



ITA No.2650 & 3747/Mum/2015  
Essar Properties Limited  
Assessment Year 2010-11

**आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं

श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D.T. GARASIA, JM AND  
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 2650/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-2011)

<b>Deputy Commissioner of Income Tax 6(2)(2)</b> Room No. 563 Aaykar Bhavan M.K.Road, Churchgate Mumbai 400 020	<b>बनाम/ Vs.</b>	<b>Essar Properties Limited</b> Essar House 11, Keshavrao Khadye Marg Mahalaxmi Mumbai 400 034
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACE-0893-Q</b>		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No. 3747/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-2011)

<b>Essar Properties Limited</b> Essar House 11, Keshavrao Khadye Marg Mahalaxmi Mumbai 400 034	<b>बनाम/ Vs.</b>	<b>Deputy Commissioner of Income Tax 6(2)(2)</b> Room No. 563 Aaykar Bhavan M.K.Road, Churchgate Mumbai 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACE0893Q</b>		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)



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<b>Assessee by</b>	:	Shri Vijay Mehta, Ld. AR
<b>Revenue by</b>	:	Dr. Anupama Singla, Ld. DR

<b>सुनवाई की तारीख / Date of Hearing</b>	:	17/04/2017
<b>घोषणा की तारीख / Date of Pronouncement</b>	:	17/04/2017

### **आदेश / ORDER**

#### **Per Manoj Kumar Aggarwal (Accountant Member)**

1. These are two appeals each by assessee as well as revenue for Assessment Year [AY] 2010-11 which assails the order of Ld. Commissioner of Income Tax (Appeals)-10 [CIT(A)], Mumbai dated 24/02/2015 on different grounds of appeal. Since, the appeals arises out of common set of facts, we dispose-off both the appeals by this common order for the sake of convenience and brevity. First, we take up revenue's appeal ITA No. 2650/Mum/2015 where the revenue has assailed the decision of Ld. CIT(A) *qua* treatment of certain lease income under the head '*Business Income*' as against '*Income from House Property*' and consequential allowance of rental expenditure / depreciation *there-from* and allowing set-off of unabsorbed depreciation of AY 1995-96 beyond eight years.

2. Briefly stated, the assessee, being resident corporate assessee, was subjected to an assessment u/s 143(3) vide Assessing Officer [AO] order dated 12/03/2013 wherein the total income of the assessee was determined at Rs.3,22,73,480/- after certain adjustments and disallowances as against returned income of Rs.'Nil' filed by the assessee on 14/10/2010. The assessee was engaged in the business of providing business center facilities, leasing of properties / Plant & machinery and investment in shares/properties/securities during impugned AY. During assessment proceedings, AO noted that the assessee earned rental income of Rs.533.16 Lacs which was reflected under the head '*Business Income*', which in the opinion of AO, was taxable under the



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head '*Income from House property*'. After hearing assessee's contention and placing reliance on various judicial pronouncements and status of assessment in earlier years, AO treated the same under the head '*Income from House Property*' against which the assessee was entitled for statutory deduction of 30% and property tax only. Further, the assessee's claim of set-off of unabsorbed depreciation for AY 1995-96 was rejected on the premises that the same was not available beyond a period of eight years as per the law prevailing at the relevant time. Aggrieved, the assessee successfully carried both the matters before First Appellate Authority vide order dated 24/02/2015 where the Ld. CIT(A) placing reliance on the decision of its predecessor and Tribunal in assessee's own case for earlier Assessment Years accepted the stand of assessee in treating rental income under the head '*Business income*' and also directed AO to allow set-off of depreciation as per law after verifying earlier years record. Aggrieved, the revenue is in appeal before us.

3. At the outset, Ld. Counsel for Assessee [AR], *Shri Vijay Mehta*, drew out attention to various orders of Tribunal in assessee's own case from AY 2005-06 to 2009-10 to contend that the issue of taxability of rental income under the head '*Business Income*' as per the contentions of the assessee has been accepted by the Tribunal in all these years. Further, the revenue's appeal against Tribunal order for AY 2005-06 was dismissed by Hon'ble Bombay High Court in ITA No.1432 of 2011 judgment dated 28/02/2012 on the premises that no substantial question of law arose. The copies of relevant judicial pronouncements have been placed in the *paper-book*. The Ld. DR conceded the settled position and fairly stated that the issue stood covered in assessee's favor in the wake of all these judicial pronouncements. This being the settled position, we dismiss Ground No. 1 of revenue's appeal. Consequently, the assessee becomes entitled to claim the business expenditure as per law against the same, which results into dismissal of Ground No.2 of revenue's appeal. Regarding the set-off of unabsorbed depreciation of AY 1995-96, the Ld. AR has placed reliance on the judgment of Hon'ble Gujarat High Court in the case of *General Motors India P. Ltd. Vs DCIT [354 ITR 244*



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23/08/2012] to contend that the set-off of unabsorbed depreciation has been allowed by the Gujarat High Court after considering the relevant statutory provisions of Section 32 as amended by the Finance Act, 2001 and CBDT Circular No. 14 of 2001 and moreover, Special Leave Petition [SLP] filed by the revenue against the said judgment has been dismissed by the Apex court. The revenue could neither controvert the same nor was able to bring any contrary judgment on record. Therefore, respectfully following the above judgments, we hold that the set-off of the unabsorbed depreciation was available to the assessee during the impugned AY and accordingly, dismiss Ground No. 3. In nutshell, the revenue's appeal stands dismissed.

4. Now we take up assessee's appeal ITA No. 3747/Mum/2015 where the assessee has raised sole ground of disallowance u/s 14A read with rule 8D for Rs.77,00,191/-. During assessment proceedings, the assessee was found to have earned exempt dividend income of Rs.10,12,650/- which called for a disallowance u/s 14A. The assessee contended that there was no general interest expenditure so as to attract any such disallowance. However, not convinced with assessee's arguments and after perusing various judicial pronouncements, AO applied Rule 8D and worked out disallowance for administrative expenses u/r 8D(2)(iii) @0.5% of average value of investments which came to Rs.97,38,266/-. The said disallowance was finally restricted to Rs.77,00,191/- being the expenses proportioned by the AO towards business expense excluding interest expenditure. Aggrieved, the assessee carried the matter before Ld. First Appellate Authority without any success vide order dated 24/02/2015, against which the assessee is in appeal before us.

5. The Ld. AR, while drawing our attention to the financial statements of the assessee, contended that the assessee incurred administrative expenditure under various heads, the majority of which were directly relatable to the leasing business carried on by the assessee and nothing to do with investment or earning of exempt dividend income. Therefore, such heavy disallowance was not warranted in the circumstances and the disallowance, at the most, be restricted to the extent of Rs.10,12,650/- being exempt



income earned by the assessee. Per *Contra*, Ld. DR opposed the same on the premises that the assessee could not bring on record any material to substantiate his contention that majority of the expenses were incurred for leasing activities and not for investments and therefore, rightly suffered the said disallowance.

6. We have heard the rival contentions and perused the relevant material on record including the financial statements of the assessee and its nature of business. So far as the applicability of Rule 8D is concerned, we find that the same is nowhere in dispute. The only dispute is with regard to quantum of disallowance. We notice that the assessee has suffered disallowance u/r 8D(2)(iii) towards administrative expenditure @0.5% and no disallowance u/r 8D(2)(ii) has been made by the AO as he had treated the rental income under the head '*Income from House Property*'. A perusal of Balance Sheet reveals that the assessee's Share Capital & Reserves stood at Rs.23.21 Crores, Loan Funds stood at Rs.46.16 crores whereas investments stood at Rs.42.45 crores. The assessee has debited finance charges of Rs.4.68 Crores in the Profit & Loss Account. *Prima facie*, the assessee has used mixed funds to make the investments which results into triggering of Rule 8D(2)(ii). In the revenue's appeal, we have already settled that the rental income earned by the assessee shall be chargeable under the head '*Business Income*'. Therefore, without delving much deeper into the issue, we are of the considered opinion that disallowance computed by AO under Rule 8D require re-appreciation / re-working in the light of our decision in revenue's appeal. Therefore, we deem it fit to restore this matter back to the file of AO for re-appreciation / re-working of disallowance u/s 14A read with *Rule 8D*. We accordingly direct so. To reiterate, the rental income earned by assessee shall be assessed as '*Business Income*' against which business expenditure as per law shall be allowable. The disallowance u/s 14A read with *Rule 8D* shall be computed *de-novo*. The assessee shall be allowed set-off of unabsorbed depreciation in terms of our above order. The set-off / carried forward of business losses / depreciation, if any, shall also be reworked. The assessee's appeal stands allowed for statistical purposes.



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7. In nutshell, the revenue's appeal stands dismissed whereas the assessee's appeal stands allowed for statistical purposes.

*Order pronounced in the open court on 17<sup>th</sup> April, 2017.*

Sd/-

**(D.T. Garasia)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17 .04.2017

Sr.PS:- Thirumalesh

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**