

ito Vs. Gopal Ram Prem Ram

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Court : Rajasthan

Decided On : Jun-19-2001

Reported in : (2001)72TTJ(NULL)698

Appeal No. : ITA No. 469 (Jod) of 1999 19 June 2001 A.Y. 1996-97

Appellant : ito

Respondent : Gopal Ram Prem Ram

Advocate for Pet/Ap. : Suresh Ojha, *for the Assessee G.R. Meghwal, for the Revenue*

Judgement :

ORDER

S.R. Chauhan, J.M.

As the above cases involve common points, so we are disposing them of by this common order for the sake of convenience.

2. ITA No. 469/Jd/1999 is an appeal by the revenue and ITA No. 521/Jd/1999 is an appeal by assessee, both for assessment year 1996-97 and both are directed against the same order of Commissioner (Appeals), Udaipur, dated 8-7-1999. CO. No. 03/Jd/2000 has been filed by assessee in respect of revenues appeal being ITA No. 469/Jd/1999.

3. ITA No. 455/Jd/1999 is an appeal by revenue and ITA No. 447/Jd/1999 is an appeal by assessee, both for assessment year 1995-96 and are directed against the common order of Commissioner (Appeals). Udaipur dated 29-6-1999. CO. No. 28/Jd/2000 is assessee's CO in respect of revenues Appeal No. 455/Jd/1999.

4. I have heard the arguments of both the sides and have also perused the records.

5. First I take up ITA No. 469/Jd/1999 being revenues appeal. The revenue has taken only one ground disputing the learned Commissioner (Appeals)'s order in allowing deduction for depreciation and interest paid to third parties from the profit determined by applying net profit rate. The learned Departmental Representative of revenue though tried to support the assessing officer's order, but frankly conceded that the issue regarding depreciation is covered against the revenue by the decision of the Honble Rajasthan High Court in the case of CIT v. Jain Construction Co. & Ors. and regarding the interest paid to third parties is covered by Amendment, that is, proviso to section 44AD(2). The learned authorised representative of assessee has also contended that the issues of depreciation and interest paid to third parties are covered.

6. I have considered the rival contentions as also the relevant material on record. The Honble Rajasthan High Court has held in the case Jain Construction Co. (supra) that even after applying NP rate and determining NP rate, the depreciation is further to be allowed separately. As such, the learned Commissioner (Appeals)'s impugned order in allowing depreciation is quite proper and in no way laconic. Similarly, as regards deduction for interest paid to third parties, I find the issue to be squarely covered by the decision of this Bench in the case of Rikhabdas Jain, Contractor v. ITO in ITA No. 849/Jd/1997 (assessment year 1993-94) delivered on 26-7-2000, wherein the interest paid to third parties has been held to be allowable as deduction. In that view of the matter. I find no fault with the impugned order of learned Commissioner (Appeals) in allowing deduction for interest paid to third parties. However, I also direct that in case the income so determinable falls less than the returned income, the same be restricted to the returned income.

7. In the result, the revenues Appeal No. 469/Jd/1999 may be treated as dismissed.

8. Now we take up ITA No. 521/Jd/1999 being assessee's appeal for assessment year 1996-97. The assessee has raised as many as four grounds of appeal before the Tribunal, but the only issue agitated and argued before us by the learned authorised representative of assessee is regarding the treating of bank interest as income from other sources instead of as business income. The learned authorised representative of assessee has contended that the assessee is a contractor, registered with Command Area Development (CAD) and Indira Gandhi Nahar Pariyojana (IGNP), registration certificate being placed on pp 5 and 6 of the paper book. He has contended that at the time of registration, the assessee is under an obligation to make security deposits and this interest is on the security deposit amount. He has contended that the amount of security deposit was of Rs. 1 lakh in IDP on which the interest came to Rs. 14,167. He has contended that the affidavit of assessee to the effect that two amounts, each of Rs. 50,000 to the CAD and Chief Engineer IDP has been furnished and the same was also furnished before the Commissioner (Appeals). He has contended that without registration, the assessee could not make tender. He has relied on the contentions raised in his written statement and has cited the following decisions :

1. 59 ITD 275 (Coch-Trib)(sic)
2. CIT v. Tirupati Woollen Mills : [1992]193ITR252(Cal)
3. CIT v. Paramount Premises (P) Ltd. (1998) 190 ITR 259 ; and
4. Ponds Exports Ltd. v. ITO (1996) 58 ITD 417 (Mad)

As against this, the learned Departmental Representative of revenue has relied on the orders of the authorities below.

9. I have considered the rival contentions, the relevant material on record as also the cited decisions. In (1992) 195 ITR 252 (supra) the Tribunal had found as a fact that earning of interest income arose from the utilisation of commercial assets, that is, the funds utilised in making fixed deposits, that is, the funds utilised in making

fixed deposits with the bank were the business funds lying temporarily in surplus with the assessee. In the circumstances, the Honble Calcutta High Court held that the interest income was assessable as business income and that the revenue expenditure could be deducted from it. In : [1991]190ITR259(Bom) (supra), the assessee was required to give guarantee to the State Bank in respect of the land taken on lease for construction work. For this purpose, certain amount was kept in fixed deposits on which the assessee earned interest. In the circumstances the Tribunal gave finding of fact that the entire interest sprang from the business activity of the assessee and it did not arise out of any independent activity. Accordingly, the interest income was considered as the business income of the assessee. (In 135 Taxation 59 Tribunal, Madras), the money received in advance from importers was deposited in banks and the interest earned thereon was claimed to be the business income. In the circumstances, the Tribunal, Madras held that the interest sprang from the business activity and shall be assessable as business income. In the instant case, from the perusal of record, I find that the assessee was required to make security deposits with CAD and IGNP for the purpose of registration with them and that without registration the assessee could not make tender in respect of work with them. Obvious as it is, the aforesaid deposits were made in connection with the business of the assessee, and, therefore, considering the legal position emanating from the above discussed judicial pronouncements, we are of the view that the interest income earned on the amount of security deposits made in connection with the business of the assessee deserves to be treated as business income and not as income from other sources. We order accordingly.

9.1. In the result, assessee's appeal No. 521/99 is partly allowed.

10. Now we take up assessee's CO No. 03/Jd/2000. The learned authorised representative of assessee has not pressed the same during arguments. I, therefore, dismiss the same accordingly.

11. ITA No. 455/Jd/1999 being revenues appeal, both the sides have relied on their same arguments as raised in respect of similar ground in ITA No. 469/Jd/1999 discussed above. As the facts are identical, I follow my own decision

rendered above in ITA No. 469/Jd/1999 wherein following the decision of Honble Rajasthan High Court in the case of Jain Construction Co. (supra) I have held that deduction for depreciation to be further separately allowed after determining the NP by applying NP rate. Accordingly, I find the depreciation similarly allowable and so I find no fault with the impugned order of learned Commissioner (Appeals) in allowing deduction for depreciation separately after determination of NP by applying NP rate. I, therefore, decline to interfere with the same.

12. In the result, the revenues appeal being ITA No. 455/Jd/1999 may be treated as dismissed.

13. Assessee's CO No. 28/Jd/1999 has not been pressed by the learned authorised representative of assessee during arguments, I therefore, dismiss the same accordingly.

14. I now take up ITA No. 447/Jd/1999 being assessee's appeal. The assessee has raised as many as five grounds of appeal before the Tribunal. But during arguments, the learned authorised representative of assessee has agitated in single issue being in respect of interest to the tune of Rs. 37,013 being assessed as income from other sources. He has referred to p. 3 of learned Commissioner (Appeals)'s order and contended that the interest amount of Rs. 37,013 comprises three components. (i) KVP interest, (ii) FDR interest, and (iii) interest from private party being M/s. G.R. Industries.

15. He has contended that the deposit by way of KVP and FDR in the bank are by way of security deposits in connection with the civil contract. As regards the third component being interest from private party M/s. G.R. Industries, he has contended that on account of surplus fund available with the assessee, the same was lent to private party for short time so as to earn interest. He has contended that as it was spare fund being part of business fund and the same was invested to earn interest income when lying idle. So the same also deserves to be treated as income from business. He has relied on the citations referred to above. As against this the learned Departmental Representative of revenue has supported the orders of the authorities below.

16. I have considered the rival contentions, the relevant material on record as also the cited decisions. As regards the amount of security deposits in connection with the business of the assessee that is for obtaining of contract for civil work we follow our own decision rendered above ITA No. 521/Jd/1999 and accordingly hold the interest earned on the amounts deposited by way of security to be the income from business and not as income from other sources. As regards the interest income earned by lending fund temporarily to M/s. G.R. Industries, the same is also covered by the decision of Honble Calcutta High Court in the case of Tirupati Woollen Mills (P) Ltd. (supra) discussed above. Accordingly. I treat the interest earned on business fund lying idle and temporarily lent to M/s. G.R. Industries to be arriving out of business activity, and as such to be income from business and not as income from other sources. I order accordingly,

17. In the result the assessee's appeal being ITA No. 447/Jd/1999 may be treated as allowed in part as indicated above.

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