

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.45/Mum/2023
(Assessment Year: 2018-19)

Living Liquidz SM Trades LLP S. M. House, Section 17, Kalyan Ambernath Road, Ulhasnagar, Mumbai-421 003	Vs.	Assessing Officer, NEFAC, New Delhi
PAN/GIR No. AAHFL 3494 L		
(Appellant)	:	(Respondent)
Assessee by	:	Shri M. Subramanian
Revenue by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	02.03.2023
Date of Pronouncement	:	30.05.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has challenged the assessment order passed u/s. 143(3) of the Act as invalid and bad in law and has also challenged the disallowance of operative expenses of Rs.15,29,595/- and interest paid on late payment of TDS amounting to Rs.12,980/- debited to profit and loss account.

3. The brief facts of the case are that the assessee is a limited liability partnership firm engaged in the business of wholesale distributors and Indian made foreign liquor. The assessee filed its return of income dated 01.10.2018, declaring total income at Rs.Nil.

The assessee's case was selected for scrutiny and the assessment order dated 15.04.2021 was passed by the Assessing Officer (A.O. for short) u/s. 143(3) of the Act by making various additions/disallowances.

4. The assessee was in appeal before the Id. CIT(A), challenging the assessment order and the disallowances made by the A.O.

5. The Id. CIT(A) confirmed the addition/disallowances made by the A.O.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. Ground nos. 1 & 4 are general in nature and requires no separate adjudication.

8. Ground no.2 pertains to the disallowance of the pre operative expenses amounting to Rs.15,29,595/-. It is also observed that the assessee being a limited liability partnership firm incorporated on 08.12.2017 for which the trading operation commenced from 01.01.2018. The assessee is said to have carried out its business only for 3 months and had filed its return of income declaring loss during the impugned year. The A.O. observed that the assessee had debited the impugned amount in its profit and loss account under the head 'pre-operative expenses' which are said to have incurred before the operation of the assessee firm and, hence, the A.O. disallowed the same as not being the 'business expenses'. Further, the assessee before the Id. CIT(A) has contended that the partnership firm by name and style M/s. Sunder Spirits was formed on 09.12.2016 through partnership deed dated 09.12.2016 and subsequently changed the name to M/s. Living Liquidz S M Trades vide partnership deed dated 15.10.2017 with effect from 15.10.2017 and thereafter the same was converted to Limited Liability Partnership by

name and style M/s. Living Liquidz S M Traders LLP (the assessee) vide LLP dated 23.11.2017 by way of registration for conversion which was granted by the Registrar, ROC dated 08.12.2017 under the Limited Partnership Act, 2008. The assessee further contended that the erstwhile company had filed its return of income for A.Y. 2017-18 on 10.11.2017 which establishes the fact that the assessee's business commenced during F.Y. 2016-17. The impugned disallowance made on pre operative expenses was pertaining to F.Y. 2017-18 and the same was debited to the profit and loss account. The Id. CIT(A) had relied on the decision of the Tribunal in the case of *Maruti Insurance Pvt. Ltd. vs. DCIT* (Del) dated 10.02.2020 which held that the expenses incurred prior to the operation of the company are not liable as 'business expenses' and are only a 'pre operative expenses'. The Id. CIT(A) also relied on the decision of the *CWT vs. Ramaraju Surgical Cotton Mills Ltd.* 63 ITR 478 (SC), which held that the commencement of business was on the date of grant of license and any expenses prior to the operation was 'pre-operative expenses' and not liable to be 'business expenses'. The Id. CIT(A) further held that the registration for conversion was granted by the Registrar, ROC only on 08.12.2017 and, hence, the commencement of operation was from 01.01.2018. The Id. CIT(A) upheld the disallowance made by the A.O.

9. The learned Authorised Representative (Id. AR for short) for the assessee contended that the lower authorities have disallowed the impugned expenditure on wrong nomenclature stated to be as 'pre operative expenses'. The Id. AR further stated that the partnership deed was initially formed on 09.12.2016 and the same was converted into LLP on 23.11.2017. The Id. AR further stated that there was only a name change and

have admitted new partners referred to as the 'incoming partners' along with the 'continuing partners'. The Id. AR for the assessee stated that the same was 'revenue expenses' and not 'preoperative expenses'. The Id. AR relied on the decision of the *Maruti Insurance Pvt. Ltd.* (supra) which was reversed by the Hon'ble Delhi High Court.

10. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said fact and stated that the impugned expenses was in the nature of 'preoperative expenses' and not 'business expenses' considering the date of incorporation of the LLP firm. The Id. DR relied on the order of the lower authorities.

11. We have heard the rival submissions and perused the materials available on record. It is observed that the partnership firm M/s. Sunder Spirits formed on 09.12.2016 was changed to name and style of M/s. Living Liquidz S M Traders LLP and which was subsequently converted to LLP vide deed dated 23.11.2017. From the recitals of the partnership deed dated 09.12.2016, 15.10.2017 and 23.11.2017, we infer that the object and the purpose of these are identical and was merely a continuation of the initially incorporated firm, i.e., M/s. Sunder Spirit. We do not find any deviation in the business carried out by the assessee firm which is akin to that of the earlier firms which name has been changed to that of the assessee's. The lower authorities have not disputed the fact that there was no change in the business subsequent to the name change. From the above observation, we are of the considered view that the impugned expenses claimed by the assessee pertains to the 'business expenses' and not the 'preoperative expenses' alleged by the lower authorities. We would like to place our reliance on the decision of the Hon'ble Delhi High Court in the case of *Maruti Insurance Pvt. Ltd. vs. DCIT* vide order

dated 12.04.2021 wherein it was held that the expenses incurred when the entity is ready to do business and when business is conducted cannot be capitalized as in the present case. The present case in hand is in a better footing than the above mentioned case where the business was carried on much prior to the impugned year and there was only a name change subsequently. We find no justification in holding the impugned expenses as 'per operative expenses'.

12. By respectfully following the above said decision, we hereby delete the impugned addition of Rs.15,29,595/- disallowed as preoperative expenses. Hence, ground nos. 2 raised by the assessee is allowed.

13. Ground no. 3 pertains to the disallowance of interest paid on late payment of Rs.12,980/- debited to the profit and loss account. The A.O. had disallowed the interest paid by the assessee on late payment of TDS amounting to Rs.12,980/- debited in the profit and loss account. The Id. CIT(A) confirmed the said disallowance by relying on the decision of the Hon'ble Madras High Court in the case of *CIT vs. Chennai Properties & Investments Ltd.* [1999] 239 ITR 435 (Mad), which held that the disallowance of interest expenditure paid u/s. 201(1A) of the Act on late payment of TDS is penal in nature and not compensatory. The Id. CIT(A) further held that the same is not 'business expenditure' and cannot be termed as 'compensatory in nature' as alleged by the assessee. As this issue has been covered by the decision of the Hon'ble High Court of Madras in the case of *Chennai Properties & Investments Ltd* (supra), we do not find any infirmity in the order of the Id. CIT(A) and, hence, we dismiss this ground of appeal raised by the assessee.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 30.05.2023

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 30.05.2023

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai