

## Exp. debited in P&L a/c showing regular increase was proof that assessee was carrying out business activity

**Summary – The High Court of Madras in a recent case of Bali Trading (P.) Ltd., (the Assessee) held that where a company, which was claiming no business activity with no other income other than rental income and interest income, claimed expenditure on repairs to plant and machinery, depreciation, telephone expenditure that too in an increasing manner, it clearly indicated that assessee was carrying on business activity**

### Facts

- During the proceedings, the assessee submitted a representation to the Assessing Officer, stating that the its income was from letting out of property and apart from that it did not have any other income. However, while filing the return, it had claimed 'business income' in addition to income from 'house property' and 'other sources'. The assessee submitted that it was just a keying error.
- The Assessing Officer rejected the assessee's claim to rectify the mistake on ground that if there was any keying mistake, the assessee could have filed a revised return, as allowed under section 139(4). He completed the scrutiny assessment under section on the returned income on the ground that without a revised return under section 139(4), total income could not be reduced and that the powers of the Assessing Officer is limited as no alteration in the returned income could be made by him.
- The assessee filed a revision petition under section 264 and reiterated the stand taken before the Assessing Officer, apart from furnishing other details to support the stand that in the return forms, the 'business income' has been keyed wrongly and requested the Commissioner to exercise his revisional powers.
- The Commissioner noted that assessee-company had claimed expenditure on repairs to plant and machinery and this was in an increasing manner. It would indicate the factual position otherwise. Thus, on facts, the Commissioner found that the nature of the expenses indicated the presence of some business activity during the relevant previous year.
- On appeal:

### Held

- Admittedly, the time within which the assessee could have filed a revised return had expired long back and the assessee appears to have woken up after notice was issued under section 143(1). During the course of the assessment proceedings, when a personal hearing was offered, the assessee for the first time took a stand that an inadvertent error had occurred while filing the income tax returns for the relevant year namely, 2012-13 and that error is a keying error. Such contention was raised by the assessee stating that except the income from 'house property' and 'other sources', they have no other income and there is no 'business income' and therefore, it is a keying error. If such is the stand taken by the assessee, he is duty bound to prove that there was no

other income except the income under the head 'house property' and 'other sources'. On a perusal of the factual position, it is clear that it was not established by the assessee before the Assessing Officer or the Revisional Authority. The assessee's case is that it is an inadvertent error, a mistake which is apparent and needs to be rectified. The Assessing Officer after taking note of the stand taken by the assessee rightly held that the assessee had time to file revised returns upto 31-03-2014 and did not do so, and only during the scrutiny assessment proceedings, such a plea was raised which cannot be considered. The Revisional Authority considering the scope of his power under section 264 went a step ahead to examine as to the *bona fides* of the stand taken by the assessee alleging that it was an inadvertent keying error. On a comparative analysis of the returns filed for the assessment year 2011-12, with that of the returns filed for the assessment year 2012-13, the Commissioner noted that for repairs to machinery, telephone expenses, salary and other expenses, depreciation have been incurred and debited to profit & loss account, which is a clear indicator that business activity is being carried out by the assessee. When that being the factual position, the assessee would not have debited the expenses in its profit & loss account.

- Thus, on facts, the Commissioner found that a company, which is claiming no business activity with no other income other than rental income and interest income claiming expenditure on repairs to plant and machinery that too in an increasing in manner, clearly indicates a position otherwise. Further, on facts, the Commissioner found that the assessee has not been able to prove with evidence that there has been no business activity during the impugned assessment year. Thus, the Commissioner having done a factual exercise, in exercise of his power under section 264 and on facts, found that the theory as propounded by the assessee as a keying error to be not proved conclusively. In such fact situation, the order passed by the Commissioner calls for no interference.