



IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.2470/Mum/2011

(Assessment Year :2007-08)

M/s. Pinebridge India Pvt. Ltd., (Formerly known as AIG Global Asset Management (I) Pvt. Ltd., 1101, Tower-B, Peninsula Business Park Ganpatrao Kadam Marg Lower Parel Mumbai – 400 013	Vs.	The Assistant Commissioner of Income Tax Circle 6(1), Aayakar Bhavan, M.K.Road, Mumbai – 400 020
PAN/GIR No.AAGCA0084P		
Appellant)	..	Respondent)

Assessee by	Shri Percy Pardiwalla & Shri Nitesh Joshi
Revenue by	Shri Chaitanya Anjaria
Date of Hearing	27/08/2018
Date of Pronouncement	10/10/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-14, Mumbai dated 03/01/2011 for A.Y.2007-08 in the matter of order passed u/s.143(3) of the IT Act.

2. The following grounds have been taken by the assessee:-

1. The (earned Commissioner of Income tax (Appeals) erred in upholding the action of the learned Assistant Commissioner of Income tax (herein after referred to as "the Assessing officer") in disallowing the expenditure to the extent of Rs.8,39,03,909/- on the ground that the appellant had not started its business activity during the previous year

under appeal. The appellant submits that under the income tax provisions, setting up of business holds relevance over commencement of business and the appellant being a private limited company, had started its business from the date of incorporation itself i.e 30th September, 2006.

2. The learned Commissioner of Income tax (Appeals) erred in upholding the conclusion arrived at the learned Assessing officer, that in the absence of receipts from business, the expenditure incurred thereto is for setting up of business and hence ought to be disallowed. The appellant submits that it had put necessary infrastructure in place for its business. The appellant submits that for allowability of expenses what is relevant is whether an assessee is ready to commence its business and mere fact that it has not received any business receipt cannot be a ground for disallowance of expenses incurred wholly & exclusively for the purposes of business.

3. Without prejudice to what has been stated above, the appellant submits that the learned Commissioner of Income-tax (Appeals) ought to have held that the appellant set up its business on 15th December, 2006 i.e. the date of its entering into Investment Management Agreement (IMA) and ought to have allowed various expenses incurred after this date as having been incurred wholly and exclusively for the purposes of its business.

4. Without prejudice to what has been stated above, the appellant submits that the learned Commissioner of Income-tax (Appeals) erred in arriving at the conclusion that out of total expenditure, Registration fees (Rs.50,00,000), consulting fees & brokerage & commission (Rs.24,29,592), recruitment expenses (Rs.31,53,993), marketing expenditure (Rs.23,90,525) were one time expenditure and cannot be allowed as business expenditure. The appellant submits that these are bonafide business expenditure incurred wholly and exclusively for the purposes of its business and ought to have been allowed.

5. The appellant submits that the Assessing officer be directed:-

a) to delete the disallowance made of a sum of Rs. 8,39,03,909/- by holding that the business activity of the appellant has started from the date of its incorporation;

b) Without prejudice to what has been stated above and in the event its contention that the business ' was set on the date of incorporation is not accepted, to hold that the date on which IMA was entered into by the appellant ought to be the date on which the business of the appellant was started and all the expenses incurred on or after the said date is allowable.

and to modify the assessment in accordance with the provisions of the Act.

6. *Each of the above grounds of appeal are independent & without prejudice to each other.*

7. *The appellant craves liberty to add, to alter and / or amend the grounds of appeal as and when given.*

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. During the previous year relevant to assessment year under appeal the assessee filed its return of income returning a net loss of Rs.6,78,64,993/-. The learned Assistant Commissioner of Income-tax, made certain disallowances, which are subject matter of this appeal and determined the net taxable income of the assessee at Rs.5,92,73,150/-.

5. In the assessment order, AO observed that during the previous year relevant to the assessment year under consideration the assessee was not engaged in any business as appearing from the copies of accounts filed during the course of hearing. The assessee was asked to submit explanation as to allowability of expenses of Rs.12,71,38,147/- not related to any business activity during the previous year relevant to the assessment year under consideration.

6. After considering assessee's reply, AO held as under:-

"I have gone through the submission of the assessee. The assessee claimed that the assessee started business activities but I am inclined not to accept the same for the reasons mentioned below :-

1. *The assessee has stated business activity is not the question. The question is whatever amounts incurred by the assessee was for the business or not and whether it is properly reflected in the books of accounts.*

2. *The claim of the assessee as to allowance of deduction of expenditure subsequent to the date of entering into Investment Management Agreement is also not acceptable on the ground that only entering into Investment Management Agreement did not confer the assessee to expend without getting any corresponding reimbursement as per agreement dated 12-12-2006. in fact, though there was reflection of expenses in the accounts, there was no reimbursement of the same or even, no effect was made for reimbursement of expenses as appearing from the accounts.*

3. *The Institute of Chartered Accountants has issued an Accounting Standard-5 "Events occurring after the balance sheet date". AS-5 provides for two situations, which are as under :-*

a) Events related to circumstances existing on Balance Sheet date:-For such events Loss or profit from events after balance sheet date should be adjusted in the accounts.

b) Events not related to circumstances existing on Balance Sheet Date :-For such events only disclosure should be made by way of notes, no adjustment is required in accounts.

The assessee's accounts do not reflect any such comment. Had it expended in terms agreement/contract, then the profit/loss should have been duly accounted for & classified in the books of accounts. The Institute of Chartered Accounts has laid down guidelines in AS-9 for Revenue Recognition which states that revenue should be recognized when there is no uncertainty in realization of consideration.

In the light of the above, assessed claim for expenditure of Rs.12,71,38,147/- is disallowed and added back to the total income of the assessee.

7. By the impugned order CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

8. Learned AR appearing on behalf of the assessee drawn our attention to the details of expenditure so incurred relates to grant electricity charges, repairs and maintenance etc., and relied on the following judicial pronouncements in support of the contention that expenditure incurred after business is set up is to be allowed as revenue expenditure.

- 1. Axis (P) Equity Ltd., 391 ITR 370 (Bombay HC)*
- 2. Multi Act Realty Enterprises Pvt. Ltd., ITAT Mumbai Bench in ITA No.7274/Mum/2011 order dated 28/08/2015*
- 3. HSBC Securities India Holdings Pvt. Ltd., ITAT Mumbai Bench in ITA No.3181/Mum/99 dated 28/11/2001*
- 4. Axis Private Equity Ltd., ITAT Mumbai Bench in ITA No.3045/Mum/2013 dated 19/08/2013.*

9. On the other hand, learned DR relied on the orders of the lower authorities.

10. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR during the course of hearing before us.

11. From the record, we found that the assessee is a private limited company and was incorporated on 30th September, 2006. Pursuant to its incorporation it started its business activities. The assessee is an Asset Management Company (AMC) formed to manage the mutual fund schemes of A1G Global Investment Group Mutual fund ("the Fund") in accordance with the Investment Management Agreement (IMA) entered into between the assessee and AIG Trustee Company (India) Private Limited ("Trustee company"). The expenditure so incurred after incorporation was disallowed by the AO on the plea that assessee has not started any business activity. From the record we found that on its

incorporation, the assessee undertook the following activities which are necessary for its business:

- Complying with SEBI requirements as per the terms of in principle approval and preparation of final application to SEBI for registration of Fund.
- Preparation and finalization of IMA and Trust Deed.
- Identifying new office location and Finalizing office lease.
- Setting up of office infrastructure.
- Hiring of key employees.
- Developing Product Literature.
- Negotiations with R&T Agent, Custodian, Fund accountants.

12. From the record we found that after its incorporation, it had already started putting in place necessary infrastructure for its business. The assessee entered into IMA with Trustee Company on 15th December, 2006.

13. We also found that assessee had undertaken a series of preparatory work to launch a mutual fund scheme of the Fund, which interalia includes:

- Filing of New fund offer document with SEBI.
- Taking Approval from SEBI to launch new schemes.
- Giving presentation to distributors.
- Setting up additional branches for better penetration
- Empanelling distributors across India.

- Putting up the marketing campaign in place.

14. Thus by undertaking the aforesaid activities, it can be said that the business activity of the assessee had commenced and the expenses are allowable. However, the Assessing Officer, while passing the assessment order has disallowed the entire expenses amounting to Rs. 12,71,38,147/- by not accepting the contention of the assessee that it has started business activities. We observe that the Assessing officer failed to appreciate the business of the mutual fund industry and disallowed the expenses. The assessee is an Asset Management Company established under the SEBI (Mutual Funds) Regulations, 1996 (SEBI Regulations, 1996). The assessee has been appointed as an Asset Management Company of the Fund. The assessee is incorporated to manage the schemes of the Fund in accordance with the provisions of the IMA. The business activities that assessee company can carry as an Asset Management Company is regulated by the said Regulations. Further the duties, responsibilities and obligations of the assessee are also provided in the Regulations. The manner in which the AMC is to be remunerated for carrying on its business as an Asset Management Company is also provided in the Regulation. The SEBI Regulations require the AMC to carry on various activities which include right from launching of the scheme, managing the funds, compliance with the Regulations, providing quarterly reports, maintenance of books of accounts, issue of unit certificates or statement of account, etc

15. We also observe that the expenses incurred by the assessee are its routine expenses incurred in conduct of its business of Asset Management Company. The assessee is in the business of asset management and in terms of SEBI Regulations and the agreement with the Trustee Company; it is required to incur these expenses for the purpose of its business. We also observe that the Assessing Officer has not appreciated the fact that entering into agreement is sufficient enough to carry on its business. It could not have carried on its business of Asset Management Company without entering into Investment Management Agreement. Accordingly, AO was not correct in holding that entering into agreement did not confer upon the assessee to expand without getting any corresponding reimbursement of expenses. From the record, we also found that the accounts and schedules thereto are prepared as per companies Act, 1956 and in accordance with the Accounting Standards issued by the Institute of Chartered Accountants of India. The accounts of assessee are duly audited. Further no event has occurred in its case subsequent to the date of Balance Sheet which requires adjustment of profit/loss in accounts. Thus, the comments of AO in respect of Accounting Standards were uncalled.

16. In view of the judicial pronouncements cited by learned AR we observe that there is a distinction between setting up of the business and the commencement of the business. What is relevant under the Income-tax Act, 1961 is the setting up of the business and not the

commencement of the business. Accordingly, it is "setting up" of the business and not the commencement" of the business that is to be considered. A business is commenced as soon as an essential activity of the business is started. Thus, a business commences with first purchase of stock-in-trade, the date when the first sale is made is not material in that respect. Similarly, a manufacturer has to undertake several activities in order to bring to produce finished goods and he commences his business as soon as he undertakes the first of such activities. The expression "setting up" means "to place on foot" or "to establish"* in contradistinction to the expression "commence". In the case of a new business engaged in trading or in the service sector, no plant and machinery are to be installed, and no trial runs are necessary; and therefore a different set of criteria will be required to be applied in order to determine whether such a type of business had been established so as to be ready to "commence" business. In the service sector or that which is engaged in trading activity, business can be said to have been "set up" if, correspondence was entered into with various parties to make them aware of the products in which the assessee was dealing, letters had been written to various prospective customers giving them quotations, a business place or an office had been acquired. These were essential activities in the course of carrying on the business and therefore in these types of business such activities can be said to be determinative of the question whether the business had been "set up" and that it was "ready

to commence". The actual receipt of an order from a prospective client for supply of product or services cannot postpone the "setting up" of the business.

17. In the instant case, assessee is engaged in the business of asset management positively and in case of service industry the criteria for determining when the business can be said to have been set up will differ and would be based on the facts of each case. In the instant case, assessee company has been incorporated to manage the assets of the mutual funds and it is incorporated with the said object. Upon its incorporation, it took various steps to commence its business such as hiring of people application to SEBI, organizing for space etc, and this amounted to setting up business and the entire expenses ought to be allowed. In any case, to act as an AMC for the fund, it is necessary for it to enter into an Investment Management Agreement with the Trustee Company, which was entered into on December 15, 2006. The assessee thereon started the process of launch of the fund. The assessee successfully launched the first fund in May, 2007. As stated earlier, it has already started its activities for launching of fund.

18. In view of the above, we hold that the Assessing Officer was not justified in not accepting the claim of the assessee that its business activities are commenced from the date of its incorporation. Accordingly, we direct the AO to verify the expenses alleged to incur wholly and

exclusively for the purpose of the business to allow the same as per law.

We direct accordingly.

19. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 10/10/2018

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 10/10/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai