

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4480/MUM/2011
Assessment Year: 2006-07**

The Dy. CIT- 1(1)(1), 579, Aayakar Bhawan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. Bhor Industries Ltd., Tanna House Annexe, 11-A, Nathalal Parekh Marg, Colaba, Mumbai- 400 005. PAN: AAACV3535C
(Appellant)		(Respondent)

Appellant by : Shri. Surabhi Sharma
Respondent by : Shri. S.C.Tiwari &
Ms. Rutuja N.Pawar

Date of Hearing: 16/09/2016
Date of Pronouncement: 30/09/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been preferred by the revenue against order dated 06/01/2011 passed by the Ld. CIT(Appeals)-1, Mumbai, for the Asst. year 2006-07, whereby the Ld. CIT(A) allowed the appeal preferred by the assessee against assessment order dated 19/12/2008 passed u/s 143 (3) of the Income Tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2006-07 declaring the total income of (-) Rs. 70,53,440/-. The case was selected for scrutiny and assessment order was passed u/s 143(3) of the Act. It was noticed that the assessee had credited only the other income of Rs. 14,31,880/- in the P&L Account. Out of the said income the assessee had

claimed profit on sale of fixed assets of Rs.69,859/-, Profit on sale of investment of Rs. 2,50,150/- under the head 'income from capital gain' in the computation of income. The other receipts under the head 'other income' are interest, rent, sale of processing material, excess liabilities/provisions written back and miscellaneous. income. Against the same income, the assessee has claimed the expenses of Rs. 2,01,01,623/- in the P&L account, on account of raw material consumed, manufacturing expenses, payments to employees, finance charges, administrative and selling expenses, depreciation etc. Out of Rs. 2,01,01,623/- claimed, the A.O allowed the expenses of Rs. 1 lakh to up keep the status of the company.

3. Aggrieved by the assessment order the assessee challenged the impugned order before the CIT(A). The CIT(A) after hearing the assessee set aside the assessment order and allowed the expenditure of entire amount claimed by the assessee holding that the business of appellant was not discontinued but it was merely a suspension of manufacturing activities which cannot be considered as closure or discontinuation of business activities. The appellant's business was in operation during the year under consideration and expenses were incurred in connection with the business of the assessee. Further the provisions of section 44AB are not applicable to the present case as in the year under consideration the appellant's gross turnover was below the prescribed limit. Aggrieved by the impugned order the revenue is in appeal before the Tribunal and it has raised the following effective grounds of appeal:-

1. "Whether on the facts and circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of expenditure of Rs. 2,00,01,623/-, despite the fact that the A.O had given a finding during the course of assessment proceedings that there was no business income derived by the assessee and the assessee has not

carried out any business activity during the year under consideration for it to be eligible to claim business expenditure.

2. The CIT(A) further erred in holding that the business of appellant has not discontinued and it was merely suspension of business without proper justification, where in fact the manufacturing activity had been discontinued.

4. Before us the Authorised Representative (AR) submitted that the Ld CIT(A) has rightly allowed the claim of expenses. Further the Ld. CIT(A) has rightly held that the provisions of section 44AB of the Act are not applicable in view of the fact that assessee's gross turnover during the year under consideration was less than the prescribed limit. The Ld. A.R. placing reliance on the decisions of the Hon'ble high courts in *L.VE. Variavan Chettiar vs. CIT (1969) 72 ITR 114 (Madras)*, *CIT vs. Rampur Timber & Turnery Co. Ltd. (1981) 129ITR 58 (Allahabad)*, *Hindustan Chemivals Works Ltd. Vs. CIT (1980) 124 ITR 561(Bom)*, *Eastern Investments Ltd. Vs. CIT (1951) 20 ITR 0001 (SC)*, *CIT vs. Malayalam Plantations Ltd. (1964) 53 ITR 0140(SC)*, *CIT Vs. Salitho Ores Ltd. (2012) 344 ITR 0161 (HC Bom at Goa)* & *CIT vs. Rajendra Prasad Mody (1978) 115 ITR 519(SC)* submitted that as per the principles of law laid down by the Hon'ble Supreme Court and Hon'ble High courts in the cases above referred, any expenditure which is incurred for keeping the business alive is considered as wholly and exclusively for the purpose of the business. The assessee has to meet establishment charges and other expenses during the period of inactivity of the entity. The Ld. A.R. further submitted that the impugned order passed by the Ld. CIT(A) in accordance with the principles of law laid down in the aforesaid cases.

5. On the other hand the Ld. Departmental Representative (DR) relying on the assessment order submitted that since no business activity was carried out by the assessee during the assessment year under consideration, the assessee cannot claim expenses of Rs. 2,01,01,623/-. Moreover, the assessee had not filed any tax audit report in the form No. 3CD for the current financial year. Hence, the assessee's various claims of expenses are not audited and vouched by the tax auditor. The A.O has rightly allowed the expense of Rs. 1 Lakh to its status as a company. Hence, the impugned order is liable to be set aside.

6. We have heard the rival submissions and also perused the material placed before us including the case law relied upon by the parties. The only issue to be decided in the present case is whether in the given situation the assessee is entitled for deduction of expenditure claimed as business expenses by it? The Ld. CIT (A) has allowed the business expenses claimed by the assessee holding as under:-

“5.5 I have considered the A.O.’s order as well as the appellant’s A/R submission. I have also taken note of the case laws relied on by the appellant. Having considered both, I find that the A.O has not given any finding in support of this disallowance, nor has he pointed out any specific instance to justify the said disallowance. It also reveals that the A.O has merely disallowed the said sum on proportionate basis, which is highly unjustifiable. On perusal of the appellant’s A/R submission, it reveals that the business of the appellant was not discontinued but it was merely a suspension of manufacturing activity. Further I am also in agreement with the appellant that stoppage of manufacturing activity for a temporary period cannot be considered as closure or discontinuation of business activity. Thus, after taking note of this fact, I consider it proper to hold that the appellant’s business was in operation during the year under consideration and the expenses are in the nature of r business purpose only. Further the contention of the appellant that the provisions of section 44AB of the Act, 1961 are not applicable to the appellant is also acceptable as in the year under consideration the appellant’s gross turnover is below the prescribed limit and the

appellant being a corporate entity its accounts are subjected to audit and the same are audited by statutory auditors under the provisions of the companies Act, 1961, Further it is also submitted by the appellant that the said auditors have not pointed out any defects for these expenses in their audit report. Thus, taking note of all these facts, I consider it proper and appropriate to hold that the A.O. was not justified in making this disallowance. Accordingly these grounds of appeal are allowed.”

7. The Ld. CIT(A) has observed that the A.O has neither given any finding to substantiate the disallowance, nor has pointed out any specific instance to justify the said disallowance. On the other hand, the appellant itself has disallowed the sum of Rs. 1,02,76,653/- while computing the income filed with the return of income. As contended by the assessee, the books of account are audited by the statutory auditors and the said auditors have not pointed out any defect in their report.

8. From the details of expenditure so incurred and claimed, we find that the assessee has merely claimed the expenses which are necessary to retain the establishment. Other expenses have been *suo motu* added by the assessee while computing taxable income. From the P&L account we notice that the loss works out to be Rs. 1,86,69,943/- however, the assessee has claimed loss of Rs. 70,53,440/- in its return of income. It means the assessee himself has disallowed the loss of Rs. 1,16,15,803/-. So, we do not find any infirmity in CIT(A) order in allowing legitimate claim of business expenditure incurred by the assessee.

9. The Hon'ble Madras High court in case *L.VE Vairavan Chettiar vs. CIT* (supra) has observed as under:-

“12. The company may not obtain or be able to execute a single business contract for months and yet it may be deemed to carry on its business, if during the period of lull and inactivity it is kept above and if it retains its

registered office and holds meetings. It is not necessary that a business to be in existence should have work all the time. There may be long intervals in inactivity and a concern may still be a going concern, though it may for sometime be quiet and dormant. The mere fact that a business has for some time been in that sense dormant would not mean that it has ceased to exist, the assessee continues to maintain an establishment and incur expenses in the expectation that work would come and the business would be successful.....”

10. In *CIT Vs. Rampur Timber & Turnery Co. Ltd.* (Supra) the question before the Hon’ble Allahabad High Court was that whether on the facts and in the circumstances of the case, having held that the assessee was not carrying on any business, the Tribunal was legally correct in allowing the entire expenses of Rs.11,295/- in the AY1969-70 and Rs.10,613 in the AY 1970-71 except in so far as it can be related to the income from property? The Hon’ble Court answered the question in affirmative in favour of the assessee and against the revenue holding that Tribunal has on facts held that the expenditure claimed by the assessee was claimed only for the purpose of keeping the company alive and the expenditure incurred for retaining the status of the company, namely, miscellaneous expenses, salary, legal expenses, travelling expenses etc. would be expended wholly and exclusively for the purpose of making or earning such income.

11. In the case of *Hindustan Chemical Works Ltd. Vs. CIT* (supra), the Hon’ble Jurisdiction High Court has upheld the finding of the Tribunal that even though no income was actually earned for some time from the assets which were in the possession of the company that fact was not relevant for considering the assessee’s claim for deduction of expenditure i.e., expenditure incurred on salaries, machinery dismantling charges, rents, taxes and insurance, postage, telegrams, telephones and other items holding that the view taken by the Tribunal is based on the decision of this court in *Ormerods*

(India) P. Ltd. vs. CIT (1959) 36 ITR 329 (Bom) . This decision has now been approved by the Supreme Court in *CIT Vs. Rajendra Prasad Moody 1978 CTR (SC) 141*.

12. Hon'ble Supreme Court in the case of *CIT Vs. Malayalam Plantations Ltd.*(supra) held that the expression 'for the purpose of the business' is wider in scope than the expression "for the purpose of earning profits." Its range is wide which may include measures for the preservation of the business and for the protection of its assets and property.

13. In view of the facts of the case and the principles of law laid down by the Hon'ble Supreme Court and the High Courts, discussed in the foregoing paras, we do not find any legal or factual infirmity in the impugned order of the Ld. CIT(A). Hence, in our considered view, the order passed by the Ld. CIT(A) is based on the evidence on record and the established principles of the law. We, therefore, uphold the order passed by the Ld. CIT(A) and dismissed both the grounds of appeal of the revenue.

14. In the result appeal filed by the revenue for the A.Y. 2006-07 is dismissed.

Order pronounced in the open court 30th September, 2016.

Sd/-
(R.C.SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated:30/09/2016

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila