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ा य अ धकरण, ''सी'' यायपीठ, चे नई
PELLATE TRIBUNAL 'C' BENCH, CHENNAI

ी चं पूजार , लेखा सद य एवं ी धु वु आर.एल रे डी, या यक सद य के सम
**Before Shri Chandra Poojari, Accountant Member &**
**Shri Duvvuru RL Reddy, Judicial Member**

आयकर अपील सं./**I.T.A.No.31/Mds/2015**
नधारण वष/**Assessment Year:2010-11**

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| The Assistant Commissioner of Income Tax,<br>Non Corporate Circle 20,<br>Chennai . 34. | Vs. | R K Swamy BBDO (P) Ltd.,<br>Film Chamber, 604-606,<br>Anna Salai Chennai 600 006.<br>**[PAN: AACCR2213F]** |
| (**अपीलाथ /Appellant**) | | ( **यथ /Respondent**) |

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|---|---|---|
| अपीलाथ क ओर से / Appellant by | : | Shri A.V. Sreekanth, JCIT |
| यथ क ओर से/Respondent by | : | Shri A.S. Sriraman, Advocate |
| सुनवाई क तार ख/ Date of hearing | : | 09.06.2016 |
| घोषणा क तार ख /Date of Pronouncement | : | 24.08.2016 |

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the ld. Commissioner of Income Tax (Appeals) IV, Chennai dated 29.09.2014 relevant to the assessment year 2010-11. The Revenue has raised the following effective grounds:

(i) deletion of disallowance under section 32(1) towards excess depreciation on lease hold improvements to the tune of .15,45,209/-,

(ii) deletion of addition of .61,08,050/- towards excess rent paid, and

(iii) deletion of addition of .1,54,519/- on account of interest on deposits.

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e are that the assessee is a multinational institution engaged in the business of advertising agency both at national and international level. It has full fledged offices in all the important metros of the country, besides its corporate office in Chennai. The assessee filed its return on 11.10.2010 admitting total income of .7,38,90,921/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 [%Act+ in short]. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 06.09.2011. After verifying the details filed by the assessee, the assessment under section 143(3) of the Act was completed on 19.03.2013 assessing total income of the assessee at .9,85,73,118/- after making various additions.

3. On appeal, after considering the submissions of the assessee and by following the decision of the Tribunal in assesseeqs own case for earlier assessment year(s), the ld. CIT(A) allowed the appeal of the assessee.

4. Aggrieved, the Revenue is in appeal before the Tribunal.

5. We have heard both sides, perused the materials on record and gone through the orders of authorities below. With regard to the first ground of depreciation on leasehold improvement, on perusal of the details filed by the assessee, the Assessing Officer has noticed that certain items does not

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g temporary structure and observed that depreciation can only be allowed at normal rates. Out of the total depreciation of .27,45,939/- claimed by the assessee an amount of .15,45,209/- was disallowed, which is not relating to temporary structure in leasehold property and added to the total income of the assessee. On appeal, by following the order of the Tribunal in assessee’s own case, the ld. CIT(A) allowed the ground raised by the assessee. We have also perused the latest decision of the Coordinate Bench of the Tribunal in assessee’s own case for the assessment year 2009-10 in I.T.A. No. 1525/Mds/2013 dated 20.09.2013, wherein the Tribunal has observed and held as under:

> *“11. Now, we come to the issue of depreciation. There is no strife between the parties that the assessee, a lessee, took on lease a property in Mumbai. It had incurred the expenses in question of wooden work, premises expansion, false ceiling etc and claimed depreciation at the rate of 100% for a sum of Rs.54,92,416/-. The Assessing Officer disallowed a sum of Rs.16,83,295/- by holding that the same had been incurred for temporary structure. The assessee had strongly placed reliance on Explanation (1) of sec.32(1) of the Act. Undisputedly, the said statutory provision treats even a lessee incurring capital expenditure for the purpose of business and profession in the construction of raising any structure etc or renovation at par with the owner of the building. The only contention of the Revenue is that the expenditure was not incurred for raising temporary structure as stipulated in the depreciation schedule. Hence, keeping in mind the fact that the assessing authority himself had allowed majority of the expenses as entitled for 100% depreciation, we hold that the rest of the expenses of false ceiling, expansion of premises and wooden work are purely temporary structures and covered by the higher rate of depreciation being purely temporary erections. In our considered opinion, the Revenue has proceeded to interpret the depreciation schedule in a narrow manner. We reiterate that the schedule of depreciation deserves to be liberally interpreted and the expressions used 'purely temporary erections such as wooden structures' have to be*

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*...ure, covering all temporary erections alike ...rds 'such as' themselves point that the latter portion of the sentence only supplements the former one and not have overriding effect on the main part. Proceeding on this reasoning, we hold that the said clause not only covers structures of purely temporary erection, but also includes false ceiling as well as wooden works. Hence, we accept the contentions of the assessee and uphold the findings of the Commissioner of Income Tax (Appeals) under challenge.*

*12. Consequently the appeal is dismissed."*

6. The Id. DR could not controvert the above findings of the Tribunal. However, he has submitted that the Department has preferred an appeal before the Hon'ble Jurisdictional High Court, which cannot be a ground to take a different view unless the decision of the Tribunal is reverted or modified. Thus, respectfully following the above decision of the Coordinate Bench of the Tribunal, we find no infirmity in the order passed by the Id. CIT(A). Accordingly, the ground raised by the Revenue is dismissed.

7. The next ground raised by the Revenue is with regard deletion of disallowance of .61,08,050/- made towards excess rent paid by the assessee. [The figure mentioned in the grounds of appeal appears to be wrong since as per the assessment order, the disallowance made by the Assessing Officer is .56,86,250/-]. The Assessing Officer has noticed from the profit and loss account and other details that the assessee has claimed rent paid to M/s. Thiruvengadam Investments (P) Ltd. [TIPL in short] of a sum of .1,14,22,200/-. Further, he has observed that M/s. Thiruvengadam Investments (P) Ltd. is a company in which the assessee has substantial

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Tax Audit Report qualified the payments made to M/s. TIPL as payments made to persons specified under section 40A(2)(b) of the Act. Since the assessee paid rent to M/s. Thiruvengadam Investments (P) Ltd. for the properties located in prime areas in Mumbai and Delhi and are governed by the provisions of Rent Control Legislation, the Assessing Officer called for various details and after verification, he was of the view that the assessee's transactions are governed under section 40A(2) of the Act and the properties are governed by the provisions of Rent Control Legislation. Where the Rent Control Legislation provides for fixation of standard rent the landlord could not reasonably expect to receive any higher rent, in breach of law. Therefore, the tenant also not liable to pay more than the standard rent to the landlord because the standard rent prescribed by Rent Control Legislation are reasonable and rent which exceeds the standard rent is regarded by the legislature as unreasonable or excessive. In view of the above, the Assessing Officer has worked out the excess rent of .56,86,200/- paid by the assessee and added to the total income of the assessee.

7.1 With regard to interest free advance, the Assessing Officer has found that the assessee has paid an amount of .4,25,00,000/- as rental deposit to M/s. TIPL while the investments were at just .1,35,36,000/-. This means that the assessee has paid more than 27% of the value of the properties as

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not furnish any evidence to show that the borrowed funds/interest bearing funds were not utilized for making the advances. Accordingly, the Assessing Officer worked out and restricted the interest amount at .1,54,519/-. Since both the issues are covered in favour of the assessee, by following the decision in assessee‹s own case for the assessment year 2009-10 in I.T.A. No. 1525/Mds/2013 vide order dated 20.09.2013, the Id. CIT(A) allowed the grounds raised by the assessee.

7.2 We have also perused the order of the Tribunal in assessee‹s own case (supra), wherein, for the above two issues, the Tribunal has observed and held as under:

*"2. By referring to the pleadings raised in the grounds, the Revenue vehemently argues that the Commissioner of Income Tax (Appeals) has wrongly deleted additions made by the Assessing Officer of ₹.61,08,050/- under sec.40A(2) of the Act in the nature of rent paid to assessee's group concern, that of ₹.1,54,519/- in the nature of interest disallowance on account of excess interest free deposit to the group concern and also qua the disallowance of excess depreciation on leasehold premises to the tune of ₹.16,83,295/-. The contention of the Revenue are that though the Commissioner of Income Tax (Appeals) has relied upon orders of the 'tribunal' in assessee's own case pertaining to the preceding assessment years qua the first two issues, its appeals are pending before the hon'ble High Court. In addition to this, it files Annexure-I of the assessment order regarding the issue of depreciation, quotes case law of (2012) 21 ITR (Trib) 634 – ABT Limited v. ACIT (Chennai) and prays for acceptance of the appeal.*

*3. In reply, Shri AS Sriraman, Advocate, has put in appearance for the assessee and prays for adjournment by way of filing a petition. We notice that the case was also fixed for hearing on 10.9.2013 ie yesterday. At the request made by the assessee, we adjourned it for today. Now again the adjournment petition has been filed. Since the*

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*...sent in the court, we reject the adjournment ...ide the case on merits.*

*4. On merits, the A.R. strongly supports the order of Commissioner of Income Tax (Appeals) under challenge by filing the orders of the 'tribunal' in assessment year 1996-97, 2001-02, 2002-03 and 1997-98 [as relied upon by the Commissioner of Income Tax (Appeals)] and prays for rejection of the appeal.*

*5. The assessee is a 'company' not having any substantial interest in public. It is engaged in the business of advertising and follows mercantile system of accounting. For the impugned assessment year, it had filed its return on 29.7.2009 disclosing income of ₹.8,00,56,875/-. The same was 'summarily' processed.*

*6. In the course of 'scrutiny', the Assessing Officer came across assessee's profit and loss account and all other details filed. The assessee had taken on lease properties in Mumbai & Delhi belonging to another entity by the name of M/s. Thiruvengadam Investments Pvt. Ltd. It is nowhere disputed that it had substantial interest in the aforesaid entity. In the impugned assessment year, the assessee is stated to have made rent payments to the tune of ₹.1,55,22,720/-. Along with the same, it had also paid an amount of ₹.4.25 crores in the shape of rental deposit. As per the Assessing Officer, the assessee had made the rent payments of lease money at exorbitant rates which attracted sec.40A(2)(b) of the Act and prima facie came to conclusion that the lease rent paid by the assessee was much more than the market rent. Similarly, qua the rental deposit aforesaid, he was of the view that the assessee had paid more than 27% of the value of the properties and deposits while the investments were just at ₹.1,35,36,000/-.*

*6. Similarly, the assessee had also claimed depreciation of ₹.54,92,416/- on leasehold improvements qua Mumbai property @ 100% depreciation by terming the expenses to have been incurred for raising temporary structures.*

*7. We notice from the assessment order dated 29.12.2011 that qua the first two payments, it had justified the same by pleading that the former sum stood paid at the rate of ₹.192/- per sq. ft; whereas the market rent was between ₹.200/- to ₹.275/- per sq. ft. Similarly, it justified the other rental deposit. This failed to convince the Assessing Officer, in whose opinion, the Rent Control legislation recognized only 8.5% return of investments as 'standard' rent. Therefore, he computed*

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*)/-. Then, a comparison was drawn of the Delhi. In view of this, the Assessing Officer made an addition of a sum of ₹.61,08,050/- in the shape of excess rent, after holding that fair market rent was even less than the standard rent. In the same tune, he quoted case law of CIT v. Abhishek Industries Limited (286 ITR 1)(P&H) and concluded that the reasonable interest free advance had to be worked out which was to be restricted qua interest debited to profit and loss account amounting to ₹.1,54,519/-."*

7.3 In view of the above decision of the Coordinate Bench of the Tribunal decided the issue in favour of the assessee and moreover the ld. DR has not filed any order of higher forum having reverted or modified, we find no infirmity in the order passed by the ld. CIT(A). Thus, both the above issues raised by the Revenue are dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 24th August, 2016 at Chennai.

| Sd/- | Sd/- |
|---|---|
| (CHANDRA POOJARI) | (DUVVURU RL REDDY) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

Chennai, Dated, the 24.08.2016

Vm/-

आदेश क त ल प अ`षत/Copy to: 1. अपीलाथ /Appellant, 2. यथ / Respondent, 3. आयकर आयु त (अपील)/CIT(A), 4. आयकर आयु त/CIT, 5. वभागीय त न ध/DR & 6. गाड फाईल/GF.