

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.291/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

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| Meenakshi Energy & Infrastructure Holdings (P) Ltd, Hyderabad PAN:AAF6917L | Vs. | Dy. C. I. T. Circle 5 (1) Hyderabad |
| (Appellant) | | (Respondent) |
| निर्धारिती द्वारा / Assessee by: | Advocate Shri A.V. Raghuram | |
| राजस्व द्वारा / Revenue by: | Shri K.Meghanath Chowhan, (CIT)DR | |
| सुनवाई की तारीख / Date of hearing: | 21/05/2024 | |
| घोषणा की तारीख / Pronouncement: | 27/06/2024 | |

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 21.02.2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. The assessee raised the following grounds:

1. On the facts and in the circumstances of the case, the order passed by the ld. CIT(A)/NFAC sustaining the assessment order and the finding in the assessment order is erroneous and unsustainable on facts and in law.
2. The ld. CIT(A)/NFAC erred in upholding the action of the AO in over stepping his jurisdiction and in delving into issues other than the ones for which the return was picked up for scrutiny. The finding of the ld. CIT(A)/NFAC that the reasons for which the return was picked up for scrutiny gives scope for the AO to interfere with the nature of income declared by the Appellant is incorrect and cannot be sustained.
3. Without prejudice to above grounds, the ld. CIT(A)/NFAC erred in upholding the action of the AO in treating the interest income earned by the Appellant as income from 'other sources' and not 'business income'. The ld. CIT(A)/NFAC further erred in upholding the action of the AO in denying the benefit of set off of brought forward business loss against the business loss of the previous year in question, on the alleged ground that the Appellant in the earlier years has treated the interest income from investments as income under the head 'income from other sources'.
4. The ld. CIT(A)/NFAC failed to appreciate that one of the objects of the Appellant deals with investments and that the Appellant had rightly treated the income earned from investments as business income. The ld. CIT(A)/NFAC ought to have appreciated that just because the Appellant had committed error in the past while offering the interest income under the head 'other sources', the same cannot be an impediment to claim it rightly as income under the head 'business income' in the asst. year under consideration.
5. The ld. CIT(A)/NFAC failed to appreciate the judgement of Hon'ble Supreme Court in the case of CIT Vs. Kedarnath Jute Manufacturing Company Limited [(1971) 82 ITR 363 (SC)] wherein it was held that the entries in the books of account cannot determine the nature of income. The ld. CIT(A) further failed to appreciate that even a single instance of a commercial activity can be considered as business depending on the facts of the case as held by the Hon'ble Supreme Court.
6. The findings of the ld. CIT(A)/NFAC in the appellate order are incorrect and the reliance placed on various judgements in determining the nature of interest income earned are misplaced.

(Tax Effect: 5,75,28,328/-)

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of investment and finance, filed its return of income for the A.Y 2018-19 on 30.10.2018 declaring total income of Rs 'nil'. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer noticed that the assessee has declared income under the head income from business and profession of Rs.17,21,19,022/-. It was further noticed that in the return of income filed for the earlier A.Ys, the assessee has not shown any business income and income from operations. The Assessing Officer further noticed that the assessee has credited interest income under the head other income and has treated as income from business. Therefore, called upon the assessee to explain as to why the interest income is assessable under the head income from business and also set off of brought forward business can be claimed against interest income. In response, the assessee submitted that the company is into the business of investment and finance as one of its objects as per the Memorandum and Article of Association and further, the assessee has given inter-corporate deposits as its business activity on which it has received interest income. Therefore, claimed that interest income has been rightly assessed under the head business income and also brought forward losses has been rightly claimed in terms of section 72(1) of the I.T. Act, 1961.

4. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the main business activity of the assessee is power generation and infrastructure, but not investment and finance as claimed by the assessee. Further, the assessee has not declared any income from operations and it has disclosed only interest income under the head “other income” in the financial statement and from the above, it is very clear that except interest income from inter corporate deposits, there is no other business activities carried out by the assessee. Further, the assessee has declared interest income under the head income from other sources for the earlier A.Ys. Therefore, without there being any changes in facts, the question of changing the head of income in respect of interest income earned from inter corporate deposit is only an after thought to claim benefit of set off of brought forward business losses. Therefore, rejected the explanation furnished by the assessee and assessed interest income under the head “income from other sources”. The Assessing Officer had also denied the set of brought forward business losses in terms of section 72(1) of the I.T. Act, 1961 on the ground that brought forward business losses can be set off against business income only.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee has reiterated its submissions made before

the Assessing Officer. The assessee further contended that the objects as cited in the Memorandum and Article of Association provides for carrying out investment and finance business and further the assessee in accordance with its objects has carried out business activity of providing inter-corporate deposits on which it has earned interest income. Although, the assessee has offered said interest income under the head “income from other sources” for the earlier A.Ys but the same has been changed to income from business and profession on the basis of the main object clause in the Memorandum and Article of Association. The assessee further contended that there is no res judicata in income tax proceedings. Although, the rule of consistency is to be followed, but the fact remains that there is no bar to rectify the mistake committed in any financial year if the facts and circumstances warrant such changes. Since the assessee is carrying out the business activity of investment and finance, the interest income from inter-corporate deposits has been rightly offered to tax under the head income from business and also claim of set off of brought forward business losses is in accordance with section 72(1) of the I.T. Act, 1961.

6. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of the reasons given by the assessee to assess interest income under the head “income from business” submitted that the treatment of interest income received from inter-corporate deposits as income from

other sources in the immediately preceding A.Y is not in dispute. Although the appellant has asserted that they mistakenly accounted for interest receipts from corporate deposits as income from other sources in the preceding A.Y and is entitled to correct this mistake, but there is no evidence that the appellant modified the treatment of interest receipts in the subsequent A.Ys or in earlier A.Ys by rectifying the errors in the accounting treatment of interest income. Further, the objects mentioned in the memorandum and articles of association is not a factor to decide the head of income. It is important to see the nature of receipts which alone is the basis for considering whether particular receipt is assessable under the head income from business or profession or other sources. The learned CIT (A) observed that in case a receipt is to be assessed under the head business from other sources, the nature of business carried out by the assessee needs to be analysed. A business is defined as any real, substantial, systematic or organized activity that has a profit motive. Income generated from such an activity is considered to be business income, otherwise it would be income from another source. Based on the activities of the assessee, the interest income earned from it, through the deposits can be classified as income from other sources only but not income from business. Therefore, the learned CIT (A) opined that there is no error in the reason given by the Assessing Officer to assess the interest income under the head income from other sources and also to deny the benefit of set off of brought forward business loss.

7. Aggrieved by the order of the learned CIT (A) the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee submitted that the learned CIT (A) erred in upholding the action of the Assessing Officer in treating interest income earned by the assessee as income from other sources and not income from business/profession. The learned Counsel for the assessee further submitted that although the assessee is into the business of generation and distribution of energy, but its memorandum also provides for carrying out the business activities of investment in shares/stocks, debentures and securities and to finance industrial enterprises and to carry on the business of an investment company. If you go by Article 76 of Memorandum of Articles of Association, the objects provided for carrying out investment and for finance activity. The assessee in pursuant to its objects has carried out investment and has earned interest income. Therefore, the argument of the authorities that interest income earned from inter-corporate deposits is not a business activity is incorrect. The learned Counsel for the assessee further submitted that there is no dispute with regard to the fact that for earlier A.Ys interest income has been offered under the head income from other sources, but the fact remains that the principle of res judicata is not applicable to the income tax proceedings. Although the principle of consistency needs to be followed but the fact remains that in case any mistake is committed in giving

treatment of particular income or expenditure in earlier A.Ys then, the same can be rectified in subsequent A.Ys because there is no bar under the Act to change the method of accounting. Further, the entries in the books of account cannot determine the nature of income and what is to be seen is the real nature of income, as held by the Hon'ble Supreme Court in the case of CIT vs. Kedarnath Jute Manufacturing Company Ltd (1971) 82 ITR 363 (S.C). Since the assessee has carried out business activity of investment and finance by extending deposits with other corporate entities, interest income earned from the said inter-corporate deposits has been rightly assessed under the head income from business as against the income from other sources. Further, the assessee has rightly claimed set off of brought forward business losses.

9. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that the interest income from inter corporate deposits cannot be considered as business income at any stretch of imagination. Once interest income is considered as income from other sources, then set off of brought forward business cannot be allowed in terms of section 72(1) of the I.T. Act, 1961. The Assessing Officer and the learned CIT (A) after considering the relevant fact that the assessee has admitted interest income under the head income from other sources for the earlier A.Ys has rightly assessed interest income under the head income from other sources and consequently denied the benefit of

set off of brought forward business loss. Therefore, he submitted that the order of the learned CIT (A) should be upheld.

10. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the memorandum of association of the appellant company provides for carrying out business activities of investment in shares/stocks, debentures and securities and also to carry out the business of finance. If the objects in the memorandum of association provides for carrying business activities, than any business activity carried out by the assessee as ancillary and incidental to the attainment of its main business activity, can be considered as one stream of business activity. Therefore, to this extent we are in agreement with the argument of the learned Counsel for the assessee that the interest income earned from inter-corporate deposits is assessable under the head business but not income from other sources. Since the assessee is carrying out the business activity of providing inter-corporate deposits and earned interest income, in our considered opinion, interest received is assessable under the head income from business and profession. In so far as the argument of the learned CIT (A) that, in order to assessee a receipt as a business receipt, it should be real, substantial, systematic or organized activity that has a profit motive, in our considered opinion, a solitary transaction can also be considered as an activity in the nature of business

and profession provided such activity is in accordance with the objects as stated in memorandum of association of the company. This legal principle is supported by the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd vs. CIT reported in (2015) 231 Taxmann 336 (S.C). Therefore, we are of the considered opinion that the Assessing Officer and the learned CIT (A) erred in assessing the interest income earned from inter-corporate deposits under the head income from other sources.

11. Having said so, let's come back to the issue that the entries in the books of account is determine the nature of head of income and further treatment of a particular receipt from one head of income in earlier A.Y is sacrosanct or the assessee can change the method of accounting or head of income, if facts and circumstances demands such changes. The Hon'ble Supreme Court in the case of CIT vs. Kedarnath Jute Manufacturing Company Ltd (Supra) has held that the entries in the books of account cannot determine the nature of income. Further, it is the nature of receipt alone can decide the head of income. Therefore, merely because the assessee has treated interest income under other income in the books of account, cannot be a reason to come to the conclusion that the said receipt is assessable under the head income from other sources and not under income from business and profession. Further, the reasons given by the Assessing Officer and the learned CIT (A) to assess interest

income under the head income from other sources that in preceding A.Ys, the assessee itself has assessed interest income under the head income from other sources is also not correct, because the principles of res judicata is not applicable to the income tax proceedings. Although the principle of consistency should be followed but the fact remains that in a case where a particular receipt has been wrongly or incorrectly assessed in different head of income, then there is no restriction under the law to change the method of accounting or head of income in subsequent A.Y as held by the Hon'ble Supreme Court in the case of CIT vs. Western India Oil Distribution Co Ltd on 23rd April, 1997, [2001]249ITR517(SC) where the Hon'ble Supreme Court upheld the decision of the Hon'ble Bombay High Court in the case of Western India Oil Distribution Co Ltd vs. CIT reported in (1980) 126 ITR 497 where it has been clearly held that after relying upon the judgment in the case of Manmohan Das is realized, it would appear that if it in an earlier year it has been held that the correct head of income applicable to the assessee's case is under section 12 i.e. "income from other sources" and by that reason the benefit of carrying forward of unabsorbed depreciation is denied to the assessee, such a decision will not bind the assessee in the subsequent year in which he wants to claim the set off. The sum and substance of the ratio laid down by the Hon'ble Supreme Court is that if facts and circumstances demands, change of method of accounting or head of income, particular receipt can be assessed in different head of income, even though the assessee

has assessed the said income under other head of income in the preceding A.Y. In the present case, although the appellant has offered the interest income under the head income from other sources in the preceding A.Y, but subsequently it has changed the head of income to income from business and profession and in our considered opinion such change is in accordance with the object clause in the Memorandum of Association and thus, the Assessing Officer and the learned CIT (A) erred in their decisions only on the basis of treatment given by the assessee for earlier A.Ys.

12. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee has rightly offered interest income received from inter corporate deposits under the head income from business and profession and also claimed set off of brought forward losses. The Assessing Officer and the learned CIT (A) without appreciating the relevant facts erred in treating the interest income earned by the assessee as income from “other sources” and not “business income” and denied the benefit of set off of brought forward business losses. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to assess the interest income under the head income from business and profession as claimed by the assessee and also allow the set off of the brought forward losses.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 27th June, 2024.

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| Sd/- (LALIET KUMAR) JUDICIAL MEMBER | Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER |
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Hyderabad, dated 27th June, 2024

Vinodan/sps

Copy to:

| S.No | Addresses |
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| 1 | Meenakshi Energy & Infrastructure Holdings (P) Ltd, 8-2-418, 3 rd Floor, Meenakshi House, Road No.7, Banjara Hills, Hyderabad |
| 2 | Dy.CIT, Circle 5(1) Income Tax Towers, AC Guards, Masab Tank, Hyderabad 50004 |
| 3 | Pr. CIT - Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order