

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 207/JP/2022
Assessment Year : 2018-19.

M/s. Mangalam Arts Govind Nagar (East), Amber Palace Road, Jaipur.	बनाम Vs.	Deputy Commissioner of Income-tax, Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABFM 9591 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (CA)

राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 29.06.2022.

घोषणा की तारीख / Date of Pronouncement : 10/08/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 29.03.2022 for the assessment year 2018-19 passed u/s 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal :-

1. The Id. CIT (A), NFAC has erred on facts and in law in upholding the order of AO disallowing the claim of litigation expenses of Rs. 2,37,00,000/- by treating the same as capital expenditure by making incorrect and irrelevant observations without appreciating the facts of the case.

2. The Id. CIT (A), NFAC has erred on facts and in law in directing the AO to calculate the interest as per section 244A while giving effect to the order by not deciding the specific ground of the assessee that when refund is determined on 21.11.2019 but granted on 11.06.2020, the assessee is eligible for interest u/s 244A till 11.06.2020 and thereby allowing interest for lesser period of 7 months.
3. The appellant craves to alter, amend and modify and ground of appeal.
4. Necessary cost be awarded to the assessee.

2. The brief facts of the case are that the assessee is a Partnership Firm, engaged in the business of manufacturing and export of wooden handicrafts, durries, rugs, textile items, etc. The assessee filed its return of income on 04.02.2019 declaring total income of Rs. 31,43,91,380/- for the year under consideration. The return of income was processed by the CPC under section 143(1) of the Income Tax Act, 1961. The case of the assessee was selected for Scrutiny and notice under section 143(2) of the Act dated 22.09.2019 was issued for compliance on 07.10.2019. In response the assessee furnished its reply on 15.01.2020. Subsequently, in compliance to notice under section 142(1) of the Act 1961 dated 02.12.2020 along with questionnaire, the assessee furnished the details and reply vide its letters on 17.12.2020 and 19.01.2021 and the same were examined and verified by the AO. In the course of assessment proceedings, the AO on examining the details of professional expenses claimed at Rs. 3,20,45,910/- observed that it includes legal expenditure of Rs. 2.37 crores paid to advocates for defending the case in Supreme Court in relation to assessee's property where its export house is situated. The AO considered the same to be a capital expenditure being incurred for

acquiring, improving, extending, possession or removing defect in the title of fixed assets by referring to the decision of Hon'ble Supreme Court in case of V. Jagannathan Rao vs. CIT, 75 ITR 373 (SC). The AO further held that assessee is in possession of the said property and utilizing the same from the beginning and, therefore, the litigation expenses incurred for continued possession of the immovable property where assessee's office and factory are located is expenditure in relation to immovable property and hence, a capital expenditure which would provide benefit for several years. The AO thus disallowed the litigation expenses of Rs. 2,37,00,000/- being a capital expenditure and added back to assessee's returned total income. Being aggrieved, assessee preferred an appeal before the Id. CIT (A). The Id. CIT (A) observed that the expenditure has substantially increased as compared to the last year. The details of expenses have not been furnished during the appellate proceedings. The outcome of the litigation and its present status is not known. Hence, nature of expenditure cannot be considered as recurring and of revenue in nature. Accordingly, the Id. CIT (A) upheld the order of the AO treating the expenditure as capital expenditure.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee has submitted that both the lower authorities have not correctly appreciated the facts of the case. The Id. A/R briefly submitted the undisputed facts as under:-

- (i) S/Shri Krishna Kumar Rawat, Ashok Kumar Rawat, Ravinder Kumar Rawat and Rajendra Kumar Rawat (collectively referred to as buyers) entered into

an agreement dated 11.11.1993 with Smt. Mithilesh Kumari (seller) to purchase Godown No.13 & 14 and 1/4th undivided share of open land at Khasra No.126 which covers approximately 9,500 sq. yds. @ Rs.1,051 per sq. yd. (total consideration Rs.99,84,500/-) **(PB 53-62)**. Against this an amount of Rs.40 lacs was paid by the buyers and the actual possession of the said godown and open land was also taken as specified in clause 3 & 8 of the sale agreement **(PB 58-59)**.

- (ii) All the 4 buyers of this property are partners of the assessee. After entering into the agreement for purchase of the property, the same was given by them to the assessee from where it is carrying on its business of export since 1994. Thus, assessee is not the owner of property but is in possession of the property to carry its export business for which no rent is paid by the assessee to the buyers of property.
- (iii) As required by section 269UC of the Act, the buyers furnished the information about purchase of the said land to the appropriate authority along with the copy of agreement dt. 11.11.1993. The appropriate authority determined the value of said land at Rs.1,34,39,556/- and accordingly passed order dt. 30.03.1994 u/s 269UD(1) of the Act for acquisition and vesting the said land to the Central Government.
- (iv) Against the said order passed by the appropriate authority of Income tax department, a writ was filed in the High Court of Rajasthan on 13.04.1994 but the same was dismissed by Single Judge vide order dt. 14.09.1994.

Against the said order appeal was filed before the Division Bench of High Court who vide its order dt. 31.05.2007 dismissed the appeal filed by the buyers. The review petition filed was also dismissed vide order dt. 24.07.2007 and accordingly further appeal was filed before the Hon'ble Supreme Court.

- (v) The Hon'ble Supreme Court vide its order dt. 29.07.2019 (**PB 63-71**) after considering the facts at Para 4-18 of its order, at Para 49 dismissed the appeal filed by the buyers.
- (vi) For pursuing the litigation before High Court and Supreme Court, the assessee incurred expenditure on payment of legal fees to advocates/consultants since it was using the said property for its business purpose. Accordingly, in the year under consideration the assessee incurred expenditure of Rs.2,36,96,671/- (i.e. approx. Rs.2.37 cr.) as per the details furnished to the AO vide letter dt. 12.01.2021 (**PB 15-21**). The year wise details of the legal expenditure incurred with reference to the said property is at **PB 41-52**.

3.1. On the above facts, the legal expenses of approx. Rs.2.37 cr. has been claimed by the assessee as business expenditure u/s 37(1) of the Act in as much as the same was incurred by the assessee to have continued possession of office/factory premises which it was using from last 25 years. From this premises assessee has secured export business worth Rs.2,500 cr. in foreign currency and created employment of more than 1,000 employees. The assessee never owned the said

property. It only occupied the property for the purpose of its business. In earlier years similar expenditure incurred by the assessee has been allowed by the AO as revenue expenditure. In fact in AY 2017-18 assessee incurred expenditure of Rs.4,99,47,976/- on payment of professional/ consultancy fees/ fees for technical services which includes an amount of Rs.13,46,554/- with respect to the said property which was allowed as revenue expenditure by the AO. Therefore, only because in the year under consideration, the expenditure is more as compared to the last year, similar expenditure incurred cannot be considered as capital expenditure only because the amount of expenditure is more.

3.2. The AO has relied on the decision of Supreme Court in case of V. JaganmohanRaoVs. CIT(1970) 75 ITR 373(**Case laws compilation PB 22-26**). This decision is not at all applicable in as much as in this case lump sum payment was made by the purchaser of the property to the sons of the seller to get release of their interest in the property. Thus, the payment was made to perfect a title or for getting rid of defect in the title or against the threat of litigation. As against this in the present case, the assessee has not purchased the property but it is in possession of property from where it is conducting its business activities without payment of rent. Therefore, in its business expediency, it incurred the legal expenditure so that the property does not vest to the Central Government. It is not a case of expenditure incurred for getting rid of defect in the tile or to perfect the title. The Ld. CIT(A) has also not relied on this decision in holding that expenditure is capital expenditure.

3.3. The Ld. CIT(A) has treated the expenditure as capital expenditure for the reason that the details of expenses have not been furnished, the nature of

expenditure is different from the earlier years and the outcome of litigation & its present status is not known. This cannot be a reason to treat the expenditure as capital expenditure. The details of expenditure were duly furnished to the AO(**PB 19-21**) which has been considered by him in the assessment order, the nature of expenditure is same as is in earlier years and the Ld. CIT(A) never required the assessee to furnish the present status/ outcome of the litigation. Hence, the reasons stated by him are neither correct nor for these reasons, the expenditure can be treated as capital expenditure. In support of his contention, the Id. A/R placed reliance on the following case laws :-

- (1) Bikaner Gypsums Ltd. Vs. CIT(1991) 187 ITR 39 (SC)**
- (2) Dalmia Jain & Co. Ltd. Vs. CIT (1971) 81 ITR 754 (SC)**
- (3) Sree Meenakshi Mills Ltd. Vs. CIT (1967) 63 ITR 207 (SC)**
- (4) CIT Vs. O.P.N. Arunachala Nadar (1983) 141 ITR 620 (Madras) (HC)**

While concluding, the Id. A/R submitted that from the above decisions it is evident that when the litigation expenditure is incurred to protect the business, the same is revenue expenditure. In the present case, the assessee is not the owner of asset but it is possessing the asset from where it is conducting its business. Thus, the litigation expenditure incurred is to protect its business and therefore, the expenditure so incurred be directed to be allowed as revenue expenditure.

4. On the other hand, the Id. D/R supported the orders of the authorities below and submitted that the order of the Id. CIT (A) be sustained.

5. We have heard the rival submissions and perused the material available on record. We note that the AO has disallowed legal expenditure of Rs. 2.37 crores

paid to the Advocates for defending the case in the Supreme Court with reference to a property from where assessee is conducting its business by holding it to be a capital expenditure for acquiring, including, extending, possession or removing defects in the title of the fixed assets by referring to the decision of Hon'ble Supreme Court in case of V. Jagmohan Rao vs. CIT, 75 ITR 373 (SC) for the reason that the assessee is in possession of said property and utilizing the same for its office and factory. The Id. CIT (A) uphold the order of AO holding that expenditure has substantially increased as compared to last year, details of expenses not furnished, outcome of litigation and its present status is not known, hence expenditure cannot be considered as recurring and of revenue nature. We are of the opinion that the reasons given by the AO/Id. CIT (A) for holding the expenditure as capital in nature is not borne out from the material available on record and placed in the paper book filed by the Id. A/R. We note that the property under consideration was agreed to be purchased by the four partners of the assessee firm vide Agreement dated 11.11.1993 but the appropriate authority passed order under section 269UC of the Act for acquisition and vesting the said property to the Central Government. This property is in the possession of the assessee from where it is carrying out its export business without payment of any rent. Since the property was under acquisition proceedings, the assessee defended the case before the Hon'ble High Court of Rajasthan but the same was dismissed by Single Judge vide his order dated 14.09.1994. Further appeal to Divisional Bench and the review petition filed against the order of Divisional Bench were also dismissed vide orders dated 31.05.2007 and 24.07.2007 respectively. Against this order, appeal filed before the Hon'ble Supreme Court came to be dismissed vide order dated 29.07.2019, a copy of which is placed

at paper book pages 63 to 71. In this connection the assessee incurred expenditure on payment of legal fees to Advocates/Consultants to protect its business interest of Rs. 2,36,96,671/- (approximately Rs. 2.37 cr.) for which the details were furnished to A.O. vide letter dated 12.01.2021. Thus the expenditure has been incurred not to acquire or improve or extend or possession or removing defect in the title of fixed assets in as much as assessee was not the owner of such asset. Hence the decision reported in 75 ITR 373 (supra) relied by the A.O. is not applicable. As against this, the Hon'ble Supreme Court in case of Dalmia Jain & Co. Ltd. vs. CIT, 81 ITR 754 (SC) at para 4 of its order held as under :-

"4. The question for decision is whether the litigation expenses incurred by the assessee were for the purpose of creating, curing or completing the assessee's title to capital or whether it was for the purpose of protecting its business. If it is the former then the expenses incurred must be considered as capital expenditure. But, on the other hand, if it is held that the expenses were incurred to protect the business of the assessee, then it must be considered as a business loss. The principle which has to be deduced from decided cases is that, where the expenditure laid out for the acquisition or improvement of a fixed capital asset is attributable to capital, it is a capital expenditure but if it is incurred to protect the trade or business of the assessee then it is a revenue expenditure. In deciding whether a particular expenditure is capital or revenue in nature, what the Courts have to see is whether the expenditure in question was incurred to create any new asset or was incurred for maintaining the business of the company. If it is the former it is the capital expenditure; if it is the latter, it is the revenue expenditure."

Again the Hon'ble Supreme Court in case of Sree Meenakshi Mills Ltd. vs. CIT, 63 ITR 207 (SC) at para 4 held as under :-

“However wrong-headed, ill-advised, unduly optimistic, or over-confident in his conviction the assessee may appear in the light of the ultimate decision, expenditure in starting and prosecuting the proceeding may not be denied admission as a permissible deduction in computing the taxable income, merely because the proceeding has failed, if otherwise the expenditure is laid out for the purpose of the business wholly and exclusively, i.e., reasonably and honestly incurred to promote the interest of the business. Persistence of the assessee in launching the proceeding and carrying it from Court to Court and incurring expenditure for that purpose again cannot be a ground for disallowing the claim.”

From these decisions it is clear that when litigation expenditure is incurred to protect the business, the same is revenue expenditure. In the present facts, since assessee has no interest in the ownership of the asset but he is in possession of the asset for conducting its business, the litigation expenditure incurred is only to protect his business and, therefore, the same is revenue expenditure. Accordingly, the litigation expenditure incurred by the assessee is revenue expenditure and not capital expenditure. Hence we allow the expenditure incurred as revenue expenditure.

Ground No. 2 relates to directing the AO to calculate interest on refund as per section 244A of the Act without adjudicating assessee's specific ground and lesser payment of interest for 7 months.

6. We have heard the rival contentions and gone through the material available on record. The assessee filed its return of income claiming refund of Rs. 5,63,13,820/-. The Id. A/R of the assessee submitted that the assessee received an intimation under section 143(1) of the Act dated 21.11.2019 determining the refund at Rs. 5,53,50,676/- and interest under section 244A thereon was calculated at Rs. 55,35,060/- for the period from 01.04.2018 to 30.11.2019 and thus refund of Rs. 6,08,85,736/- was determined. This refund was granted to the assessee on 11.06.2020. The Id. A/R submitted that as per section 244A where refund of any amount becomes due to the assessee, he is entitled to receive simple interest thereon from 1st day of April, of the assessment year to the date on which refund is granted. Simply calculating the interest till the month on which intimation under section 143(1) is issued do not amount to grant of refund. Refund is granted when the amount is actually paid to the assessee. In the case of the assessee, the refund was actually paid to the assessee on 11.06.2020. Therefore, the assessee is eligible for interest under section 244A from April, 2018 to June, 2020 i.e. for 27 months and not from April, 2018 to November, 2019 i.e. 20 months. Rule 244A of the IT Rules, 1962 reads as under :-

" 244A(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :-

(a) Where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, -

- (i) From the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or
- (ii) From the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i).

Thus considering the above facts and rules narrated above, we direct the AO to allow interest to the assessee upto the actual date of refund i.e. upto 11.06.2020.

The matter is restored to the file of the AO.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 10/08/2022.

Sd/-
(राठौड़ कमलेश जयंतभाई,)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/08/2022.

das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Mangalam Arts, Jaipur.
2. प्रत्यर्थी / The Respondent-The DCIT, Circle-4, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 207/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

