

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER

**ITA No.472/M/2024
Assessment Year: 2010-11**

M/s. Janak Texturisers Pvt. Ltd., C/O G.P. Mehta & Co. CAS, 807, Tulsiani Chambers, Nariman Point, Mumbai Maharashtra-- 400 021 PAN: AAACJ9297M	Vs.	The Income Tax Officer, Ward-4(2)(1), 647-Aayakar Bhawan, M.K. Road, Mumbai, Maharashtra-400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri G.P. Mehta, Ld. A.R.
Revenue by : Ms. Kavitha Kaushik, Ld. Sr. D.R.

Date of Hearing : 01.01.2025
Date of Pronouncement : 13.01.2025

O R D E R

Per : Beena Pillai, Judicial Member:

Present appeal filed by the assessee arises out of order dated 15.12.2023 passed by the Ld. Addl/Joint Commissioner of Income Tax (Appeals), Kolkata (in short “Ld. Addl./Joint Commissioner”) for A.Y. 2010-11 on following grounds of appeal:

- “1. The orders passed by the learned lower authorities are bad in law and bad in facts.*
- 2. Assessment Order passed by the learned Assessing Officer is ab-initio void inasmuch as, reasons recorded, if any prior to issue of notice u/s 148 of the I.T. Act, 1961 were not provided to the appellant.*
- 3. The notice issued under section 148 of the I.T. Act, 1961 being a vague notice is ab-initio void.*

4. *The notice issued under section 148 of the I.T.Act, 1961 is ab-initio void, for want of sanction by designated authority. Consequently, assessment order passed in pursuance of said notice is also ab-initio void*

5. *The learned lower authorities have grossly erred in disallowing / confirming disallowance of expenses to the extent of Rs. 6,78,980/-. Reasons assigned for the impugned disallowance are wrong and contrary to settled legal position.*

6. *The learned lower authorities have grossly erred in not appreciating the fact that in case of a private limited company, certain expenses are essentially relatable to its existence / establishment hence same ought to have been allowed in its entirety.*

7. *Having regard to the facts and circumstances of the case, provisions of law & judicial propositions, entire amount of of the expenses incurred at Rs. 6,78,980/- ought to have been allowed in full.*

8. *The appellant may please be permitted to raise any additional or alternative ground on or before the hearing of appeal.”*

Brief facts of the case are as under:

2. The assessee is a private limited company. It is noted that the assessee did not file any return of income for the year under consideration and accordingly the assessment was reopened by issuing notice u/s 148 of the Act on 31.03.2017.

2.1. In response to the notice, assessee filed its reply on 28.04.2017 requesting to drop the reassessment proceedings, however, no return of income was filed in response to the notice u/s 148 of the Act.

2.2. Subsequently, notice u/s 142(1) was issued calling upon assessee to furnish complete set of return of income filed, copy of balance sheet and capital account and other accounts maintained with all attachments. There was no response to the notices issued. Subsequently, notice u/s 142(1) was sent to the email of the assessee requesting for an immediate compliance as there was no response to the second notice issued. Summon u/s

131 of the Act was issued calling upon the assessee to appear for the reassessment proceedings. Subsequently, one more letter was issued asking upon assessee to furnish the details as called for. In compliance, assessee vide letter dated 12.12.2017 filed details such as computation of income, financial statements, copy of acknowledgment of return filed on 11.12.2017 declaring total income of Rs.2,54,132/-.

2.3. The Ld. AO after verification of the details observed that, assessee has earned income from rent and interest income during the year under consideration and has claimed expenses in the books of account amounting to Rs.7,62,261/-. The Ld. AO was of the opinion that, the assessee did not have any income arising out of the business activity and hence disallowed the expenditure claimed to the extent of Rs.6,78,980/-.

2.4. The Ld. AO observed that, the assessee had claimed deduction u/s 24 against the rental income of expenses incurred for the purpose of business was also set off against the rental income which according to him was not allowable.

Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the Ld. CIT(A).

3. The Ld. CIT(A) summarily upheld the additions made by the Ld. AO by observing that there was no business activity and assessee failed to submit any documentary evidences to prove the genuineness and nexus of expenses.

Aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before this *Tribunal*.

4. The Ld. A.R. submitted that, the only issue contested by the assessee before this *Tribunal* is Ground Nos.5, 6 & 7 relating to disallowance of expenses of Rs.6,78,980/-. He submitted that, vide written submission filed before this *Tribunal* the ground Nos.1 to 4 have not been pressed by the assessee. The said written submission is placed on record to support the submissions of the Ld. D.R.

Accordingly **ground Nos.1 to 4** raised by the assessee stand dismissed.

5. In respect of **Ground Nos.5 & 6** the Ld. A.R. submitted that, assessee had claimed expenditure to the extent of Rs.7,62,261/-, the breakup of which are as under:

<u>Description</u>	<u>Amount</u>
<i>Bank Charges</i>	4,962
<i>Bank Loan Interest</i>	34,695
<i>Computer Expenses</i>	5,645
<i>Depreciation as per Income Tax</i>	56,382
<i>Directors remuneration</i>	4,20,000
<i>Electricity Charges</i>	54,504
<i>Filing Fees</i>	24,500
<i>Income Tax Appeal Filing Fees</i>	5,611
<i>Legal & Professional charges</i>	7,500
<i>Membership & Subscription</i>	11,025
<i>Office Expenses</i>	18,127
<i>Office Rent</i>	20,316
<i>Payment to auditors</i>	13,788
<i>Repairs & Maintenance charges</i>	8,640
<i>Telephone Charges</i>	34,147
<i>Vehicle Insurance</i>	3,720
<i>Vehicle Expenses</i>	38,699

	7,62,261
	=====

5.1. He submitted that, out of the above expenses the Ld. AO allowed expenses to the extent of Rs.26,899/- being appeal filing fee, legal and professional charges and payment to the auditors.

5.2. The Ld. A.R. submitted, that the other expenses disallowed are without any basis as there was no business income for the

year under consideration. He submitted that, on perusal of the above expenses none of the expenses could be categorized as not for the purposes of business. He submitted that, assessee, being a private limited company, has to incur expenses to maintain the establishment and there are certain relevant statutory payments that have to be incurred.

5.3. The Ld. A.R. submitted that, the main business of the assessee was to manufacture nylon threads at the factory which considerably slow down from the year 2009 due to financial difficulties. The Ld.AR submitted that, instead of carrying out own manufacturing/trading activity the assessee thus exploited its business asset by way of renting out its business assets. He submitted that, the factory premises formed part of the block of assets that was rented out against which the rental income was earned.

He submitted that, the business asset were thus utilized by the assessee and the expenses incurred on day to day basis for renting of the establishment cannot be denied.

5.4 The Ld. A.R. placed reliance on the decision of co-ordinate Bench of the *Tribunal* in case of *Raja Bahadur Motilal Mills Ltd. vs. ACIT, Circle VI(5), Bombay* in ITA Nos.6717 to 6721 for AY 1978-79 to 1982-83 and also on the decision of the *Hon'ble Delhi Tribunal* in case of *ITO vs. Mokul Finance (P) Ltd.* 110 TTJ (Del) 445, *CIT vs. Kriti Resorts Pvt. Ltd.* 60 DTR (HP) 138.

5.5 The Ld. A.R. thus submitted, that the claim of the assessee being in accordance with law cannot be denied. He also placed reliance on the decision of *Hon'ble Bombay High Court* in case of *Hindustan Chemical Works Ltd. vs. CIT* reported in 124 ITR 561 wherein *Hon'ble Bombay High Court* held that, even though no

income was actually earned for sometime from the assets which were in possession of the company that fact was not relevant for considering the assessee's claim of deduction of expenditure incurred for holding these assets.

5.6 On the contrary, the Ld. D.R. relied on the orders passed by the authorities below.

I have perused the submissions advanced by both the sides in the light of records placed before me.

6. It is noted from the records that the assessee has computed the rent receipt from the factory premises as income from house property against which standard deduction has been claimed further the expenses has been claimed in the profit and loss account and the rent received is also declared as income from under the head other income, this categorically clear from Schedule-I to the profit and loss account.

6.1 In my view, assessee computed the rental income received under the "income from house property" as well as business income which is not the right procedure. No doubt, the rental income received, from the factory premises, amounts to income under the head house property. However, considering the fact that the premises rented out formed part of the fixed Schedule assets, it would be appropriate if the rental income received is considered u/s 57 of the Act, wherein all related expenses incurred by the assessee to keep up the property could be claimed as an expenditure.

6.2 Decisions relied by the Ld.AR are distinguishable on facts as in those cases the assessee therein re-started its business subsequently on this background *Hon'ble Courts* considered the claim of assessee by allowing expenditure to be claimed u/s 37(1)

of the Act. However in the present facts of the case, there is no evidence brought on record by the Ld.AR regarding revival of business activity in subsequent years.

6.3 It is therefore, directed to the Ld.AO to verify the rental income received by the assessee and compute taxability u/s 57 of the Act by considering proportionate expenses against such rental income. The Ld.AO is directed to re-compute the taxable income of the assessee in the hands of the assessee u/s 57 of the Act as mentioned hereinabove. **Accordingly, grounds raised by the assessee stands partly allowed.**

In the result, appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 13.01.2025.

**Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER**

Mumbai, Dated: 13.01.2025.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.