

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गराव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.71/Vizag/2015  
(निर्धारण वर्ष / Assessment Year: 2007-08)

Kanyaka Parameswari Rice Mill  
Machilipatnam  
[PAN No.AAIFS3880N]  
(अपीलार्थी / Appellant)

ITO, Ward-1,  
Machilipatnam  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR  
प्रत्यार्थी की ओर से / Respondent by : Shri Y. Sesa Srinivas, DR  
सुनवाई की तारीख / Date of hearing : 17.04.2018  
घोषणा की तारीख / Date of Pronouncement : 25.04.2018

**आदेश / ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals) {CIT(A)}, Vijayawada vide appeal No.265/MTM/CIT(A)/VJA/09-10 dated 31.12.2014 for the assessment year 2007-08.

2. Ground No.1 & 4 are general in nature, which does not require specific adjudication.

3. Ground No.2 is related to the assessment of income under the head "income from other sources" against the admission of income by the assessee under the head "business income". The assessee filed the return of income declaring loss of ₹ 1,51,438/- under the head "business income". The assessee derives income from leasing of its rice mill comprising of building and machinery. The A.O. selected the case for scrutiny and found that as per the lease deed, the rent accrued was ₹ 4,81,000/- towards building rent, machinery rent, municipal tax, land tax, etc. against the admission of income of ₹ 4,50,000/- as rent received. The assessee admitted the income under the head 'business income'. The assessing officer further observed that the assessee did not provide any services or amenities nor did it has provided any such services to the lessee except leasing out the property and receiving the rent from the rice mill. The assessee also did not carry on any business activity. Hence, the A.O. assessed the income on leasing of the rice mill under the head 'income from other sources'. The A.O. relied on the decision of Hon'ble Supreme court in the case of M/s. Sultan Brothers Pvt. Ltd. Vs. CIT 51 ITR 353 (SC) wherein Hon'ble Apex court held as under:

*"We do not think that the cases cited lay down a test for deciding when a letting amounts to a business. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature."*

4. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed action of the A.O. in assessing the income under the head 'income from other sources'.

5. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld. A.R. submitted that the assessee owned a rice mill, shed, godowns and machinery and leased the premises to another rice mill i.e. M/s. Sri Kanyaka Parameswari Rice Mill Contractors Company, (hereinafter called as a 'lessee') for annual lease rent of ₹ 4,50,000/-. Since the assessee has constructed a commercial asset and exploiting the commercial asset, the assessee has rightly offered the income under the head 'business income'. The Ld.AR further argued that the intention of the assessee is to do business by exploitation of commercial asset, thus the income of the assessee is to be assessed under the head 'business income' but not under the head other sources. The Ld.AR argued that the orders of Ld. CIT(A) may be

set aside and direct the A.O. to assess the income under the head 'business income'.

6. On the other hand, the Ld. D.R. argued that the assessee owns rice mill which is leased to the lessee. The assessee is not carrying any business activity in the rice mill. As rightly observed by the A.O., the assessee has not provided any services to the lessee. Therefore, the Ld. D.R. of the view that both the A.O. as well as the CIT(A) have rightly held the income under the head 'income from other sources' and no interference is called for in this case.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the A.O. as well as the Ld. CIT(A) has treated the income from letting out of the rice mill as 'income from other sources' and followed the decision of Hon'ble apex court in the case of M/s. Sultan Brothers Pvt. Ltd. Vs. CIT (supra). The Hon'ble ITAT, Visakhapatnam has an occasion to consider the issue with regard to the leased income of poultry complex. The assessee had offered the rental income from its leased out poultry complex under the head 'business income'. The A.O. has assessed the same as 'income from other sources' and Hon'ble ITAT confirmed the action of the A.O. in assessing the income under the head

'income from other sources' in the case of ITO Ward-4(1) Vs. Pujya Sujatha Agro Farms Pvt. Ltd. 12 taxmann.com 457, (Visakhapatnam). Similarly, Hon'ble Delhi High court in the case of Garg Dyeing & Processing Industries Vs. ACIT reported in 28 taxmann.com 287 held that letting out of building and letting out of fixtures, fittings, air conditioning, plant, furniture were inseparable rental income is assessed as income from other sources. Hon'ble ITAT Bangalore Bench in the case of T.R. Mills Pvt. Ltd. Vs. ITO Ward-12(2), Bengaluru in 84 taxmann.com 74 (Bangalore Trib.) held that the business asset including of fittings and fixtures was let out but after discontinuing business activity of textile mill, rental income could not be treated as income from 'house property' and the same would be assessed as income from other sources. In the instant case, the assessee owns a rice mill and let out the rice mill to another rice mill and receiving the rental income without carrying on any business activity or rendering any services incidental to carrying on the rice mill. Therefore, the case laws cited (supra) and the decision of Hon'ble apex court in the case of M/s. Sultan Brothers Pvt. Ltd. (supra) relied upon by the lower authorities are squarely applicable and the lower authorities have rightly assessed the income under the head 'income from other sources'. Accordingly, we uphold the order of the Ld. CIT(A) on this ground and dismiss the appeal of the assessee.

8. Ground No.3 is related to the disallowance of expenditure incurred by the assessee, denial of depreciation and set off of unabsorbed depreciation. In the assessment order, the assessing officer did not allow the unabsorbed depreciation claimed by the assessee. The A.O. has not given any reason for denying the set off of unabsorbed depreciation of earlier years. However, the A.O. allowed the current year depreciation u/s 57(ii) of the Act. Depreciation is an allowance and section 32 of the Act provides for depreciation on assets used for the purpose of businesses. Section 32(2) of the Act provides for carry forward and set off of unabsorbed depreciation. Section 32(2) of the Act reads as under:

***"Depreciation.***

*Section 32(2) where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years."*

9. The unabsorbed depreciation of earlier year is considered as the depreciation allowance of the succeeding year, therefore, the unabsorbed depreciation allowance appearing, if any shall be added to the allowance for the depreciation of the succeeding year and deemed

to be part of the allowance for current year and and hence eligible for set off against business income and any other head of income for that year of succeeding year. There are no conditions regarding the discontinuance of business. This issue has been considered by the coordinate bench of ITAT Delhi in Nanak Ram Jaisinghani Vs. ITO Ward-13(1), New Delhi reported in (2018) 92 taxmann.com 86 (Delhi Trib.) and held that unabsorbed depreciation and brought forward loss can be set off against income from other sources. For ready reference, we extract relevant paragraph of the order of the coordinate bench cited (supra):

- *Section 32(2) provides for treating the unabsorbed depreciation of earlier years as the depreciation of the current year and thus it becomes in the nature of current year's business loss. Section 71(1) read with section 71(2A) further provides that the current years business loss can be set off against any income except the income under the head salary. Thus on collective reading of these three sections, it is very clear that B/F depreciation can be set off against income from other sources of the current year.*
- *Section 72(2) provides that any allowance shall be first treated as provided in section 71(1) and only thereafter the balance shall be carry forward. Thus, section 72(2) nowhere restricts for setting off of income from other sources from B/F depreciation. It is also found that in the case of the assessee, in assessment year 2009-10, the Assessing Officer himself allowed similar set off under section 143(3). It is also noteworthy that for not allowing this set off, in this year, the Assessing Officer has not assigned any reason whatsoever. Thus, in view of above legal position, it is held that whatever income stands assessed under the head income from other sources should be allowed to be set off against B/F depreciation and B/F losses. In result this ground of appeal is allowed. [Para 15]*

10. The similar views are expressed by the Hon'ble courts as under:

CIT Vs. Sahu Rubber Pvt. Ltd. 179 ITR 29 (Bom)

CIT Vs. Deepak Textile Industries Ltd. 210 ITR 1029 (Guj)

CIT Vs. Virmani Industries Pvt. Ltd. Etc. 216 ITR 607 (SC)

11. Following the case laws cited (supra), since the unabsorbed depreciation partakes the character of current year depreciation, we hold that the A.O. cannot deny the set off of unabsorbed depreciation against the income from other sources. Accordingly, we direct the A.O. to allow the unabsorbed depreciation from the rental income of the rice mill. The assessee's appeal on this ground with regard to depreciation is allowed.

12. The next issue of the assessee in ground No.3 is to allow the expenditure incurred by the assessee. In the assessment order, the A.O. did not allow the expenditure claimed by the assessee. The expenditure debited to the P&L account was as under:

<i>Lessee Income</i>		<i>450000</i>
<i>Interest on I. T. Refund</i>		<i>4040</i>
<i>Interest paid to Bank</i>	<i>79793</i>	
<i>Interest paid to others</i>	<i>29570</i>	
<i>Interest paid to partners</i>	<i>88194</i>	
<i>Establishment Char</i>	<i>1440</i>	
<i>Electricity development Char</i>	<i>164000</i>	
<i>Remunerations – Partners</i>	<i>12000</i>	
<i>Depreciation provided in book</i>	<i>124323</i>	
	<u><i>499320</i></u>	<u><i>454040</i></u>
<i>Net loss</i>	<i>45280</i>	



Add: Depreciation provided in Books		124323
Deduct: Depreciation as per IT Act	<u>230478</u>	
	<u>275758</u>	<u>124323</u>
Unabsorbed depreciation C/F	151435	

13. As per section 57(iii) of the Act, the assessee is entitled for the expenditure incurred for earning the income. The section 57(iii) reads as under:

*"57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely –*

*.....  
(iii) Any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;"*

14. In the instant case, the assessee has claimed deduction in respect of interest paid to bank, interest paid to others, interest paid to partners, establishment charges, electricity development charges and remuneration to partners. The Ld. A.R. argued that except the interest and the remuneration paid to partners, the remaining expenditure incurred by the assessee is for earning the income and the same is allowable u/s 57(iii) of the Act. The interest paid to others is related to the funds borrowed by the assessee for establishing or renovation of the rice mill, hence, the interest expenditure is directly related to the earning income and to be allowed. Similarly, in respect of establishment charges and electricity development charges, Ld. A.R. argued that these

are the expenses which are incurred for the purpose of establishing and running the rice mill, therefore, requested to allow the expenditure.

15. Section 57(iii) of the Act allows the expenditure incurred for earning the income. This issue is also considered by the Hon'ble ITAT, Visakhapatnam bench in the case of Pujya Sujatha Agro Farms Pvt. Ltd. 12 Taxmann.com 457 (supra) and directed the A.O. to allow the expenses incurred for earning the income. Therefore, we hold that the assessee is entitled for the allowance of expenditure, accordingly we direct the A.O. to allow the expenses incurred for earning the income as well as the interest incurred in establishing, repairing and renovating the rice mill. This ground of appeal of the assessee is allowed. However, the interest and remuneration paid to partners is not covered u/s 57(iii) and the AO has rightly disallowed the same. Thus we confirm the disallowance to the extent of interest and remuneration paid to the partners and direct the AO allow the remaining expenditure including the interest paid to others. The appeal of the assessee on this ground is partly allowed.

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

The above order was pronounced in the open court on 25<sup>th</sup> Apr'18.

Sd/-  
(वी. दुर्गाराव)  
**(V. DURGA RAO)**

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S. SUNDER SINGH)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 25.04.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – M/s. Kanyaka Parameswari rice Mill Owners Company, D.No.7-247, Godugupet, Machilipatnam
2. प्रत्यार्थी / The Respondent – The ITO, Ward-1, Machilipatnam
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM