

## For a new business, previous year starts from the date of setting-up of business and not from 1st April

**Summary – The Lucknow ITAT in a recent case of Prayagraj Power Generation Co. Ltd., (the Assessee) held that For a new business or for a new source of income which has come into existence, previous year would start from date of setting up of new business or from date when new source of income has come into existence**

### Facts

- During relevant financial years, assessee's business undertaking of generation of power was not set up and plant and machinery was in process of installation.
- The revenue authorities held that since the assessee's business was already set up prior to 1-4-2009, the previous year relevant to assessment year 2010-11 had already started from 1-4-2009 as it could be said that any source of income was in existence till that point of time.
- On appeal to the Tribunal, the assessee contended that during the relevant financial years its business of generation of power was not set up and only land was acquired and advances were given for plant & machinery, etc.; hence, its previous year was not commenced in the relevant assessment years.

### Held

#### ***Previous year would start from date of setting up new business or new source of income***

- The previous year is to be ascertained with respect to the assessee but for doing so, one has to find out that whether that assessee has set up a business or a source of income has newly come into existence if that assessee is not already having a business already set up or a source of income already in existence. Even if an assessee is already having a previous year in respect of a business already set up prior to start of the financial year or is having a source of income prior to start of the financial year then in respect of that assessee, the previous year *qua* the existing business or existing source of income will start from 1st April of the relevant Financial year but if a new business is set up or a new source of income has come into existence in that financial year then *qua* such new business or new source of income, the previous year will start from the date of setting up of the new business or from the date when new source of income has come into existence. It means, for the same assessee, there may be a previous year from 1st April in respect of an existing business or existing source of income and for a new business or for a new source of income which has come into existence in that financial year then *qua* such new business or new source of income, the previous year will start from the date of setting up of the new business or from the date when new source of income has come into existence. Even for an assessee, who is already having a previous year in relation to an existing business or existing source of income, the date of starting of previous year in

relation to new business or new source of income is very important because income in respect of such new business or new source of income can be brought to tax only after the start of the previous year in that respect and similarly, expense in respect of that business or that source of income can be allowed as a deduction from the date of the start of the previous year in relation to that business or source of income. If the previous year in relation to new business or new source of income has started, and expenses are incurred and there is no generation of income, loss to the extent of expenses will be allowable which can be set off against any other income of that year and if it cannot be so set off in full or in part then such loss which could not be so set off can be carried forward as per law.

***New business was not set up at least upto 31-3-2011 - Previous year not started in relevant year***

- This is not a case of the revenue that any business was already set up prior to 1-4-2009 *i.e.* the start of the previous year relevant to assessment year 2010-11 or that any source of income was in existence till that point of time. The audited accounts of the assessee company for the year ending on 31-3-2010 relevant to assessment year 2010-11. As per the profit & loss account, there is no income and there is no expenditure except writing off of preliminary expenses. In the balance sheet, the source of funds are share capital and secured loans. The application of funds is in fixed assets comprising of mainly land and some small amount of furniture, computers, office equipments and vehicles. There is pre-operative expenditure during construction period. The remaining amount on account of other current assets and on account of loans and advance. Hence, it is seen that only land was acquired and advances are given for plant & machinery *etc.* and under these facts, it cannot be said that the business was set up. Similarly, as per the balance sheet for the year ending as on 31-3-2011 there is share capital, share application money and secured loans and the utilization thereof is in fixed assets, capital work-in-progress, pre-operative expenditure during construction period, loans and advances and some cash and bank balance. In this year also, it cannot be said that the business was set up. In the instant case, the business of the assessee is generation of power and therefore, the business is not set up at least upto 31-3-2011 because it is not the case of the revenue that by this date, the assessee-company was ready to commence business. Hence, as per the facts of the instant case, it is clear that, the business was not set up at least upto 31-3-2011 and therefore, the previous year in respect of business undertaking of generation of power was not started till that date and this is not the case of the revenue that by this date, the assessee-company was ready to commence business. Hence, as per the facts of the instant case, it is clear that the business was not set up at least upto 31-3-2011 and, therefore, the previous year in respect of business undertaking of generation of power was not started till that date.