

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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ITTA Nos.142 and 146 of 2004

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COMMON ORDER: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

These two appeals are being disposed of by this common order as in both the appeals the following substantial questions of law were raised for our consideration:

“a) Whether in the facts and circumstances of the case, Income Tax Appellate Tribunal was correct in law, in holding that the interest obtained by the Appellant Company from granting of loans and advances and ICDS etc. constituted income from other sources and not business income?

b) Whether the Income Tax Appellate Tribunal was correct in law in holding that the interest obtained on ICDS, Loans and Advances made in the course of carrying on business did not constitute business income and if not, whether the Tribunal was correct in limiting the allowance of expenditure while sustaining the assessment of income under other sources?

2. The appellant was incorporated on 09.12.1994 with the main object of setting up of spinning and weaving mill and to carry on business of manufacture and sale of various kinds of cotton and synthetic fibers and machinery equipment and also to invest and to deal in shares.

3. The assessee filed its return of income for the assessment years 1996-97 and 1997-98 and they were finalized under Section 143(3) of the Income Tax Act, by orders dated 31.03.1999 and 31.03.2000 respectively. Challenging the said orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-IV, Hyderabad. Before the appellate authority, the assessee challenged the tax treatment given by the Assessing Officer to the loss on account of purchase and sale of shares and the action of the

Assessing Officer in restricting the claim for deduction of expenditure. The appeals were dismissed by the appellate authority holding that the shares represented investment made by the appellant and the loss incurred on purchase and sale of shares was correctly treated as “short term capital loss” by the Assessing Officer, and accordingly, confirmed the action of the Assessing Officer. So far as the deduction on account of expenses is concerned, it was observed that the interest income, dividend and service charges had been assessed under the head “Income from other sources” and the main receipt was on account of interest on inter-corporate deposits and since the aforesaid income had been assessed under the head “Income from other sources”, the assessee would be entitled to deduction only for that part of the expenditure which was necessary for earning the income.

4. The assessee carried the matter in appeal to the Income Tax Appellate Tribunal, Hyderabad Bench ‘B’, Hyderabad, and the Tribunal disposed of appeals bearing ITA Nos.715/Hyd/99 and 523/Hyd/2001 for the assessment years 1996-97 and 1997-98 respectively by common order dated 27.10.2003. The Tribunal held that the loss on sale of shares has to be treated as loss under the head “business” and since there is no appeal against the said finding by the revenue, we are not concerned with the said issue. With regard to the other issue of disallowance of proportionate expenses on the income received on ICDs, security deposits and service charges and dividends, it was held that only such expenditure which has a direct bearing on earning of such income is allowable as deduction. Accordingly, it confirmed the orders of the Assessing Officer and the appellate authority in treating the expenditure referable to the income declared under the head “other sources”. Against this finding of the Tribunal, the above appeals are filed by the assessee.

5. Learned Counsel for the appellant submits that the income derived from interest received on ICDs, security deposits and service charges and dividends could not form part of income from other sources, but as a business income. Hence, the expenses for earning such income should have been allowed as deduction. The learned Counsel for the Revenue, on the other hand, submitted that the main object of the assessee was to establish spinning and weaving mill, and the investment in ICDs and other deposits were made only to

make income out of idle funds and it cannot be construed as business income as there was no nexus.

6. Apart from the short term capital loss on sale of shares claimed by the assessee, income from interest on ICDs, dividends, security deposits and service charges are the main sources of income. The assessee debited all expenses to the profit and loss account and claimed deduction against the aforementioned income. The Assessing Officer treated the above income as income from other sources and allowed deduction only to the extent of expenses relatable to earning of other incomes. Out of the expenses of Rs.5,91,404/- for the assessment year 1996-97, the Assessing Officer allowed a sum of Rs.1,25,000/-, whereas for the assessment year 1997-98, the Assessing Officer allowed only Rs.5.00 lakhs as against the total claim of Rs.25.31 lakhs towards expenditure.

7. Before the Tribunal, the treatment of income under the head “other sources” was not assailed, but only the deduction of expenditure was challenged. When the income was treated under the head “other sources”, it is logical that the expenditure incurred for earning such income from “other sources” alone can be allowed as deduction. Such treatment of expenditure by the assessing officer was confirmed by the appellate authority as well as by the Tribunal. We see no error in the order of the Tribunal.

8. In the facts and circumstances of the case, no substantial question of law arises for consideration. The Appeals are, accordingly, dismissed. Miscellaneous petitions, if any, pending in these appeals shall stand disposed of. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

Date: 31.03.2015

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