

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SMC BENCH 'B', BANGALORE**

BEFORE SHRI AK GARODIA, ACCOUNTANT MEMBER

ITA No.1367/Bang/2017
(Asst. Year – 2009-10)

M/s Coffeeday Enterprises Ltd.,
(Formerly known as Coffeeday
Resorts (P) Ltd.,
No.23/2, Coffeeday Square,
Vittal Mallya Road,
Bengaluru.

. Appellant

Vs.

The Income-tax Officer,
Ward-5(2) (3),
Bangalore.

Respondent

Appellant by : Shri C Ramesh, C.A

Respondent by : Shri Palanikumar, Addl. CIT

Date of Hearing : 22-11-2017

Date of Pronouncement : 29-11-2017

ORDER

PER SHRI AK GARODIA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals) – 2, Bangalore dated 13/4/2017 for assessment year 2009-10.

2. The grounds raised by the assessee are as under:-

“1. The order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it.

2. *The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance to the extent of Rs.32,80,8221- being the interest on borrowed capital which was allowable under the provisions of section 36(1)(iii) of the act.*

3. *The learned Commissioner of Income Tax (Appeals) erred in giving a finding that, the appellant had not commenced the business and hence the interest expenses is not allowable, ignoring the fact that, the appellant was already setup and ready for business and under the circumstances, the interest expenses could not have been disallowed.*

4. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, the appellant had received interest income on advances made and the interest expenses if not allowable under the head business should have been allowed under the head other sources, wherein the interest income has been considered for taxation.*

5. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, there was a direct nexus between the borrowed funds and the advances made on which interest income was received and under the circumstances, the interest expenses should have been allowed as expenditure against the interest income.*

6. *The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of fund raising*

charges of Rs.2,64,7561- as not relatable to business ignoring the fact that, the expenditure is revenue in nature and allowable in the year such expenditure was incurred.

7. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, the appellant company was setup and ready for business and under the circumstances, the fund raising charges should have been allowed as revenue expenditure.

8. The learned Commissioner of Income Tax (Appeals) erred in confirming the allowance of expenditure of Rs.1,21,657/- for the reason that, the appellant has not commenced the business ignoring the fact that, the company was incorporated and was ready for business and hence the expenditure was allowable.

9. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, the company was incorporated and the expenditure was in the nature of running expenses to keep the company in operation and hence allowable as revenue.

10. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, the appellant has declared income under the head other sources and if the expenditure is not allowable under the head business, should have been allowed under the head other sources, since the expenditure was revenue in nature and required for day to day running of the company.

11. It The learned Commissioner of Income Tax (Appeals) erred in not following the ratio laid down by the Hon'ble Supreme Court in the case of CIT V. M/s.Sarabhai Management Corporation Ltd (1991) 192 ITR 151 (SC).

12. The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.

Prayer

The appellant prays that, the Honourable Tribunal to kindly delete the addition consequent to

- i) Disallowance of interest paid on borrowed capital of Rs.32,80,822/-*
- ii) Disallowance of Expenditure on fund raising charges disallowed of Rs.2,64,576/-.*
- iii) Disallowance of expenditure such as rent, salaries and bank charges of Rs.1,21,657/-.”*

3. It was submitted by the Id AR of the assessee that ground No.1 is general and the issue involved in ground Nos.2,3,4 and 5 is one and the same and it was submitted that the assessee's submissions on this issue is available in the written submissions at pages 3 and 4 of the paper book.

4. The Id DR of the Revenue supported the order of the CIT(A).

5. I have considered the rival submissions. I find that the claim of the assessee is this that as per the Memorandum & Articles of Association of the assessee company, the main business of the assessee company is to deal and investment in shares. As per the balance sheet

of the assessee company available at page Nos.1 to 11 of the paper book, it is seen that the assets of the company includes investments of Rs.192 crores and deposit with a company M/s Mysore Amalgamated Coffee Estates Ltd. Rs.17.95 crores and Yes bank Rs.49 lakhs and there is no inventory or stock in trade. As per P&L account available at page 12 of the paper book, the assessee is showing income of Rs.3,44,869/- on account of interest on FDs and the activity in respect of purchase of shares of various companies is not shown as purchase and closing stock in trade. Specific query was raised by the Bench and in reply it was submitted by the Id AR of the assessee that there is no stock in trade and in my considered opinion, in the facts of the present case, it cannot be said that the assessee is doing any business activity and any income is to be taxed under the head 'income from business'. Therefore, no deduction is allowable u/s 36(1)(iii) in respect of interest paid by the assessee and claimed as allowable expenditure because as per the sec. 36(1)(iii), interest is allowable if it is incurred in respect of capital borrowed for the purpose of business. Since there is no business activity, no deduction is allowable u/s 36 (1)(iii). Hence, I reject these grounds.

6. Regarding ground Nos. 6 and 7, it was submitted by the Id AR of the assessee that the issue involved is one and same i.e. regarding disallowance of fund raising charges of Rs.2,64,756/-. In this regard also, the contentions of the Id AR of the assessee were same that the same is allowable as interest expenditure u/s 36(1)(iii) because as per the provisions of sec. 2(28A) interest includes services fee or other charges in respect of money borrowed or debt incurred or in respect of any credit facility which has not been utilized.

7. In my considered opinion on this issues also, the assessee is bound to fail because when it is seen and held that assessee has not commenced any business activity and no deduction is allowable u/s 36 (1) (iii) in respect of interest expenditure because it is not in respect of any business activity, the fund raising charges also cannot be allowed for the same reason. Accordingly, grounds 6 and 7 are also rejected.

8. Regarding ground No.8 to 1,1 it was submitted by the Id AR of the assessee that issue involved in these grounds is also one and the same i.e. regarding disallowance of business expenditure of Rs.1,21,657. He submitted that it was disallowed by the AO on this basis that the assessee has not commenced the business ignoring the fact that there were some activities for business and therefore, expenditure is allowable. My attention was drawn to page No.12 of the paper book regarding details of expenditures and it was pointed out that this includes Rent Rs.65,419/-, Salary and Wages Rs.56,000/- and Bank charges Rs.238/-. In this regard, my attention was drawn to page Nos.7 and 8 of the paper book, where the written submissions are made in respect of this issue. The assessee has placed reliance on the following judicial pronouncements at page 8 of the paper book :-

- i) CIT Vs. Sarabhai Management Corporation Ltd., (1991) 192 ITR 151 (SC)
- ii) SPPS Systems (P) Ltd., Vs. DCIT (2015) 154 ITD 465 (Hyd-Trib)
- iii) CIT Vs. Aspentech India (P) Ltd., (2010) 187 Taxman 25 (Delhi)
- iv) CIT (Central), Ludhiana Vs. Majestic Auto Ltd., (2013) 38 Taxmann.com 214 (P & H)
- v) CIT Vs. Rampur Timber & Turnery Co., Ltd., (1981) 6 Taxman 241 (All)

vi) Preimus Investment and Finance Ltd., Vs. DCIT (ITAT Mumbai)

9. The Id DR vehemently followed the order of the CIT(A).

10. I have considered the rival submissions. I find that this is not the objection of the AO that no sales and Revenue has been generated. The objections of the AO is this that the assessee company has not carried out any business activity but earned the income. I have also seen that in the P & L account the assessee is getting interest income and as per the balance sheet, the assessee has shown investments of Rs.192 crores and deposits in a company Rs.17.95 crores and FD with bank Rs.49 Lacs apart from small amount of cash in hand, cash at bank, interest on FD accrued and TDS etc., and, therefore, it is apparent that no business activity was undertaken by the assessee in the present year. In the light of these facts, I examine the applicability of various judgments cited by the Id AR of the assessee at page No.8 of the paper book as noted above.

11. The first judgment cited is a judgment of Hon'ble Apex Court rendered in the case of CIT Vs. Sarabhai Management Corporation Ltd., (Supra). In that case, the assessee had purchased property and it was on the lookout of the persons to whom it could be let out and it had been able to get customer and it had carried out repairs/installation etc., and taken other steps in the premises for converting from residential house into business accommodation in line with the requirements of the customer and under this facts, it was held by the Hon'ble High Court in that case that the assessee's business has commenced but in the present case, the facts are totally different. It is seen that in the present case, no activity was undertaken by the assessee which can be said to be

business activity. Therefore, in the facts of the present case, this judgment is rendering no help to the assessee.

12. The second judgment cited is of the Tribunal rendered in the case of SPPS Systems (P) Ltd., Vs. DCIT (Supra). In that case, the assessee company employed a software professional and paid services charges and incurred other expense and the assessee could not get any work and hence, no business activity was disclosed by the assessee. Under these facts, it was held by the Tribunal in that case that there was business activity though there was no Revenue during the year under consideration. In the facts of the present case, this Tribunal order is also not rendering any help to the assessee because in the present case, it was not been shown that there is any business activity undertaken by the assessee.

13. The next judgment cited is a judgment of Hon'ble Delhi High Court rendered in the case of CIT Vs. Aspentech India (P) Ltd., (Supra). In that case, it was held by the CIT(A) and Tribunal that the business has already started and AO was swayed away by the huge expenditure against meager income. It was held under these facts that since business has already been commenced, entire expenditure is allowable. In the present case, this judgment is also not rendered any help since in the present case, business has not commenced.

14. Next cited judgment is rendered in the case of CIT Vs. Rampur Timber & Turnery Co., Ltd. (Supra). In that case, it was held by Hon'ble Allahabad High Court that expenditure claimed being for proper disposal of the assets owned by the company and it was allowable u/s 57(iii) of the Income-tax Act. This judgment is also not applicable in the present case.

15. The remaining two cases cited are not reported in any journal and copy of the judgment was not provided and therefore, applicability of these judgments cannot be examined.

16. As per the above discussion, I have seen that none of the above decisions relied on by the Id AR of the assessee has rendered any help to the assessee and in my view, as per the facts of the present case, business of the assessee has not been started because it was not shown that any business activity was undertaken by the assessee. Hence, I find no reason to interfere in the order of the CIT(A).

17. In the result, the assessee's appeals is dismissed.

Order pronounced in the open court on **29th November, 2017.**

**Sd/-
(AK GARODIA)
ACCOUNTANT MEMBER**

Vms.

Bangalore

Dated : 29/11/2017

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Asst. Registrar, ITAT, Bangalore.