

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
 (Hearing through Video Conferencing Mode)

आयकरअपील सं./ ITA No. 8665/Mum/2010
(निर्धारण वर्ष / Assessment Year: 2004-05)
 &

आयकरअपील सं./ ITA No. 6576/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2007-08)
 &

आयकरअपील सं./ ITA No. 8553/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s. Navsari Oil Products Pvt.Ltd. C/o VVF Limited, Plot NO.109 Sion (East), Mumbai-400 025	बनाम / Vs.	ITO-CC 7(1)(3) Aaykar Bhavan Mumbai – 400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACN-1387-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Madhur Agarwal-Ld.AR
Revenue by	:	Shri Tharian Oommen-Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	01/02/2021
घोषणा की तारीख / Date of Pronouncement	:	09/02/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2004-05, 2007-08 & 2008-09 contest separate orders of learned first Appellate Authority. However the facts as well as issues are

more or less identical and therefore, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience and brevity.

2. The appeal for AY 2004-05 arises out of order dated 17/09/2010 passed by learned Commissioner of income tax (Appeals)-41, Mumbai [CIT(A)], Appeal No.DCCC-35/IT.165/10-11. The assessment was framed by Ld. Assessing Officer (AO) u/s 143(3) on 30/11/2006. The only grounds urged before us are ground nos. 2 to 4 which read as under: -

Ground No. 2:

The learned CIT(A) failed to appreciate that the appellant continues to run its business and grossly erred in confirming the action of the learned AO of disallowing Rs.42,53,152/- of Retrenchment Compensation, without appreciating the fact that such compensation is paid under section 25F of Industrial Disputes Act and is a deductible expenditure.

Ground No. 3:

(i) The learned CIT(A) grossly erred in confirming the action of the learned AO to treat the entire lease rentals of Rs.30,33,600/- included under the head 'Income from Business' to be 'Income from Property' of Rs. 27,00,000/- and 'Income from Other Sources' of Rs.3,33,600/-.

(ii) Without prejudice to above, the learned CIT(A) grossly erred in confirming the action of the learned AO of disallowing Rs.17,29,197/- being depreciation on assets given on lease rental, u/s 57(ii) of the Income Tax Act, 1961.

Ground No. 4:

The learned CIT(A) grossly erred in confirming the action of the learned AO of making an addition of notional rental income of Rs.19,60,888/-.

3. We have carefully heard the rival submissions and perused relevant material on record including the orders of lower authorities and documents placed in the paper book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4.1 The material facts are that the assessee being resident corporate assessee is stated to be engaged in manufacturing of fatty acids etc. During assessment proceedings, upon perusal of

financial statements, Ld. AO formed an opinion that the assessee did not carry out any manufacturing activity during the year but carried out only circular trading transactions with its associated concerns namely M/s VVF Limited. The assessee had two other associated concerns namely M/s R. Exports Private Limited and M/s Vita Soaps & Specialties (a partnership firm claiming 100% deduction u/s 80-IB) (in short VSS). It was alleged that the assessee group was indulging in colorable tax avoidance devices in order to inflate profits of concerns claiming 100% deduction u/s 80-IB.

4.2 Since the assessee did not carry out any manufacturing activity during the year, Ld. AO opined that no depreciation could be allowed on Plant & Machinery since the same were not used for the business purposes. Rather the premises was leased out by the assessee along with Machinery to M/s VVF on one side and new building constructed by M/s VSS on behalf of the assessee and partly let out by the assessee to M/s VSS. The lease income thus earned was offered as 'Business Income' which Ld. AO proposed to assess as 'Income from House Property' in the backdrop of his aforesaid findings. The assessee defended its stand by relying upon object clause in its Memorandum of Association which enabled the assessee to enter into any arrangement conducive to the company's objects. However, this plea could not convince Ld. AO since the stated fact alone would not be decisive to determine the heads of income.

4.3 It was also observed that the assessee entered into 10 separate agreements with its associated concerns which were in

the nature of lease agreements, manufacturing facility lease, rent for factory premises etc. The brief details of these agreements have been extracted in para 5.2 of the assessment order. All these agreements were old agreements entered into by the assessee as early as 03/06/1989 and as late as 01/08/2003. Upon perusal of the same, Ld. AO opined that the assessee had been shedding its business premises and plant & machinery in phased manner right from year 1995 to its associated concerns. The assessee defended its stand of offering rental / lease income as 'Business Income' by submitting that in earlier years, this position was accepted by the department at assessment level itself. However, in the background of ratios of various judicial pronouncements holding the field, Ld. AO ultimately held that rent received from building was to be assessed under 'Income from House Property' whereas rent received on Machinery and other asset was to be taxed as 'Income from Other Sources'. The alternative claim that the depreciation should be allowed u/s 57(ii) was also rejected since the assessee was not hirer of plant, machinery and furniture etc.

4.4 Proceeding further, it was noted that the assessee was receiving nominal rent of Rs.10000/- from M/s VSS for using the premises of 1740.20 Sq. Meters at Daman. M/s VSS had met the entire cost of construction of the let out premises to the tune of Rs.163.40 Lacs which was shown under the head sundry creditors. In the lease agreement, this amount was shown as interest free security deposit. However, Ld. AO, finding the agreed rent to be highly unimaginable, worked out additional rent of Rs.19.60 Lacs,

being 12% simple interest on interest free security deposit of Rs.163.40 Lacs.

4.5 The last addition was on account of retrenchment compensation. The assessee paid a sum of Rs.42.53 Lacs to certain employees as retrenchment compensation. The Ld. AO opined that the same would bring enduring advantage or benefit resulting into reduction of recurring expenditure and therefore, it would be in the nature of capital expenditure. Alternatively, the expenditure would be amortized over a period of 5 years. In the absence of any satisfactory explanation forthcoming from the assessee, the expenditure so claimed was fully disallowed u/s 37(1).

4.6 Finally, lease income from buildings was assessed as 'Income from House Property' whereas lease income from Plant & Machinery was assessed as 'Income from Other Sources'. No deduction was allowed u/s 57(ii). The depreciation on leased building and Plant & Machinery was denied. Finally the returned loss of Rs.148.18 Lacs was reduced to Rs.51.83 Lacs. However, the determined loss would be increased by Rs.30.33 Lacs since these receipts were assessed under other heads but were not reduced from 'Business Income' while computing the assessee's income. The necessary directions have already been issued by Ld. CIT(A) in para 6.1 of the impugned order.

5. Though the assessee preferred further appeal assailing the stand of Ld. AO in disturbing the computations made by the assessee, however, the same could not find favor with Ld. CIT(A) who chose to confirm the action of Ld. AO in *toto* except for

directions in para 6.1 of the impugned order as enumerated by us in preceding paragraphs. Aggrieved, the assessee is in further appeal before us.

Our Adjudication

6. Upon due consideration, we find that though there are various allegations in the assessment order that the assessee group was indulging in colorable tax avoidance devices, however, the trading results shown by the assessee have ultimately been not disturbed by Ld. AO. What has been done is the fact that rental income from Buildings has been assessed as 'Income from House Property' whereas lease income from Plant & Machinery has been assessed as 'Income from Other Sources'. In the process depreciation on these assets has been denied to the assessee. It could also be observed that by accepting the trading results, Ld. AO has accepted the fact that assessee's business was continuing despite the observation that no manufacturing activity was being carried out by the assessee during the year which is also evident from the fact that except for depreciation allowance, retrenchment compensation along with minor disallowances, all other business expenditure as claimed by the assessee has been allowed by Ld. AO.

7. Proceeding further, we find that various lease agreements of buildings and Plant & Machinery, entered into by the assessee, were continuing since past many years and the assessee earned rental / lease income in similar manner since AY 1999-2000 and offered the same as 'Business income'. The assessee's stand has always been accepted by the department in most of other years.

The Ld. AR has tabulated the assessment position, along with documentary evidences, for various years in the following manner:-

No.	AY	Intimation / Assessment Order	Total Income as per Return	Assessed as per intimation / assessment order	Accepted as Business Income	Attached -ITR/ Computation / Intimation / Assessment Order
1	1999-00	Intimation u/s. 143(1)	8,41,071	8,41,071	Yes	1-3
2	2000-01	No intimation/ No order	11,97,846		Yes	4-5
3	2001-02	No intimation/ No order	4,17,040		Yes	6-7
4	2002-03	Assessment Order u/s. 143(3)	12,93,330	12,93,330	Yes	8-11
5	2003-04	Intimation u/s. 143(1)	11,00,790	11,00,790	Yes	12-14
6	2005-06	Rectification order u/s. 154 against intimation u/s. 143(1)	-15,445	-15,445	Yes	15-16
7	2006-07	Rectification order u/s. 154 against intimation u/s. 143(1)	-7,66,273	-7,66,275	Yes	17-18
8	2009-10	Assessment Order u/s. 143(3)	NIL	25,48,473	Pending before CIT(A)	19-30
9	2010-11	Assessment Order u/s. 143(3)	NIL (after set-off of brought forward loss of Rs. 9,47,198)	NIL (after set-off of brought forward loss of Rs. 9,47,198)	Yes	31-34
10	2011-12	Assessment Order u/s. 143(3)	2,01,53,083	2,18,78,953 (Denied set-off Of loss Of AY 2004-05 of Rs. 17,25,870/-)	Yes	35-38
11	2012-13	No intimation/ No order	2,85,35,121			39
12	2013-14	Assessment Order u/s. 143(3)	72,11,849	72,11,849	Yes	40-43
13	2014-15	Intimation u/s. 143(1)	-67,11,748	-67,11,748	Yes	44-55
14	2015-16	Intimation u/s. 143(1)	-3,54,56,694	-3,54,56,694	Yes	56-67
15	2016-17	Intimation u/s. 143(1)	8,72,819	8,72,819	Yes	68-79
16	2017-18	Intimation u/s. 143(1)	NIL (after set-off of brought forward loss of Rs. 14,61,264)	NIL (after set-off of brought forward loss of Rs. 14,61,264)	Yes	80-93
17	2018-19	Intimation u/s. 143(1)	NIL (after set-off of brought forward loss of Rs. 17,59,914)	NIL (after set-off of brought forward loss of Rs. 17,59,914)	Yes	94-106
18	2019-20	Intimation u/s. 143(1)	15,70,205	15,70,205	Yes	107-121

It could be gathered that rental / lease income so earned by the assessee has been accepted by the revenue as 'Business income' all along since AY 1999-2000 except for this assessment year and AYs 2007-08 & 2008-09. Though undisputedly, the principle of res - judicata is not applicable to income tax proceedings but the rule of consistency would demand that accepted position is not disturbed on identical facts as per the decision of Hon'ble Bombay High Court in the case of **PCIT v/s. Quest Investment Advisors Pvt. Ltd. reported in [2018] 409 ITR 545** wherein it has been held that when a principle has been accepted by the Revenue in earlier years as well as in subsequent years then the Revenue is bound by it unless there is a change in law or change in facts therein, which change has to be pointed out in the assessment Order. In so doing the jurisdictional High Court followed the judgment of the Supreme Court in **Bharat Sanchar Nigam Ltd. v/s. Union of India reported in [2006] 282 ITR 273** where the court had drawn a distinction between the principle of res judicata and consistency. The decision of Hon'ble Apex Court in **Radhasoami Satsang V/s CIT (193 ITR 321)** also favor the same proposition.

8. Therefore, on the facts and circumstances, the action of Ld. AO in disturbing the rental / lease income as 'Business Income' could not be held to be justified. Once the assessee's position has been accepted in so many past as well as succeeding years, there is no reason to disturb the same only in few years, the facts being remaining the same. Therefore, we are inclined to hold that the rental / lease income from building as well as from plant & machinery was assessable as 'Business Income' only.

Consequently, the assessee would be entitled for depreciation on these assets. In such a scenario, the question of determining the notional rental income would not, at all, arise. We order so. Ground Nos.3 & 4 stand allowed to that extent.

9. So far as the issue of retrenchment compensation is concerned, Ld. AR correctly pointed out that the payment was covered by the provisions of Sec.35DDA and accordingly, the same should be allowable in 5 equal installments. Concurring with the same, we direct Ld. AO to allow $1/5^{\text{th}}$ of retrenchment compensation paid during the year. Ground No.2 stand partly allowed. The appeal stand partly allowed in terms of our above order.

ITA No.3576/Mum/2012, AY 2007-08

10. The registry has noted a delay of 392 days in this appeal. The condonation of the same has been sought by the assessee on the strength of condonation petition dated 23/10/2012 which is supported by the affidavit of director of the assessee company. It has been submitted that there was a lapse on the part of tax consultant in filing the appeal which came to light only during engagement of new consultant. The Ld. AR also relied upon the decision of Hon'ble Apex Court in **Anil Kumar Nehru V/s ACIT (101 Taxmann.com 191)** as well as in **CIT V/s Progressive Education Society (102 Taxmann.com 402)** to support the condonation of delay.

Though Ld. DR opposed the condonation of delay, however, upon perusal of case records, we find that the issues in this year are quite similar to issue raised in AY 2004-05. The appeal for AY

2004-05 has been filed in time. Hence, it could be viewed that the assessee had inclination to contest the issue by way of further appeal and the plea that there was lapse on the part of tax consultant was to be accepted. Finding the arguments to be plausible one, we condone the delay and proceed with adjudication of the appeal.

11. As stated, the assessee is, more or less, similarly aggrieved in this year. While framing assessment u/s 143(3) on 31/12/2009, the lease income is proposed to be assessed as 'income from other sources'. Consequently, 90% of major expenditure comprising-off of Salaries, Administration and Rent etc. has been disallowed. The set-off of business losses has been denied. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

12. Since facts are identical in this year, following our adjudication for AY 2004-05, we hold that rental / lease income was to be assessed as 'Business Income' only. Consequently, the assessee would be entitled for deduction of business expenditure as well as set-off of carry forward losses. The Ld. AO is directed to re-compute the income in terms of our above order. The appeal stand allowed in terms of our above order.

ITA No.8553/Mum/2011, AY 2008-09

13. The facts in this year are quite identical to AY 2007-08. While framing assessment u/s 143(3) on 23/11/2010, the lease income is proposed to be assessed as 'income from other sources'. Consequently, salary expenses to the extent of 75%, repairs to building for Rs.1.73 Lacs and professional fees of Rs.0.19 Lacs has been disallowed by Ld. AO which has been confirmed by Id.

CIT(A). The set-off of business losses has also been denied. Aggrieved, the assessee is in further appeal before us.

14. Since facts are identical as in AY 2007-08, following our adjudication for that year, we hold the rental / lease income was to be assessed as 'Business Income' only. Consequently, the assessee would be entitled for deduction of Salary expenditure, repairs to building and professional fees as well as set-off of carry forward losses. The Ld. AO is directed to re-compute the income in terms of our above order. The appeal stand allowed in terms of our above order.

Conclusion

15. The appeal for AY 2004-05 stands partly allowed whereas the remaining two appeals stand allowed in terms of our above order.

Order pronounced on 09th February, 2021.

Sd/-	Sd/-
(Amarjit Singh)	(Manoj Kumar Aggarwal)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 09/02/2021
Sr.PS, Kasarla Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.