

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sri G.D. Agarwal, Hon'ble V.P. And Sri C.M.Garg, JM

ITA No. 709/Del./2014 : Asstt. Year : 2010-11

ACIT Circle-31(1) New Delhi	Vs	Plaza Partner DLF Centre, 9 th Floor, Sansad Marg New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAFFP2318B		

**Assessee by : Sh. R.S.Singhvi, CA
Revenue by Mrs. Nandita Kanchan, CIT(DR)**

Date of Hearing : 30.05.2016	Date of Pronouncement : 01.07.2016
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ORDER

PER C.M.Garg, J.M.

This appeal by the Revenue has been filed against the order of the CIT(A)XXVI, New Delhi dated 25.11.2013 passed in first appeal no. 229, 230 & 240/2012-13 for AY 2010-11.

The grounds raised by the Revenue read as follows :

- 1. The CIT(A) has erred in deleting the disallowance of Rs. 4,62,87,174/- made by the AO u/s 24a of the IT Act, as the property was constructed and developed by the partners/ DLF group of the firm.*

2. *The CIT(A) has erred in directing that rental income fo the assessee should be asse4ssed under the head ‘income form house property’ and not as business income.*
3. *The CIT(A) has erred in restricting the disallowance to Rs. 3,00,000/- out of total disallowance of Rs. 7,92,244/- made by the AO u/s 57(iii) of the IT Act.”*

Ground no. 1 & 2 :

2. Apropos ground no. 1 & 2 at the very outset the ld. AR submitted a copy of the order of the Tribunal ITAT ‘F’ Bench dated 15.10.2014 passed in ITA no. 1265.Del.2012 & 695.Del.2013 for AY 2008-09 & 2009-10 in assessee’s order appeals and contended that the orders of the CIT(A) on similar issue has been upheld by the Tribunal for the preceding AYs, hence, issue is squarely covered in favour of the assessee for AY 2010-11. The ld. DR strongly supported the action of the AO. However he could not controvert this fact that in the similar issue appeals of the Revenue for AY 2008-9 & 2009-10 have been dismissed by the Tribunal order dated 15.10.2014 (Supra).

3. On careful and vigilant reading of Tribunal order (Supra) for preceding AYs, we note that the issue of Rental Income M/s. Business Income has been decided in favour of the assessee with following observations :

“ Ground nos. 1 and 2 : Similar arguments have been advanced by the parties as they argued on issue no. A hereinabove in the appeal for the assessment year 2008-09. In the present year the assessee had declared rental income of Rs. 15,4,40,614/- under the Head “house property” and claimed 30% deduction amounting to Rs. 4,51,32,144/- as per the provisins laid down in Section 24(1)

of the IT Act. The AO did not agree and disallowed the claimed deduction. The ld. CIT(A) has, however, allowed the claimed deduction. Under similar facts an identical issue has been adjudicated upon and decided in favour of the assessee hereinabove in the appeal for the assessment year 2008-09. Following the same, we do not find reason to interfere with the first appellate order in this regard. The same is upheld.

The ground nos. 1 and 2 are accordingly rejected.”

4. In view of above respectfully following the order of the Tribunal for AY 2008-09 & 2009-10, we are inclined to hold that the issue is squarely covered in favour of the assessee by the Tribunal order (supra) consequently ground nos. 1 & 2 of the revenue for AY 2010-11 are dismissed.

Ground no. 3 :

5. Apropos ground no. 3 : The Ld. AR also drawn our attention towards relevant paras 15 to 17 of the Tribunal order (supra) and contended that in the similar set of facts and circumstances the issue has been decided in favour of the assessee dismissing the appeal of the department. The Ld. DR supported the action of the AO. However, he could not controvert the fact that similar issue has been decided in favour of the assessee for AY 2009-10 by the Tribunal order (supra).

6. From relevant operative paras of Tribunal order (supra) for AY 2009-10. We note that the issue has been decided in favour of the assessee with following observations & findings :

“15. Ground no. 3 : The Ld. AR at the outset of hearing pointed out the issue raised is covered by the order dated 12.3.2014 of the Tribunal in the case of ACIT Vs. Messers Atiria Partners, ITA No. 2490/Del/2012 (AY2008-09). In this regard, he referred contains of para no. 14 of the order.

16. In support of the ground the Ld. Sr. DR placed reliance on the assessment order.

17. Having gone through the orders of the authorities below, we find that the AO disallowed expenses amounting to Rs. 7,06,200/- claimed by the assessee against income from other sources. The assessee had declared income from other sources amounting to Rs. 80,46,782/-. The total expenses of Rs. 12,07,029 was claimed out of which the assessee disallowed a sum of Rs. 4,30,829/-. The assessee claimed deduction of Rs. 7,76,200/- against income from other sources. The AO noted that in assessment year 2008-09 the total expenses claimed against income from other sources were disallowed. The assessee pleaded the admissibility of the expenses be considered afresh. The AO held that since the assessee has no ground to claim deduction of expenses amounting to Rs. 7,76,200/- against the income from other sources amounting to Rs. 80,46,782/-, the same was disallowed. Considering the facts of the case and submissions of the assessee the Ld. CIT(A) held that the assessee has not been able to justify the claim of the entire expenses. He, however, considering the nature of expenditure being office maintenance, salary paid, conveyance, legal and professional expenses found it unjustifiable to assume that no expenses whatsoever has been incurred for earning an income of over Rs. 80,00,000/- from other sources. He, thus, keeping in view the provision of Section 57 (III) of the Act and judicial decisions cited before him allowed a relief of Rs. 1,20,000/- i.e. at the rate of Rs. 10,000/- per month on account of expenses or maintenance of its status as a firm. He accordingly, sustained the addition of Rs. 6,06,200/-. We find that the first appellate order is reasoned one, hence, no interference therewith is required. The same is upheld. Ground no. 3 is accordingly rejected.”

7. Facts of circumstances of the present AY 2010-11 are similar hence respectfully following the order of the Tribunal (Supra) we hold that keeping in view the provisions of section 57(iii) of the Income Tax Act, 1961 and ratio of the relevant judicial pronouncements on the issue in the present case. The CIT(A) in relevant para 6 of the first appellate order, allowed relief of Rs. 3,00,000/- i.e. at the rate of 25,000/- per month on account of expenses or maintenance of its status as a firm. Consequently the CIT(A) sustained addition of Rs. 4,92,244/-. We are unable to see any valid reason to interfere with the impugned order. Consequently, ground no. 3 of the revenue being devoid of merits is also dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order Pronounced in the Court on 01/07/2016.

Sd/-
(**G.D.Agarwal**)
VICE PRESIDENT

Sd/-
(**C.M.Garg**)
JUDICIAL MEMBER

Dated: 01/ 07/2016

Binita

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)

		Date	<u>Initial</u>	
1.	Draft dictated on (hand written)	handwritten		
2.	Draft placed before author	20.06.2016		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
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8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			