before the commencement of the business, all expenses during the interregnum, would be permissible deductions under section 10(2).”

7. *The aforesaid distinction is relevant when we examine and refers to the definition of „previous year“. Following the said judgment, in the case of CIT Vs. L.G. Electronic (India) Ltd. [2006] 282 ITR 545 (Delhi), it has been observed that the date of setting up of business and date of commencement of business may be two separate dates. This decision in the case of L.G. Electronics (supra) has been followed in CIT Vs. ESPN Software India P. Ltd., [2008] 301 ITR 368 (Delhi) wherein it has been held that a business will “commence” with the first purchase of stock-in-trade and the date on which the first sale is made is immaterial. Similarly, for manufacturing, several activities in order to bring or produce finished products have to be undertaken, but business commences when the first of such activities is taken.*

8. *In view of the facts found by the tribunal, we do not think that any substantial question of law arises for consideration. Pragmatic and practical view has to be taken. We also record that the Assessing Officer and the first appellate authority did not specifically go into the factual matrix relating to and to ascertain the date of “setting up” of business, though order of the first appellate authority is more detailed and elaborate. Thus, there is nothing to controvert the facts as found and recorded in the impugned order. In view of the factual finding of the Tribunal, Revenue cannot succeed”.*

As the facts are identical what was before the Hon'ble Delhi High Court in the case of *Samsung India Electronics Ltd (supra)*, respectfully following the same, we allow the claim of the assessee.

7. Since, the facts and circumstances are exactly identical on other years i.e. assessment years 2013-14 and 2014-2015 also , consequently we direct the ld. Assessing Officer to allow the claim of the assessee on this issue.

8. The next common issue in these three appeals is as regard to order of Id. CIT(A) confirming the action of the Id. Ld. Assessing Officer in assessing interest income amounting to Rs.7,43,415/- under the head "income from other sources" and not allowing the interest paid on money borrowed as deduction u/s.57 (ii) of the Act. For this, assessee has raised the following grounds in assessment year 2012-2013.

"5. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of interest income amounting to Rs.7,43,415/- under the head Income from Other Sources.

6. For that the Learned Commissioner of Income Tax (Appeals) ought to have allowed the interest paid on moneys borrowed as a deduction u/s 57(iii) of the Act while confirming the addition of interest income under head Income from Other Sources.

7. For that the Learned Commissioner of Income Tax (Appeals) erred in not providing cogent reasoning for rejecting the claim of the appellant and had mechanically without application of mind followed the decision of this Hon'ble Court in appellant own case for AY 2010-11 without appreciating the fact that Order of ITAT in ITA No.1648/Mds/2015 is challenged before Hon'ble Madras High Court in TCA No.229 of 2016 and thus the issue has not attained finality".

9. We have heard rival contentions and gone through facts and circumstances of the case. The brief facts are that the assessee has capitalized this interest of Rs.7,43,415/- but the Id. Assessing Officer assessed the same as "income from other sources" being income received

from interest on fixed deposit and other incidental activities during the course of construction and erection and were assessable under Section 57(ii) of the Act. Aggrieved, the assessee preferred an appeal before the Id. CIT(A).

10. The Id. CIT(A) also confirmed the action of the Id. Id. Assessing Officer by observing at 9.1 as under:-

“9.1 With reference to assessment of interest under sources, the issue is covered against the assessee by the Hon'ble jurisdictional ITAT in the assessee's own case for the AY 2010-11 in ITA.No.1648/Mds/2015. Respectfully following the same, the grounds in this regard for all the impugned AYs 2012-13 to 2014-15 are dismissed”.

Aggrieved, the assessee preferred an appeal before the Tribunal.

11. We noted that assessee admittedly received interest from fixed deposits of Rs.7,43,415/-. But in any case this being assessed as “income from other sources” the Id. Assessing Officer consequently should have allowed interest expenses u/s.57(ii) of the Act. Hence, we direct the Id. Assessing Officer to allow accordingly. This issue raised by the assessee is allowed.

12 The facts and circumstances are exactly identical on other years i.e. assessment years 2013-14 and 2014-2015, consequently we direct the Id. Assessing Officer to allow the claim of the assessee on this issue.

13. In the result, the appeals filed by the assessee in ITA Nos.505, 506 & 507/Chny/2023 for assessment years 2012-2013, 2013-14 and 2014-2015 are allowed.

Order pronounced on 12th day of June, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated:- 12.06.2024.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.