आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं माननीय श्री रविश सूद, न्यायिक सदस्य के समक्ष।

BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND HON'BLE SHRI RAVISH SOOD, JM

आयकरअपील सं./ I.T.A. No.3033/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

Assistant Commissioner of Income Tax-7(2)(2) Room No.623, 6th Floor Aaykar Bhawan M.K.Road, Mumbai-400 020	बनाम/ Vs.	**New Era Mercantile Private Ltd** 442, Industry Manor A Marathe Marg, Prabhadevi Mumbai-400 025
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AACN-1710-H**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&
CO. No. 40/Mum/2019
[Arising out of ITA No. 3033/Mum/2017]
(**निर्धारण वर्ष** / Assessment Year: 2012-13)

New Era Mercantile Private Ltd 442, Industry Manor A Marathe Marg, Prabhadevi Mumbai-400 025	बनाम/ Vs.	**Assistant Commissioner of Income Tax-7(2)(2)** Room No.623, 6th Floor Aaykar Bhawan M.K.Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AACN-1710-H**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Ms. Purvi Gandhi- Ld. AR
Revenue by	:	Sh. Prakash Mane- Ld.DR

सुनवाई की तारीख/ **Date of Hearing**	:	14/02/2019
घोषणा की तारीख / **Date of Pronouncement**	:	26/02/2019

आदेश / O R D E R

Per Bench

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-13 [CIT(A)], Mumbai, *Appeal No. CIT(A)-13/DCIT-7(3)(1)/956/2015-16 dated 01/02/2017* on following grounds of appeal: -

> 1. *On the facts and in the circumstances of the case and in law, whether the Ld. Commissioner of Income tax(Appeals) is right in holding receipts of Rs.1,25,607/- of miscellaneous income and Rs.75,150/- of insurance premium refund are assessable under the head "Business Receipts" in place of income from Other Sources without appreciating that there was no business activity in the relevant previous year and no sales were reported in returns of income for A.Y. 2013-14 and 2014-15.*
> 2. *On the facts and in the circumstances of the case and in law, whether the Ld. Commissioner of Income tax (Appeals) is right in deleting disallowances of expenses incurred on account of employee benefit expenses, depreciation and other expenses totaling to Rs.71,62,567/- without appreciating the fact that there was no business activity in the relevant previous year and no sales were reported in returns of income for A.Y. 2013-14 and 2014-15.*
> 3. *On the facts and in the circumstances of the case and in law, whether the Ld. Commissioner of Income tax(Appeals) erred in not appreciating the fact that the assessee failed to adduce any material before the Assessing Officer to reflect intention of carry on the business.*

The assessee has filed Cross Objection in support of the impugned order.

2.1 Fact in brief are that the assessee being *resident corporate entity* stated to be engaged in *manufacturing of soaps and detergents* was assessed in scrutiny assessment *u/s 143(3) of the Income Tax Act, 1961* on 24/03/2015 by *Ld. Deputy Commissioner of Income Tax, Circle-7(3)(1), Mumbai [AO]* wherein the income of the assessee was determined at Rs.3.11 Lacs as against loss of Rs.79.28 Lacs filed by the assessee on 28/09/2012.

2.2 During assessment proceedings, it transpired that the assessee has not carried out any manufacturing activity during the year. The assessee reflected other income of Rs.6.42 Lacs in the profit & loss which consisted of profit on sale of assets, interest on FDRs, misc. income, insurance premium refund and sundry balances written-off. The misc. income of Rs.1.25 Lacs and insurance premium refund for Rs.0.75 Lacs treated by the assessee as *Business Income* was treated *as Income from Other Sources* for want of details.

2.3 It was also noted the assessee claimed certain business expenditure which has been disallowed on the ground that the assessee did not carry out any business activity during the year and therefore, the same could not be allowed either u/s 37 or u/s 28. The same resulted into disallowance of following expenditure: -

Head of Expenditure	***Amount (Rs.)***
Employee benefit expense	*33,03,025*
Depreciation	*2,89,084*
Other expenses	*45,34,684*
Total	***71,62,567***

3.1 Aggrieved, the assessee agitated the same with success before Ld. CIT(A) vide impugned order dated 01/02/2017 wherein the assessee submitted that adequate details of misc. income were duly filed before Ld. AO vide letter dated 15/10/2014 and therefore, the observations made by Ld. AO were incorrect. After appreciation of details, Ld. CIT(A) came to conclusion that misc. income of Rs.1.25 Lacs was received by way of liquidation of old stock and the insurance premium refund was refund of excess premium paid by the assessee and therefore, these items constituted *business receipts.*

3.2 The assessee also submitted that non-carrying of manufacturing activity could not vitiate claim of business expenditure since the assessee was in existence and had every intention to carry out the business. The first appellate authority, after due consideration of factual matrix concurred with assessee's stand in the following manner: -

> *5.3 **Decision:**- I have carefully considered the Assessing Officer's order as well as the AR's submissions. The short point for consideration here is whether expenditure for running a company should be allowed in a particular year where there was no manufacturing activity and consequently no or almost nil business income. The appellant was manufacturing soaps and detergents up to the previous year preceding the relevant previous year. During the relevant previous year neither was there any manufacturing activity nor was there any substantial trading activity. The only trading was to the tune of Rs.1.25 Lakh, whereby certain old stock was liquidated. Although there was very little business income, the appellant had continued to incur certain expenditure required for running a company. The Assessing Officer however did not agree with this proposition and disallowed all the expenses citing the lack of business per se. There has been no winding up of the appellant-company either. Its physical infrastructure used in the manufacturing activity and its human resource infrastructure too is intact. In these circumstances, there cannot be any case for disallowance of the business expenses as done by the Assessing Officer. In similar circumstances, the Delhi Bench of Hon'ble Tribunal had held the matter in favour of the assessee while rendering its decision in the case of Harsh International Pvt. Ltd. v. DCIT (ITA no. 2498/Del/2013, assessment year 2009-10 dated 14th February 2014). It had held that the intention to conduct the business activity was the paramount factor for examining the assessee's claim with regard to expenses of depreciation. As the infrastructure set up by the appellant had not been dismantled, it had to be presumed that it had every intention of carrying on its business. Even if the assessee was unable to carry out its business due to unavoidable circumstances beyond its control, it was entitled to allowance of its fixed and necessary expenses required to maintain its basic infrastructure, regardless of the fact that it had not been put to use during the year under consideration. A copy of this unreported decision has been placed on the appellate record. In the case of CIT v. Vellore Electrical Corporation Ltd (113 Taxman 236) the Hon'ble High Court of Madras had occasion to deal with this very issue. In that case, the assessee-company had been acquired by the State Government, which act of acquisition had been challenged by the assessee and was pending before the Hon'ble Supreme Court in that particular previous year. During that period the assessee had maintained its establishment and continued to incur salaries as well as other expenses. In that case it had been held that it would be wrong to hold that the said expenses had been unconnected with its business, regardless of the fact that there was no actual business conducted during that period. It would hence become clear that the appellant's expenditure-which had been incurred essentially to keep its infrastructure in terms of assets as well as manpower in running*

> *condition-has to be allowed, notwithstanding the fact that there was no manufacturing of soaps and detergents during the relevant previous year and that there was consequently very little trading of the same. It would also be important to note that the Assessing Officer's disallowance of the impugned expenditure was not based on any other criteria but the there was lack of business activity and the consequential assessability of its profit. Accordingly, after respectfully following the aforecited superior judicial authorities, the entire disallowance of expenditure of Rs.71,62,567/- as made by the Assessing Officer is hereby set aside.*

Aggrieved the revenue is in further appeal before us.

4. The Ld. Departmental Representative [DR] submitted that the assessee did not carry out any business activity and therefore, the expenditure could not be allowed within the meaning of Section 37(1). Per *Contra,* Ld. Authorized Representative for Assessee [AR], *Ms. Purvi Gandhi,* submitted that although there was temporary lull in the business activities, however, the same could not be a ground to disallow genuine business expenditure.

5. We have carefully heard the rival submissions and perused relevant material on record. The undisputed position that emerges is that the assessee has not carried out any business activity during the impugned AY but claimed expenditure in the nature of *employees' expenses, depreciation and other expenditure* which has been disallowed by Ld. AO for want of business activities / business receipts. In our considered opinion, so long as the assessee's business is in existence, actual business receipts in not a *sine qua non* to claim the business expenditure. The assessee was a corporate entity and its business could come to an end only upon its being wound up as per due process of law. The corporate entity has to incur expenditure so as to maintain its corporate personality and day-to-day existence. Other

notable feature is the fact that the assessee has claimed depreciation which demonstrate that its fixed assets were in existence and were not sold-off during impugned AY. The perusal of *other expenses* as placed on record reveal that the same are in the nature of *electricity, water charges, rent, duties & taxes, travelling, telephone expenses, legal expenses & other routine expenditure.* So far as the treatment of misc. income and insurance premium refund is concerned, the complete details of the same was already filed by the assessee before Ld. AO and the same were found to be arising out of liquidation of old stock and refund of excess premium paid by the assessee and therefore, the same were clearly business income in nature. The revenue is unable to rebut the factual matrix as well as case laws being relied upon by first appellate authority. This being the case, no infirmity or perversity could be found in the impugned order. Accordingly, the revenue's appeal stands dismissed which makes assessee's *cross-objections infructuous.*

6. The appeal as well as *cross-objection* stand dismissed.

Order pronounced in the open court on 26th February, 2019.

Sd/-	***Sd/-***
(Ravish Sood)	**(Manoj Kumar Aggarwal)**
न्यायिक सदस्य / **Judicial Member**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 26/02/2019
Sr. PS Thirumalesh/ Sr.PS:-Jaisy Varghese

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.**