

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1256/Mds/2015

निर्धारण वर्ष /Assessment year : 2005-2006

M/s. Ascendas IT Park
Chennai Limited,
Ist floor, International Tech
Park, Pinnacle Building,
Taramani Road,
Taramani,
Chennai 600 113.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 1(1)
Chennai.

[PAN AAECA 7979D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. Raghunathan Sampath, Adv
: Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 18-02-2016

घोषणा की तारीख /Date of Pronouncement

: 04-05-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-1, Chennai in ITA No.298/08-09/A-1, dt 30.01.2015 for the assessment year 2005-

2006 passed u/s.143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised the following grounds:-

'2. The learned CIT(A) has failed to appreciate that the work "business" is one of wide import and in fiscal statutes, it must be construed in a broad sense rather than a restricted sense.

3. The learned CIT(A) failed to appreciate the fact that where the tax payer is engaged in real estate activity, the business can be considered to be set up when the primary activity, ie. acquisition of land takes place and the subsequent business expenditure incurred from thereon is to be allowed as revenue expenditure.

3. The Brief facts of the case that the Assessee is a Company engaged in the business of developing and leasing of properties of Hi Tech & IT office spaces. During the previous year assessee company carried on the business of developing an IT Park and filed return of income disclosing loss of ₹1,49,96,827/-. The return of income was processed under sec 143(1) and loss was accepted. Subsequently, the Assessing officer issued notice u/see 148 of the Act where the Assessing Officer has reason to believe that the expenses claimed by the assessee in the pre-commencement period should be capitalized and interest on deposits taxable under the head "Income from other sources". The Assessee submitted explanation with supporting (Annx 1

and 2) that the marketing division of the assessee premises had commenced in previous year and consequently expenditure is charged to profit and loss account as Revenue in nature but the Id. Assessing Officer passed re-assessment order dated 12/12/08 by treating the Interest on deposits ₹17,42,295/- as the income from other sources and raised a demand. The Learned Assessing Officer has disallowed the claim of Revenue expenditure of ₹1,49,63,881/- and treated as prior period expenditure and Interest Income is separately taxed. The Id. Assessing Officer relied on the decision of *Tuticorin Alkali Chemicals and Fertiliser Limited Vs CIT 227 ITR 172 (SC)*. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Commissioner of Income Tax (Appeals) considered the grounds and findings of the Assessing Officer on the claim of interest on deposits set off against the expenditure and the assessee contention being set up of commercial business operations. The Id. Authorised Representative substantiated arguments and filed submissions and supported the facts with judicial decisions. The Id. Commissioner of Income Tax (Appeals) considered the written

submissions and factual observations of Assessing Officer and is of the opinion that purchase of land by the assessee company for construction of I.T. Parks cannot be termed as commencement of business and exhaustively discussed at para 4.2 of the order as under:-

"4.2 I have carefully considered the facts of the case and the submissions of the Id.AR. The Id.AR argues that the commencement of the business in the case of I.T.parks is different from the regular business. He is of the opinion that once the advances were paid to acquire land for construction of I. T. parks, the business commence. The appellant argues that it itself has capitalized some part of the pre- operative expenditure and some was claimed as revenue. As seen from the facts of the case the issue in question is the treatment given to the interest income earned from the banks of Rs.17,42,295 prior to the commencement of business. There was no dispute with regard to the treatment given to the expenditure incurred by the appellant till the commence of business. As per the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd (supra), the income earned prior to the commencement of the business needs to be assessed under "Income from Other Sources" and all the expenditure incurred till such commencement needs to be capitalized. Since no business has commenced during the financial year relevant to A.Y. 2005-06 by generating any income by the appellant company, the bank interest earned during the year from the expenditure of the company for the year when the business has not commenced, is not in order. The action of the Assessing Officer by bringing to tax such bank interest earned prior to the commencement of business under "Income from Other Sources" is well within the law. I do not find any infirmity in the order of the Assessing Officer. Therefore, I do not want to

interfere in the decision taken by the Assessing Officer. The ground is dismissed”.

and dismissed the appeal of the assessee. Aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee assailed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative reiterated the submissions of assessment and appellate proceedings on the issue of definition of commencement of business in broader sense and applicability. The Id. Commissioner of Income Tax (Appeals) has erred in not appreciating the facts that assessee is engaged in real estate activity and the business is presumed as commenced on acquisition of land and any expenditure incurred during the said period is treated as Revenue expenditure. The Id. Authorised Representative substantiated with written submissions on the main objects of the assessee company as development of I.T. Park and industrial park and construction and maintenance of infrastructure for IT and industrial parks by acquiring land for development. The assessee took possession of the land in May, 2004 and advanced money to the contractors to commence construction of park during financial year 2004-05. The company has capitalized expenditure incurred in capital assets which are in the nature of project management fees, property

mangement fees and other expenses and the interest on fixed deposits in bank ₹17,42,295/- is credited to profit and loss account and setoff of against the business expenditure. The Id. Authorised Representative relied on the judicial decisions and produced memorandum of association and articles of association and substantiated the grounds with Tribunal decisions in the case of *Arcane Developers Pvt. Ltd vs. ITO & others in ITA 4632/Del/2010 dated 22.06.2012* and emphasized on High Court decision of *CIT vs. M/s. Dhoomketu Builders & Development Pvt. Ltd. in ITA 528 & 529/2012, dt 23.04.2013* and prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the orders of lower authorities and vehemently opposed the grounds of the assessee and prayed for dismissing the appeal.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative basic contention that the business of the assessee was setup on acquisition of land and claimed expenditure in profit and loss account due to commencing business operations during the year and the Id. Authorised Representative drew our attention to the annual report of the company and referred to schedule of profit and loss account were the assessee has offered income in the profit and loss account and

claimed expenditure. Further offered the net loss as per return of income. The decisions relied by the assessee on acquisition of land is deemed as business been set up but the assessee company was incorporated on 03.11.2003 which falls in the financial year 2003-2004 relevant to assessment year 2004-05. But the main activities of the business started in the financial year 2004-05 relevant to current assessment year were the assessee has advanced money for purchase of land and the construction of tech park was commenced and also capitalized the expenditure in the books of account. Generally in the first year of operations, where the assessee acquired the land cannot be treated as commencement of business. It is in the nature of gestation period where the assessee company yet to start business activities. On perusal of objects of Memorandum of Association and Articles of Association assessee is carrying on the business in India including maintaining, establishing, developing and construction of commercial complex and residential building. The assessee has claimed set off on assumption that business has been setup and income has to be adjusted against the project cost. The Id. Authorised Representative relied on the decisions, are on different business prospective and main object as per MOA of the company is not acquisition of land. As per the balance sheet as on 31.03.2005, the assessee has disclosed fixed assets including capital work in progress

and pre-operative expense pending capitalization. The assessee company has knowledge of various expenditure incurred and identified certain category of expenditure has characteristic of pre-operative expenses which Id. Assessing Officer referred at page 2 of assessment order. The Id. Assessing Officer relied on the accounting treatment by the assessee company and the definition of the business were the company has suo-motu capitalized expenses ₹2,74,97,341/- to the date of establishing and completion of IT parks and characteristic of expenditure remain on par with pre-operative expenditure. The Assessing Officer relied on Supreme Court decision of *Tuticorin Alkali Chemicals and Fertiliser Limited* (supra) where it was held that interest on bank deposits received before commencement of operations of the business should be offered separately as income from other sources. The assessee has acquired the property and also invested in bank deposits further yet to commence its business operations and freehold land was disclosed in schedule of fixed assets as at 31.03.2005 and the assessee incurred general and administrative expenses debited to profit and loss account as the pre-operative expenditure and setoff with interest income cannot be considered. Considering the provisions, financial statements, judicial decisions, written submissions and material papers filed, the action of set off interest income with expenditure is not permitted in the circumstances

were assessee has not set up the business or commenced the business and also not submitted commencement of business certificate issued by Registrar of Companies under Companies Act, 1956. We are of the opinion that the Id. Commissioner of Income Tax (Appeals) has elaborately dealt on the disputed issue in confirming the order of Assessing Officer and we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) and uphold the same and dismiss the grounds of appeal.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced on Wednesday, the 4th day of May, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:04.05.2016

KV

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |