

आयकर अपीलिय अधिकरण
दिल्ली पीठ "ई", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं. 606/दिल्ली/2020 (नि. व. 2013-14)
ITA NO.606/DEL/2020 (A.Y.2013-14)

Malbros Holdings Pvt. Ltd., (Successor Company)
(Before amalgamation M/s. Sunkalp Portfolio
Investments Pvt. Ltd.),
The Hotel Surya, Office Floor, New Friends Colony,
New Delhi 110025
PAN: AAECM-9585-D

..... अपीलार्थी / Appellant

बनाम Vs.

Income Tax Officer,
Ward 24(3), Central Revenue Building, IP Estate,
New Delhi 110002

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : S/Shri Satish Khosla, and
Manish Malik, Advocates
Shri Pankaj Jain, AR
प्रतिवादीद्वारा / Respondent by : Shri S.L. Verma, Sr. DR
सुनवाई की तिथि / Date of hearing : 20/06/2024
घोषणा की तिथि / Date of pronouncement : 29/07/2024

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-XXV, New Delhi (hereinafter referred to as 'the CIT(A)') dated 09.12.2019, for assessment year 2013-14.

2. The solitary issue raised in appeal by the assessee is disallowance of interest income on Inter Corporate Deposits (ICD) and Fixed Deposits (FD) as income of the assessee under the head "Profits & Gains of Business or Profession", instead the Assessing Officer (AO) has held aforesaid interest income as "Income from Other Sources".

3. Shri Satish Khosla, appearing on behalf of the assessee submits that the assessee is engaged in the business of leasing & finance. During the period relevant to assessment year under appeal, the assessee has earned interest income on Inter Corporate Deposits and Fixed Deposits. The aforesaid income was offered to tax by the assessee as Business Income. The assessee in its profit & loss account has shown interest income under the head Revenue from operations. Since, the time of inception the assessee has been consistently showing interest income as income from operations. In the preceding assessment year and in succeeding years, the Department has accepted interest income offered to tax as business income. It is only in the impugned assessment year that the AO has changed the head of income from 'Business Income' to 'Income from Other Sources'. The Id. Counsel placed on record copy of assessment order dated 22.12.2017 for AY 2015-16 passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). He pointed that for the assessment year 2012-13, 2014-15, 2016-17 and 2017-18, the return of the assessee was processed u/s. 143(1) of the Act. The Id. Counsel submitted that the company M/s. Sunkalp Portfolio Investments Pvt. Ltd. merged with Malbros Holdings Pvt. Ltd., a Non-Banking Finance Company (NBFC) w.e.f 01.04.2017. The Id. Counsel

further submitted that the assessee has given ICD's to unrelated parties, the list of companies to whom ICD's were given is at page 73 of paper book.

3.1. The Id. Counsel submitted that the assessee had amortized certain expenditure starting from AY 2012-13. Amortization expenditure was allowed in AY 2012-13; the AO in the impugned assessment year has withdrawn amortization of expenses without withdrawal of the same from the assessment year in which it was first allowed to be amortized.

4. Per contra, Shri S.L. Verma representing the Department vehemently defended the impugned order. He submitted that the assessee was not registered NBFC, hence, the assessee could not have carried out leasing & finance activity. The interest income from ICD's and FD's was thus rightly held to be income from other sources by the AO. The assessee is not carrying any business activities except for advancing of loans to the selected entities; therefore, the interest income was assessed as income from other sources.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The primary issue in appeal is change of head of income by AO from 'Business Income' to 'Income from Other Sources'. The assessee is engaged in the business of leasing & financing. To substantiate nature of business carried out by the assessee, the assessee has placed on record copy of Memorandum of Association (MOA). A perusal of main objects of MOA shows that one of the main objects of the assessee is to carry business of leasing & financing. For the sake of completeness the relevant extract from the main objects of the assessee company is reproduced herein below:

“2. To carry on the business of leasing and finance company and for the purpose to acquire, maintain, sell and give on lease, hire-purchase, installment, financing, funding of loan, refinancing and letting on hire all description, application, modalities and all kinds of properties whether moveable or immovable on such terms and conditions as may be deemed fit. To carry on in India or elsewhere the business of financing money lending, bill discounting, factoring and corporate lending to advance money with or without securities to provide finance to industrial enterprises on short term, medium and long term basis by hire purchase, leasing or otherwise for corporate sectors, group companies and investment in corporate sector, group companies both registered and non registered in stock exchange, provide various loan assistance such as housing loan, gold loan, education loan, marriage loan to individuals”.

6. The assessee has disclosed interest income on ICD's & FD's as income from operations in Profit & Loss account. The statement of P&L account for the period ending 31.03.2013 is at page 69 of the paper book. The assessee has been consistently treating interest income on ICD's & FD's as business income and has offered the same to tax as such. The Department in the preceding assessment year i.e. AY 2012-13 and the subsequent assessment years i.e. AY 2014-15 to 2017-18 has accepted interest income as business income of the assessee. Though the assessments were framed u/s. 143(1) of the Act, it was only in AY 2015-16 that assessment was made u/s. 143(3) of the Act in the case of assessee. The assessee has placed on record copy of assessment order for AY 2015-16. Perusal of the same reveals that income offered to tax has been accepted without any addition.

7. In the impugned assessment year AO has changed the head of income from profits & gains from business profession to income from other sources. Primary reason for changing head of income by the AO is, that the assessee is not a registered non banking finance company. The findings of the AO have been upheld by the CIT(A). We do not find merit in the reasons for changing head of

income. The object clause of Memorandum of Association clearly defines the objects of the company for which it is incorporated and the business it intends to carry. Merely, for reason that the company is not a registered NBFC cannot be reason for changing the head of income. It is an admitted fact that in preceding assessment year and succeeding assessment year the Department has accepted interest income as Business Income of the assessee. The assessee has been consistently showing interest income as business income. The rule of consistency demands that the nature of assessee's income should not be disturbed in one of the intervening assessment years when in the past and in the subsequent assessment years, the Revenue has already accepted the nature of income as Business Income. Thus, in the light of above observations, the ground no. 1 of appeal is allowed.

8. In ground no. 2 of appeal the assessee has assailed disallowance of Rs. 31,12,392/- claimed as business expenditure. The Id. Counsel for the assessee restricted his arguments only with regard to disallowance of amortized preliminary expenses. The assessee had incurred expenditure of Rs.17.85 lakhs paid towards ROC fees for share application money on 09.03.2011. The assessee has amortized aforesaid expenditure over the period of five years. The first year of claim was AY 2012-13, this is a second year of claim of amortization of expenditure Rs. 1.56 lakh. The AO disallowed assessee's claim of amortization of expenses in the impugned assessment year only. In the subsequent assessment years the Department has again accepted amortization of expenditure. We find no valid reason for disallowing amortization of expenditure in the impugned assessment year when the same has been allowed in the preceding and

succeeding assessment years. The AO is directed to allow amortization of preliminary expenses in the impugned assessment year as well. Ground no. 2 of appeal is thus allowed *pro tanto*.

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

Order pronounced in the open court on Monday the 29th day of July, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 29/07/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI