

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH: 'SMC-I', NEW DELHI
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
 (THROUGH VIDEO CONFERENCE)

ITA NO. 6534/DEL/2019
 A.Y. : 2016-17

IFFCO EBAZAR LTD., C-1, DISTRICT CENTRE SAKET PLACE, NEW DELHI - 110 017 (PAN: AAKCA1714G)	Vs.	ACIT, CIRCLE 12(1), NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. Nitin Gulati, Adv.
Department by	Sh. Prakash Dubey, Sr. DR.

ORDER

PER H.S. SIDHU, JM:

This appeal filed by the Assessee is directed against the impugned order dated 28.6.2019 passed by the Ld. CIT(A)-4, New Delhi, in relation to assessment year 2016-17 on the following grounds:-

1. *Whether on the facts and circumstances and in law, the impugned order dated*

17.12.2018 passed by the Ld. CIT(A) is without jurisdiction, illegal, bad in law and void ab initio.

2. Whether on the facts and circumstances of the case the Ld. CIT (A) has erred in upholding the findings of the Ld. Assessing Officer who had erred in holding that the assessee is still in the process of setting up of business and therefore the business of the assessee has not "commenced" during the year.

3. Whether on the facts and circumstances of the case the Ld. CIT (A) has erred in confirming the disallowance of the claim of business loss made by the assessee in return of the income.

4. Whether on the facts and circumstances of the case the Ld. CITA (A) has erred in law and on facts in confirming the findings of the Ld. Assessing Officer who had erred in assessing the interest and miscellaneous income of Rs. 1,21,659/- under the head "income from other sources" as against the claim of the assessee that the said income forms part of the profit and gains of business.

5. Whether on the facts and circumstances of the case the Ld. CIT (A) has erred in law and on facts in confirming the findings of the Ld. Assessing Officer who had erred in disallowing

the carry forward of loss for the year, as claimed in the return of income, by wrongly invoking/applying the provision of section 79 of the Income Tax Act, 1961.

6. The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.

2. Fact relating to the issue are that assessee filed its return of income on 03.10.2016 declaring loss of Rs. 1,34,46,032/-. The case was selected for scrutiny under CASS and the notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") dated 02.8.2017 was issued and served upon the assessee. Thereafter the notice u/s. 142(1) of the Act dated 10.5.2018 alongwith questionnaire was issued and served upon the assessee. In response to the same, the Ld. AR of the assessee appeared and filed all the necessary documents supporting the claim of the assessee. The assessee company is to carry on its business on its own or through franchisee arrangements of buying, selling, importing, exporting, marketing, distributing in wholesale basis or otherwise any kind of services, goods, material and items whatsoever in nature. During the year under consideration, assessee has declared loss of

Rs. 1,34,46,032/- in its ITR. On perusal of the computation of income and financials submitted by the assessee, which the AO has reproduced in para no. 2 of the assessment order and found that out of total revenue of Rs. 1,26,864/-, there is only Rs. 5,175/- revenue from operations and Rs. 1,21,659/- other income which comprises of income interest income and miscellaneous income during the whole financial year. From this income assessee has deducted total expense of Rs. 142,69,475/- in the P&L account and therefore net profit of (-) Rs. 1,41,42,611/- has been determined which has been subsequently arrived at loss of Rs. 1,34,46,031/- after giving effect under the provision of Income Tax Act. After considering the reply filed by the assessee, the AO was of the view that assessee filed details vide letter dated 12.11.2018 wherein purchase and sale of goods (Harpic) stated to have made from M/s Shyn Industries on 19.5.2015 of Rs. 5063/- and M/s A&B Housekeepers Pvt. Ltd. on 25.5.2015 for Rs. 5175/- respectively. Assessee has explained about setting up and commencement of business and concluded stating that the business of the assessee is duly set up as well commenced in the concerned assessment year as the assessee

effectuated the sale and purchase during the concerned assessment year. The sales or purchase in miniscule having regard to expenditure incurred did not disentitle the assessee that such expenditure would be disallowed. Considering the facts of the case the assessee is only shown single purchase and sale during the first quarter, thereafter no business transaction to generate revenue has been made in the whole financial year. This shows the transaction was not related to business and the nature of expense debited in the P&L account also does not relates to business operations rather it is of in the nature of carrying out research and analysis, feasibility for the business i.e. activity prior to setting up and commencement of business. The AO was also of the view that assessee's outlets started its operation in April, 2016 has not been disputed by the assessee which is in the perquisite for carrying out trading activity as in the case of the business of the assessee. Accordingly, show cause notice dated 6.12.2018 was issued to the assessee asking therein as to why the expenses debited in the profit and loss account should not be disallowed being there was no business operations during the year under consideration. In response to the same, the assessee filed a

reply dated 11.12.2018 alongwith documentary evidences. The explanation of the assessee was considered by the AO, but not accepted by holding that assessee has only shown single purchase and sale during the first quarter, thereafter no business transaction to generate revenue has been made in the whole financial year and disallowed the business loss claimed by the assessee during the year under consideration and also invoked the provisions of section 79 of the I.T. Act, 1961. After considering the reply filed by the assessee, he completed the assessment u/s. 143(3) of the Act dated 17.12.2018. Aggrieved by the same, assessee filed its appeal before the Ld. CIT(A), who vide his impugned order dated 28.6.2019 and dismissed the appeal of the assessee. Aggrieved with the impugned order dated 28.6.2019, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee draw my attention towards paper book filed by the assessee containing pages 1-131 in which the assessee has filed its written submissions on the issues in dispute alongwith 04 Annexures which includes the list of employees hired by the

assessee, alongwith Form 6 of the CEO of the Company; invoices of fixed assets such as computer and other peripherals, copy of invoice of IFFCO Kisan SEZ Ltd.. Supporting with written submissions filed by the assessee assessee has also filed various case laws rendered by the various Higher Courts. Ld. Counsel for the assessee especially draw my attention towards the ITAT 'B' Bench, Delhi decision in the case of ITO vs. Amrit Foods (P) Ltd. (1984) 10 ITD 681 (Delhi) dated 12.3.1984, a copy of which was attached in the paper book at pages 33-38 and stated that it is a well settled law that even a single transaction may constitute 'business' as defined in section 2(13). It is not essential there should be series of transactions, both of purchase and of sale to constitute trade, as the case of the assessee. Therefore, he stated that this issue is squarely covered in favour of the assessee by the aforesaid decision of the ITAT, Delhi Bench ITO vs. Amrit Foods (P) Ltd.(Supra).

3.1 Ld. Counsel for the assessee further stated that assessee company was incorporated on 05.10.2011 under the Companies Act, 1956 with the name "Asset Infra Development

Ltd.". Thereafter the name of the company was changed to IFFCO EBazar Ltd. by a Special Resolution passed in the Extra Ordinary Meeting (EGM) dated 25.3.2015 which was duly accepted by the Registrar of Companies. He further stated that in addition to the expense that had been incurred by the assessee in connection with setting up of the business, assessee also in the first of Quarter of 2015 purchased its various fixed assets such as computer and other peripherals through the invoices which are placed on record with the written submissions of the assessee. He specifically argued that assessee has commenced its business in the said assessment year, as the assessee has made its sale of goods i.e. Harpic and purchase its evident from the table mentioned in the written submissions attached as Annexure A-3 meaning thereby that the assessee was duly set up and commencement in the relevant assessment year has effectuated the sale of goods i.e Harpic and purchase during the connected assessment years. But the AO as well as Ld. CIT(A) has wrongly given the finding that assessee has never commenced its business in the year under consideration. To support this arguments, he draw my attention towards the judgment of the

ITAT in the case of ITO vs. Amrit Foods (P) Ltd. (Supra) which he has filed with the paper book and stated that the issue in dispute may be decided in favour of the assessee by deleting the addition in dispute. Ld. Counsel for the assessee has also argued all the issues mentioned in the grounds of appeal.

4. On the contrary, Ld. DR relied upon the orders passed by the AO as well as Ld. CIT(A) and stated that AO as well as Ld. CIT(A) has made the addition and confirmed the addition in dispute on the basis of the documentary evidences filed by the assessee as well as on the case laws relied upon by the Assessee. He requested that the appeal filed by the assessee may be dismissed.

5. I have heard both the parties and perused the relevant records especially the documentary evidences filed by the assessee alongwith the decision of the ITAT, Delhi 'B' Bench in the case of ITO vs. Amrit Foods (P) Ltd. (Supra), I am of the view that the assessee has commenced its business in the said assessment year as the assessee had made its sale and purchase i.e. Harpic which is evident from the table below

which has already been mentioned in the written submissions:-

S.No.	Name of the party	Name of good or service purchased	Amount	Purchase /Sale
1.	M/s Shyn Industries	Harpic	5175	Purchase
2.	M/s A&B Hosekeepers Pvt. Ltd.	Harpic	5175	Sale

Particulars	FY 2015-16	FY 2016-17	FY 2017-18
Sales / Turnover	5,175	48,49,79,551	4,24,84,09,212

5.1 Keeping in view of the facts and circumstances of the case as explained above and the transaction made by the assessee during the assessment year in dispute details of the same are reproduced above as well as in view of the ITAT 'B' Bench, Delhi decision in the case of ITO vs. Amrit Foods (P) Ltd. (1984) 10 ITD 681 (Delhi) dated 12.3.1984 (Supra), wherein it was held as under:-

“It is well settled that even a single transaction may constitute ‘business’ as defined in section 2(13). It is not essential that there should be a series of transactions, both of purchase and sale to constitute trade. Even a single purchase followed by a single sale, may be regarded as business and a single such transaction outside an assessee’s line of business an adventure in the nature of trade. Neither repetition nor continuity of similar transactions is necessary to constitute a transaction an adventure in the nature of trade. It is also well settled that where a purchase is made with the intention of resale, it depends upon the conduct of the assessee and the circumstances of the case whether the venture is on capital account or in the nature of trade.

In the instant case, certain facts admitted proved on record were (i) that the assessee, in view of the manufacturing and trading activities

carried on by it, could not have made use of the margarine plant, more so when the raw material required for running the said plant was available only in a vanaspati manufacturing unit and the assessee was not such a unit, (ii) that the plant purchased had no close link with the assessee's business which was manufacture and sale of desi ghee, (iii) that the interest paid by the assessee on fund borrowed for buying plant was not added to the cost of the plant but was claimed and allowed as revenue expenditure account of the assessee under appropriate heads, and (iv) that depreciation had not been allowed to the assessee in respect of the plant at any time. Since the margarine plant was a plant, the same had to be shown in the balance sheet as such under the head 'Plant and machinery'. There was no other way but to show it as such. It was wrong to infer from that, as done by the ITO, that the margarine plant was always included in the fixed assets and not

in the current assets in the balance sheets. Clearly, the assessee had purchased the margarine plant, which was not in its line of business, with the intention of reselling it for profit and, by its conduct, had treated the transaction as an adventure in the nature of trade. There was close proximity between the purchase of the plant and its sale.

Applying the law as set out above to the facts of the case, it was clear that the transaction in question was an adventure in the nature of trade and the profit arising therefrom had been correctly treated by the first appellate authority as business profit.”

5.2 In view of the aforesaid discussions as well as in view of the aforesaid precedent, I am of the view that the issue in dispute is squarely covered in favour of the assessee by the aforesaid decision of the ITAT as reproduced above, hence, respectfully following the same, I am of the view that it is well settled law that even a single transaction may constitute

business as defined in section 2(13). It is not asking there should be a series of transaction. Both of purchase and the sale to constitute trade. Therefore, I delete the addition in dispute. Since the addition in dispute is deleted as aforesaid, the other grounds argued by the assessee have become academic and hence, need not be adjudicated.

6. In the result, the Assessee's Appeal is allowed.

The decision is pronounced in the Open Court on 07.01.2021. Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

"SRB"

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi