

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "F" NEW DELHI)
BEFORE SHRI RAJPAL YADAV AND SHRI B.C. MEENA

ITA No. 5760/Del/2011
Assessment Year: 2008-09

M/s. Rare Garments Pvt. Ltd., G-15, Preet Vihar, Delhi-1100 92 (PAN: AACCR1546M) (Appellant)	Vs.	Assistant CIT, Circle 15(1), New Delhi. (Respondent)
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Appellant by: None
Respondent by: Shri Davender Singh, Sr.DR

ORDER

PER RAJPAL YADAV: JUDICIAL MEMBER

The assessee is in appeal before us against the order of Learned CIT(Appeals) dated 24.10.2011 passed for assessment year 2008-09. The solitary substantial grievance of the assessee is that Learned CIT(Appeals) has erred in confirming the disallowance of Rs.1,42,564 and Rs.14,50,123.

2. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of learned DR, we have gone through the record carefully. On 18.6.2012, we have heard ITA No. 5723/Del/2010, an appeal of the assessee filed in assessment year 2006-07 against the order of Learned CIT(Appeals) dated 17.8.2010. The grounds of appeal available in the present assessment year are verbatim same except

variation in the quantum. The assessee has claimed the expenses of Rs.1,42,564 under the head “business expenditure” which has been disallowed to it on the ground that it has not carried out any business activity. It has shown only rental income. In assessment year 2006-07, such expenses were claimed at Rs.1,51,446. We have upheld the disallowance.

3. The main claim in the present year is a sum of Rs.14,50,123 which represents interest expenses on the loans used for construction of the building and which according to assessee deserves to be allowed under section 24(b) of the Income-tax Act, 1961 against the rental income. We find that in assessment year 2006-07, a sum of Rs.14,23,797 was claimed by the assessee as interest expenses on the loans used for construction of the building. This issue has been set aside by the ITAT to the Assessing Officer for readjudication. The order of the ITAT in assessment year 2006-07 on both the issues reads as under:

“PER RAJPAL YADAV: JUDICIAL MEMBER

The assessee is in appeal before us against the order of Learned CIT(Appeals) dated 17.08.2010 passed for assessment year 2006-07. The grievance of the assessee is that Learned CIT(Appeals) has erred in confirming the disallowance of Rs.1,51,446 and Rs.14,23,797.

2. The registry has pointed out that the appeal is time barred by twenty days. In support of the condonation of delay, the assessee has filed an application along with affidavit of Shri Pawan Gupta S/o late Shri M.L. Gupta. It is pleaded in the application that the order of the Learned CIT(Appeals) was served upon the assessee on 27th September 2010. The appeal was presented before the ITAT on 16.12.2010. Shri Pawan Gupta, CA has deposed in his affidavit that he was regularly handling the income-tax matters of the assessee. In the year 2010, he was out of station when the order of the Learned CIT(Appeals) was communicated to his office by the assessee and he could not attend the work on account of his absence from the city. The appeal could not be filed well in time by the assessee.

3. On due consideration of the explanation of the assessee supported by the affidavit of CA Shri Pawan Gupta, we are of the view that there is no deliberate attempt at the end of the assessee for not filing the appeal before the ITAT well in time. It was prevented by sufficient reasons to present the appeal in the ITAT well in time. It has given its papers to the tax consultant who could not prepare the appeal and submit before the ITAT. Taking into consideration all these aspects, we allow the application for condonation of delay and condone the delay of twenty days in filing the appeal. We proceed to decide the appeal on merit.

4. In the first ground of appeal, grievance of the assessee is that Learned CIT(Appeals) has erred in confirming the disallowance of

Rs.1,51,446. The brief facts of the case are that the assessee has filed debited following expenses in its books of account.:

Loan processing fee	Rs.1,19,307
Sales-tax	Rs. 11,350
Insurance Expenses	Rs. 15,615
Bank charges	<u>Rs. 5,174</u>
	Rs.1,51,446

5. According to the Assessing Officer, the assessee company has not carried out any business activities. It has shown only rental income and against the rental income, such type of business expenses cannot be allowed. Learned Assessing Officer further observed that vide letter dated 11th September, 2008, assessee has given an explanation but it failed to submit any evidence demonstrating the facts which can enable it to claim these expenses.

6. On appeal, Learned CIT(Appeals) has confirmed the disallowance. With the assistance of learned representatives, we have gone through the record carefully. In our opinion, the assessee failed to submit evidence in support of its claim. No material was brought on the record indicating the fact that the assessee has carried out business activities. In this year, it has only shown rental income and against such income, the expenses enumerated in section 24b can be allowed. These expenses do not fall within the ambit of section 24b, hence, in our opinion, learned Assessing Officer has rightly disallowed the claim of the assessee.

7. In the next ground of appeal, grievance of the assessee is that Learned CIT(Appeals) has erred in confirming the disallowance of Rs.14,23,797. The brief facts of the case are that assessee has debited a sum of Rs.15,48,278 under the head “financial expenses”. According to the Assessing Officer, assessee failed to submit any explanation in support of its claim. His finding on this issue reads as under:

“ Further vide order letter dated 08.12.2008 and notice dated same, the assessee company was asked to show cause why the financial expenses of Rs.15,48,278 be not disallowed as the borrowed capital has not been utilized for business purpose and the case was fixed for 15.12.2008. ON the said date none attended nor any adjournment was filed. Out of the total expenses under the head financial expenses, amount of Rs.1,19,307 being loan processing fees and Rs.5,174 being bank charges has already been disallowed. In view of the non compliance of the above show cause, amount of Rs.14,23,797 being interest paid is being disallowed”.

8. On appeal, learned first appellate authority has confirmed the disallowance by recording following findings:

“5. The disallowance of interest expenses of Rs.14,23,797 was made by the A.O. on the ground that the borrowed capital was not used for business purposes as there was no reply to the query raised

by the A.O. in this regard at the time of assessment. During the appellate proceedings the learned AR has only submitted a covering letter dated 17.08.2009 enclosing therewith photocopy of a certificate dated 17.3.2009 from UCO Bank, Pusa Road, New Delhi Branch stating that “ a loan of Rs.1,95,00,000 against rent received on the property situated at C-22A, Sector 57, Noida to M/s. Rare Garments Pvt. Ltd. situated at G-15, Preet Vihar, Delhi-1100 92 and charged a sum of Rs.14,23,797 as bank interest up to 31.3.2006.” As can be seen from the above, the certificate issued by the Bank is silent on the purpose for which the loan of Rs.1,95,00,000 has been granted and the purpose for which the above amount has actually been utilized by the appellant company. The learned AR has also not made any submission on the matter either. Considering the above, the disallowance of Rs.14,23,797 made by the A.O. is found to be in order and is confirmed”.

9. The learned counsel for the assessee submitted that assessee took loan of Rs.2,51,23,774 from different persons, namely, Mohit Aggarwal, Chanderkanta Aggarwal, Ritu Aggarwal and Pawan Gupta. This loan was used for the construction as well as for purchase of land. Out of this loan, a substantial amount was repaid. The assessee thereafter took a term loan from UCO Bank amounting to Rs.1.95 crores. This loan was used to repay the unsecured loan taken from various individuals. Thus, the loan from the bank was used by the assessee for repayment of unsecured loan taken from various persons during the construction period. All these details were submitted to the

Assessing Officer. The Assessing Officer has accepted the contentions of the assessee in assessment year 2005-06 when an assessment order was passed under sec. 143(3) of the Act. Thus, all these details were on the record of the Assessing Officer. He could have cross verified, but instead of verifying the details, learned Assessing Officer proceed to disallow the claim of assessee. On the other hand, Learned DR submitted that no discussion is discernible from the assessment order for assessment year 2005-06. The assessee has not filed complete details before the Assessing Officer. According to the Learned DR, it is the assessee who has to demonstrate his case before the Assessing Officer for claiming any deduction.

10. We have heard the rival contentions and gone through the record carefully. Section 24 of the Income-tax Act, 1961 provides deduction against the income from house property. This section has a direct bearing on the controversy, therefore, it is imperative upon us to take note of the relevant clauses. It reads as under:

24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

(a)

(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

..... [Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan”.

Explanation – For the purposes of this proviso, the expression “new loan” means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the purpose of repayment of such capital]”

11. A bare perusal of the above provisions would indicate that income chargeable to tax under the head “income from house property” shall be computed after allowing deduction, namely, interest on an amount which was used for acquisition, construction, repair, renovation of a property. Thus, if an assessee has borrowed funds, purchased a property/land, raised construction it or renovated it and then earned income, then expenses in the shape of interest etc. would be allowed as a deduction out of the rental income. In the present case, assessee has claimed financial expenses and alleged that interest bearing funds were used for raising construction. Assessing Officer has rejected the claim of assessee on the ground that assessee failed to establish on the record as to how interest bearing funds were used for raising construction etc. which enable the assessee to earn rental

income. Before the Learned CIT(Appeals), assessee has filed a bank certificate, but learned first appellate authority has rejected its claim on the ground that such certificate is silent on the purpose for which the loan of Rs.1.95 crores has been granted. In our opinion, both the Revenue Authorities Below have failed to look into the accounts of the assessee for earlier years i.e. balance sheet, ledger account etc. The assessee has alleged that it has raised unsecured loan from individual for construction. These loans were repaid by taking a term loan from the bank. Considering all these details, we deem it appropriate to set aside this issue to the file of the learned Assessing Officer for verification and readjudicate of this issue. The assessee will be at liberty to submit all necessary details in support of its claim. Learned Assessing Officer shall decide the issue after providing due opportunity of hearing to the assessee.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes”.

4. Since there is no disparity on facts, therefore, following our order in assessment year 2006-07, we partly allow the appeal of the assessee and the issue regarding admissibility of deduction in respect of interest expenses amounting to Rs.14,50,123 is set aside to the Assessing Officer for readjudication.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Decision pronounced in the open court on 22.06.2012

Sd/-
(B.C. MEENA)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: 22/06/2012
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR