

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1425/CHNY/2024
निर्धारण वर्ष/Assessment Year: 2017-18

M/s. A.K. Ahamed Co,
No.141, South Masi Street,
Madurai – 625 001.

The ACIT,
Vs. Non-Corporate Circle -1,
Madurai.

PAN: AADFA 4747M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri T. Vasudevan, Advocate
: Smt. M.S. Deeptha, JCIT

सुनवाई की तारीख/Date of Hearing : 08.08.2024
घोषणा की तारीख/Date of Pronouncement : 14.08.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, in ITBA/NFAC/S/250/2023-24/1062928056(1) dated 19.03.2024. The assessment was framed by the Assistant Commissioner of Income Tax, Non-Corporate Circle 1, Madurai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.12.2019.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in assessing the interest income as 'income from other sources' as against claimed by assessee as 'business income'. For this, assessee has raised the following Ground No.5:-

5. The Hon'ble commissioner of Appeals failed to appreciate that the Interest earned on Fixed deposits amounting to Rs 23,11,160 had direct nexus with the business as only the profits from the business were ploughed towards fixed deposits. The interest income derived has been deployed only for the purpose of business and hence there is existence of a direct and proximate nexus between the income that was earned and the business activity of the appellant.

3. We have heard rival contentions and gone through facts and circumstances of the case. The assessee has earned the following interests:-

<i>1. Interest from Raymonds Ltd</i>	-	<i>25818</i>
<i>2. Interest from OCM Pvt. Ltd.</i>	-	<i>6550</i>
<i>3. Others</i>	-	<i>1927</i>

The AO treated the same as 'income from other sources' and assessed accordingly. The CIT(A) also confirmed the action of the AO. We noted that the assessee has received interest from Raymonds Ltd., amounting to Rs.25,818/-, interest from OCM Pvt. Ltd., amounting to Rs.6,550/- and others amounting to Rs.1,927/-, which are trade debtors. We noted that these trade debtors are directly relatable to business of the assessee and hence, as a direct

proxy link with the business of the assessee and hence, these items should have been assessed as 'business income' and we direct the AO accordingly.

3.1 As regards to balance interest on Electricity deposit of Rs.4,39,025/-, interest on fixed deposit with HDFC Bank of Rs.7,71,200/- and interest on fixed deposit with Karur Vysya Bank of Rs.10,66,640/- these interests earned by assessee on FD's and AO considered these as 'income from other sources' and CIT(A) confirmed the same. Now before us, the Id.counsel for the assessee contended that these are inextricably linked to the business of the assessee because the statutory deposit with Electricity Department and deposits with HDFC Bank and KVB was out of compulsion of the assessee to the maintain the FDRs with banks for taking loan. As the assessee could not establish by any documentary evidences that these are inextricably linked with business and these are purely interest income and as such, the same should have been assessed as 'income from other sources' and not 'business income'. The AO and CIT(A) have rightly assessed the same and we confirm the same. However, as alternatively contended by the Id.counsel for the assessee, the netting of interest should be allowed by the AO in case, the assessee is able to prove that any interest is paid by taking

the amount borrowed and keeping these amounts in the FDRs with HDFC Bank or Karur Vysya Bank and also for deposit made with electricity department under compulsion by taking a loan. If the assessee is able to prove direct nexus, the AO will allow netting of. In term of this limited purpose, this issue is remanded back to the file of the AO for verifying and accordingly, this issue is partly-allowed for statistical purposes.

4. The next issue raised by assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing excess remuneration u/s.40(b) of the Act. For this, assessee has raised the following Ground No.6 as under:-

6. The Hon'ble commissioner of appeals erred in confirming the disallowance of excess remuneration U/s-40(b) of IT act 1961. The Hon'ble appeals as well as the officer failed to appreciate that the re-computation of the allowable remuneration was not in line Explanation 3 to section 40(b) of income tax act.

Further when the interest receipts are found to have a nexus with the business, the same shall not be excluded for arriving the Book profits U/s-40(b) and consequently the disallowance of excess remuneration claim does not arise

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this issue has direct correlation with the interest receipts and we have already held that interest from Raymonds Ltd., interest from OCM Pvt. Ltd., and interest from others are to be assessable as business income, this

being consequential issue, the AO will recompute the remuneration in term of section 40(b) of the Act, after considering these three interest items. As regards to interest on electricity deposit, interest on HDFC bank and interest on KVB, FDRs, the income is to be assessed as 'income from other sources', we have already held so, the assessee is not entitled for any remuneration on this u/s.40(b) of the Act. Hence, this issue is partly-allowed to that extent. The AO is directed accordingly.

6. The next issue in this appeal of assessee is as regards to the disallowance of capital expenditure of Rs.94,500/- disallowed by AO and confirmed by the CIT(A). For this, assessee has raised the following Ground No.7:-

7. The Hon'ble commissioner of appeals erred in disallowance of Capital expenditure for Rs.94,500 without appreciating the fact the said expense was not charged to the Profit and Loss account If at all, the learned official ought to have disputed only for claim of depreciation and not towards allowance of expenditure.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO has disallowed capital expenditure of Rs.94,500/- which was incurred by assessee for purchase of asset and which was not charged to the books and accounts or the profit & loss account against 'business income.'

Even this plea was taken before CIT(A) but he simply confirmed the action of the AO vide para 3.2 as under:-

“3.2 Ground No.2 is related to the addition of Rs.94,500/- which is not a capital expenditure and is recorded as fixed assets in the books of accounts. Since the addition of Rs.94,500/- is a reasonable cost of fixed assets, I have no reasons to interfere with this addition of AO.”

We find that once the expenses have not charged to profit & loss account, no disallowance can be made. Hence, we delete the disallowance and allow this ground of assessee's appeal.

8. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO as regards to addition of Rs.1,91,905/- being expenditure executed in the previous year 2015-16 relevant to assessment year 2016-17 but received bill belatedly and transaction was recorded only in subsequent financial year 2016-17 relevant to this assessment year 2017-18. For this, assessee has raised the following ground No.8:-

8. The mere fact that the expense does not relate to the accounting year by itself is not a ground for disallowance of expenditure. The business transaction relating to expenditure for Rs 1,91,905 was executed in the previous year (2015-16) for which bills for expenses have been received belatedly by the appellant and hence transaction was recorded only in the subsequent financial year (2016-17).

A liability though pertaining to an earlier year is said to accrue, ascertainable and legally enforceable when the same is crystallized. Since the liability for the expense was crystallized only during the subsequent year, the same is ought to be allowed as a deduction U/s-37 of Income tax act

9. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this bill was raised in March, 2016 i.e., 31.03.2016 but assessee recorded this transaction in the next year i.e., financial year was 2016-17 relevant to this 2017-18. This being a tax neutral in one year, it has to be allowed and tax rate in assessment year 2016-17 & 2017-18 is the same. Hence, this being a tax neutral that addition is unwarranted and hence, deleted.

10. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO and disallowing the expenses for non-deduction of TDS u/s.40a(ia) of the Act. For this, assessee has raised the following ground No.9:-

9. The Hon' ble Commissioner of Appeals erred in confirming the addition made U/s-40a (ia) of the income tax act without considering the ledger extract and TDS Challans submitted by the appellant. The material records furnished clearly establish the fact there is no short deduction of tax at source and the liability has been fully discharged

11. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the assessee filed the details of nature of expenses, date of credit and details of TDS and stated that on all the transactions, TDS was deducted from Altair HR Management, Neat and Clean Service Squad, Venkateswar Associate, Gaurav Sharma, Girish Textile Agency, Balaji Silk Mills &

SGM Prints. When this was confronted to Id.Senior DR, she stated that this can be subject matter of verification by the AO. As both conceded and assessee contended that assessee has already deducted TDS, let this statement be produced before AO by the assessee and assessee will prove that these TDS have been deducted by assessee and paid on respective dates, the AO will consider the same and will decide after verification and in case, TDS is paid, he will allow the expenditure in totality. In term of the above, this issue is also set aside and allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is partly-allowed for statistical purposes.

Order pronounced in the open court on 14th August, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 14th August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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