

**Expenditure incurred during the interval period of setting up of a new business and its commencement can be allowed as deduction**

The ITAT, Pune in *Messung Systems Private Limited v. ITO [ITA No.683/PUN/2018 dated November 7, 2022]* partly allowed the appeal of the assessee against the order passed by the Revenue Department holding that the expenses incurred for pre- operative nature cannot be set-off against the interest income. Held that, expenditure incurred by a company during the setting up of new business and its commencement can be allowed as deduction.

**Facts:**

Messung Systems Private Limited (“**the Appellant**”) is engaged in the business of trading of Programmable Logic Controllers (“**PLC**”) and parts thereof. The return of income of the Appellant for the Assessment Year (“**A.Y.**”) 2014-15 was filed on September 30, 2014 declaring total income of INR 27,83,430/-. During the immediate preceding year i.e. Financial year (“**F.Y.**”) 2012-13, the Appellant sold its entire business and thus was in the process of setting up a new business.

During, setting up of new business the Appellant incurred certain expenditure and also earned interest income on Fixed Deposits (“**FDs**”). The Appellant claimed the set-off of the expenses incurred against the interest income. The Assessing officer (“**A.O.**”) was of the opinion that the setting up of expenses incurred for pre-operative nature cannot be set-off against the interest income and thus vide an order dated November 29, 2016 passed under Section 143(3) of the Income Tax Act, 1961 (“**the IT Act**”), brought to tax the interest income of Rs.2,21,92,972/- under the head “Income from other sources”.

Subsequently, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals) (“**CIT(A)**”) contending that the expenditure incurred between the setting up of the business and commencement of the business are allowable as revenue expenditure and such loss be

allowed to set-off against the income assessed under the head “Income from other sources”. However, the same was rejected by the CIT(A) on the ground that the expenses incurred by the Appellant are pre-operative expenses and thus are not allowable as deduction.

Hence, this appeal has been filed.

**Issue:**

Whether the expenses incurred by the Appellant are pre-operative expenses and are allowable as deduction?

**Held:**

The ITAT, Pune in *ITA No.683/PUN/2018* held as under:

- Observed that, the A.O. and CIT(A) simply discussed the legal principle without advertng to the material facts on record and had not really decided whether the Appellant had set-up and ready to commence the business or not.
- Noted that, the A.O. and CIT(A) had failed to examine the nexus of the expenditure incurred and the new business which is stated to have been set-up.
- Opined that, the matter requires remission to the file of the A.O. to decide the issue in appeal with reference to the material on record whether the appellant company had set-up a new business or not.
- Held that, the expenditure incurred during the interval period of setting up of a new business and its commencement of business can be allowed as deduction. Thus, the matter was remitted back to the A.O.

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