

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA Nos. 467/Jodh/2018
(ASSESSMENT YEARS- 2015-16)

Shri Devkripa Textile Mills (P) Ltd., C-111, Shastri Nagar, Bhilwara.	Vs	ACIT, Bhilwara Circle, Bhilwara.
(Appellant)		(Respondent)
PAN NO. AACCD2866Q		

Assessee By	Shri Gautam Chand Baid- C.A.
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	20/01/2023
Date of Pronouncement	05/04/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

This is an appeal filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals), Ajmer [herein after referred as "CIT(A)"] for the assessment year 2015-16 dated 21.08.2018, which in turn arises from the order passed by the Asstt. Commissioner of Income Tax, Circle, Bhilwara passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 24.12.2017.

2. The assessee has raised the following grounds:-

“1. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in sustaining the disallowance made by Ld. AO for Rs. 26,66,972/- being half of depreciation claimed by assessee on the finding that business of the assessee suspended during the year under consideration and machinery were used for less than 180 days during the year under consideration. Disallowance so made and sustained for the depreciation on the assessee put to use in earlier years. Disallowance so made and sustained may kindly be deleted.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in sustaining the disallowance of director remuneration made by Ld. AO for Rs. 2,86,000/- out of Rs. 5,10,000/- claimed by assessee on the finding that same is not allowable u/s 37(1) as business of the assessee suspended during the year under consideration. Disallowance so made and sustained may kindly be deleted.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in sustaining the disallowance for Rs. 1,00,000/- out of lump sum disallowance made by Ld. AO for Rs. 2,00,000/-. Disallowance so made and sustained may kindly be deleted.

4. The appellant crave liberty to add, amend, alter, modify, or delete any of the ground of appeal on or before its hearing before your honour.

5. The appellant prayed for the justice.”

3. Briefly the facts of the case are that the assessee company is engaged in manufacturing of synthetic fabrics on job work basis for other parties. It is also engaged in trading of synthetic fabrics during the year. It filed its e-return on 27.10.2015 declaring total loss of Rs. 1,57,07,558/-. The return was processed u/s 143(1) on 26.02.2016 at the declared income. The case was selected for complete scrutiny under CASS. Notice u/s 143(2) of the Income Tax Act, 1961 was issued on 12.04.2016 duly served upon the assessee on 20.04.2016, fixing the case for hearing on 22.04.2016. Subsequently, notice u/s 142(1) of the Act with query letter dated 06.07.2017 was issued fixing the case for hearing on 20.07.2017. In compliance to notices issued to the assessee company attended from time to time and furnished required details/information which were placed on record. During assessment proceedings books of accounts were produced which were examined on test-check basis. The facts of the case were discussed with the A/R of the assessee company by the AO.

4. The assessing officer noticed that the business of the assessee has been carried on up to July, 2014 only. However, the assessee has paid remuneration of Rs.5,10,000/- to the directors for the whole year. The assessee had also claimed depreciation for full year. Since the business operations have been stopped in July, 2014, the AO took the view that the

above said directors' remuneration and depreciation cannot be allowed for whole of the year. Accordingly, he restricted the salary expenses to Rs.2,24,000/- and disallowed balance amount of Rs.2,86,000/-. Since the assets were put to use for less than 180 days only, the AO disallowed 50% of depreciation claimed by the assessee. The AO also disallowed a sum of Rs.2,00,000/- from out of other expenses, since some of the expenses were supported by self made vouchers.

5. Being aggrieved by the order passed by the AO, the assessee preferred an appeal before the Id. CIT(A), who concurred with the view taken by the AO in respect of disallowance of remuneration paid to directors and disallowance of depreciation. However, he reduced the adhoc disallowance made out of expenses to Rs.1.00 lakh. Accordingly, the Ld CIT(A) allowed the appeal of the assessee in part.

6. Now the assessee is in appeal.

7. The Ld A.R submitted that the assessee has not completely stopped the business and there was only suspension of business for a temporary period. He submitted that the business has been revived in the succeeding year. Accordingly, he submitted that the tax authorities are not justified in making disallowances out of director's remuneration; out of depreciation and out of

other expenses. The ld. AR for the assessee strongly relied upon the two judgment to support his case which reads as under:-

- CIT vs. Chennai Petroleum Corporation Ltd. 358 ITR 314 (Mad H.C.)
- CIT vs. Refrigeration and Allied Industries Ltd. 247 ITR 12 (Del H.C.)

8. Per contra, the ld. Sr. DR relied upon the orders of the ld. CIT(A).

9. We have considered the rival contention and perused the materials available on record. It is the submission of the assessee that the business operation has not been discontinued permanently, but it was only suspended for a temporary period. The Ld A.R also submitted that the business has been revived in the succeeding year. The question that arises for consideration is whether the temporary lull in the business would disentitle the assessee to claim depreciation and other expenses for full year. In this connection, we may refer to the decision of **Hon'ble Madras High Court rendered in case of CIT vs. Chennai Petroleum Corporation Ltd. (supra)** wherein the Hon'ble High Court has held as under:-

“ 20. As far as the decision of this court reported in CIT v. Maps Tours and Travels [2003] 260 ITR 655 (Mad) is concerned, if under law, there is a prohibition on the assessee to put the cars on roads for want of registration, considering such prohibition, the claim of the assessee

under section 32 of the Income-tax Act could not be granted. Thus, the abovesaid decision has to be seen in the light of the facts and circumstances of the case; hence, the same would not be of any assistance to the assessee. In fact, the learned standing counsel appearing for the Revenue fairly stated before this court that in the decisions reported in CIT v. Southern Petrochemical Industries Corporation Ltd. [2009] 311 ITR 202 (Mad) and CIT v. Southern Petrochemical Industries Corporation Ltd. [2008] 301 ITR 255 (Mad), this court had considered the grant of depreciation even to stand-by machinery. When that being the case, we do not find any justifiable ground to disturb the reasoning of the majority members of the Income-tax Appellate Tribunal.

21. Under the stated circumstances, on the admitted case that business was a going and the machinery could not be put to use due to raw material paucity, we reject the Revenue's contention, thereby, confirm the majority view of the Income-tax Appellate Tribunal."

10. We may also gainfully refer to decision rendered by Delhi bench of Tribunal in the case of Ishwar Builders P Ltd vs. DCIT (ITA 3387/Del/2019 dated 4.12.2019, which is a direct decision on this issue. In this case, the Tribunal followed the decision rendered by Hon'ble Delhi High Court in the case of Capital Bus Service 123 ITR 404 and held as under:-

"17. Ground No. 3 relates to the disallowance of depreciation on car amounting to Rs. 45.31 lakhs and interest on car loan amounting to Rs. 19.91 lakhs.

18. A perusal of the assessment order shows that these amounts have been disallowed by the Assessing Officer solely on the ground that during the year under consideration, the assessee did not carry out any business activity. The disallowance was confirmed by the Id. CIT(A).

19. Before us, the Id. counsel for the assessee stated that it is incorrect to say that the assessee did not carry out any business activity during the year under consideration. The Id. counsel for the assessee pointed out that the assessee company is engaged in the business of construction, development of land etc and during the year under consideration, the assessee did invest in agricultural land at Chandan Hola, Delhi. It is the say of the Id. counsel for the assessee that there being a lull in the business, it cannot be said that the assessee had no intention to carry on business and it is not the case of the Revenue that the assessee has closed out its business activities.

20. The Id. DR supported the findings of the Assessing Officer. It is the say of the Id. DR that the Assessing Officer has considered all the issues raised by the counsel and, therefore, there is no error or infirmity in the findings of the Assessing Officer and the Id. CIT(A).

21. We have given thoughtful consideration to the orders of the authorities below. In our considered opinion, depreciation has been claimed by the assessee on the written down value of the asset which means that in earlier years, the asset was used for the purposes of business. Nowhere the Assessing Officer has brought any material evidence on record to suggest that there is a closure of business activities. On the contrary, we find that in furtherance of its business activities, the assessee has further advanced Rs. 65 lakhs towards land at Chandan Hola, Delhi which means that the assessee was, in fact, carrying out business activities during the year under consideration.

22. The Hon'ble High Court of Delhi in the case of Capital Bus Service 123 ITR 404 has held that the only condition for allowability of depreciation is that the business should not have been closed out once for all and that the assessee should demonstrate that hopes of the business being revived are alive and real.

23. In light of the decisions of the Hon'ble High Court as mentioned elsewhere, the assessee was in fact, engaged in furtherance of its business activities and, therefore, it cannot be said that the assessee has closed down its business once for all. Therefore, the assessee is eligible for claim of depreciation.

In view of the decision discussed herein above, we are of the view that there is no requirement of disallowing part of director's remuneration and depreciation when the business was stopped due to temporary lull. Accordingly, we set aside the order passed by Ld CIT(A) on the above said two issues and direct the AO to delete the disallowances.

11. In respect of disallowance of Rs.1.00 lakh sustained by the Ld CIT(A) from out of the disallowance made out of various expenses, we notice that the assessee did not controvert the finding of the AO that some of the vouchers are supported by self made vouchers. Accordingly, we do not find any reason to interfere with the decision rendered by Ld CIT(A) on this issue.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 05/04/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench