

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI G.S.PANNU (AM) AND SHRI. RAM LAL NEGI (JM)

**ITA 6502/MUM/2013
Assessment Year: 2005-06**

M/s. Ambience Business Services Pvt. Ltd. C/o R. K. Khanna & Associates 402 Regent Chambers, Nariman Point, Mumbai- 400 021. PAN:- AAACA9528L	Vs.	The ACIT, Circle 6(1), Aayakar Bhavan, Mumbai- 400 020.
(Appellant)		(Respondent)

**ITA 5215 & 5216/MUM/2011
Assessment Year: 2005-06 & 2006-07**

The ACIT, Circle 6(1), Room No. 506, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. Ambience Business Services Pvt. Ltd. (Formerly known as Ambience Advertising Pvt. Ltd.) 401-E, Neelam Centre, S.K. Ahire Marg, Worli, Mumbai- 400 030. PAN:- AAACA9528L
(Appellant)		(Respondent)

&

**ITA No.8945/MUM/2010
Assessment Year: 2007-08**

The ACIT, Circle 6(1)(3), Room No. 508, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. Ambience Business Services Pvt. Ltd. C/o R. K. Khanna & Associates 402 Regent Chambers, Nariman Point, Mumbai- 400 021. PAN:- AAACA9528L
(Appellant)		(Respondent)

Appellant by : Shri. Raja B.Singh
Respondent by : Shri. A. Ramachandran &
Arun Shenoy

Date of Hearing: 07/09/2016
Date of Pronouncement: 13/01/2017

ORDER

PER RAM LAL NEGI, JM

These appeals pertain to the assessee company known as Ambience Advertising Private Limited for the Asst. years 2005-06, 2006-07 & 2007-08. Out of the aforesaid four appeals, three have been filed by the revenue and one appeal has been preferred by the assessee. Since all the appeals pertain to the same assessee, these were clubbed, heard together and are being disposed of by this common order for the sake of convenience.

ITA No. 5215/Mum/2011 for A.Y. 2005-06

This appeal has been preferred by the revenue against order dated 28/04/2011 passed by the Ld. CIT(A) Mumbai for the A.Y. 2005-06, where by the Ld. CIT(A) partly allowed the appeal filed by the assessee against assessment order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are that the appellant, 'Ambience Advertising Private Limited' now known as Ambience Business Services Private Ltd., a private limited company engaged in the business of rendering consultancy, letting on hire its computers, etc. and letting office space, filed its return of

income for the relevant Asst. year declaring the total income of Rs. 3,23,844/-. The original assessment was completed determining the total income of Rs. 58,48,162/-. In the said assessment an amount of Rs. 54,44,500/- was considered under the head 'Income from House Property'. After making deduction under section 24(1) of the Act, the same was assessed at Rs. 38,11,150/-. Similarly, an amount of Rs. 20,37,012/- was considered under the head "Income from Other Sources" and was assessed accordingly without considering any deduction u/s 57 of the Act. No income was assessed under the head Profits & Gains of Business or profession and accordingly no deduction u/s 30 to 43D of the Income Tax Act was considered.

3. The assessee challenged the assessment order before the Ld. CIT(A) which was dismissed by the CIT(A). On further appeal the Income Tax Appellate Tribunal partly allowed the appeal of the assessee and set aside one of the issues involved in this case to the file of the AO with certain observations.

4. Second assessment order u/s 143(3) r.w.s.254 of the Income Tax Act, was accordingly passed determining the total income of the assessee at Rs. 34,94,694/-. The said order was further challenged by the assessee by filing appeal before the Ld CIT(A). The Ld. CIT(A) set aside the said order and allowed the appeal of the assessee.

5. The revenue has filed the present appeal against impugned order passed by the Ld. CIT(A) on the following effective ground of appeal:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to allow all the expenses as disclosed in the Profit & Loss Account under

appropriate head of income and to allow losses brought forward if any under Chapter VI of the IT Act, 1961, without appreciating the facts that deduction u/s 24(1) amounting to Rs. 14,97,726/- was already allowed against the income from House Property against which no further expenses is allowable and also, the assessee failed to bring on record any expenditure incurred wholly and also, the assessee failed to bring on record any expenditure incurred wholly and exclusively for the purpose of earning of 'Income from Consultancy' as envisaged u/s 37 of the Income-tax Act, 1961.'

6. Before us, the learned departmental representative relying on the findings of AO submitted that the Ld. CIT(A) has passed the impugned order ignoring the facts that deduction u/s 24(1) has already been allowed against income from house property; the assessee has failed to bring on record any expenditure incurred wholly and exclusively for the purpose of earning income from consultancy as envisaged u/s 37 of the Act.

7. On the other hand the Ld. Counsel for the assessee submitted that there is no infirmity in the order of the Ld. CIT(A), as the CIT(A) has set aside the order giving effect to the CIT(A) order with the direction to passed assessment order afresh by computation the income under the head Income from House Property, Income from business of Profession and Income from other Sources as per the direction of vide ITAT order dated 14/05/2010.

8. We have heard the rival submissions and perused the material placed before us including the orders passed by the authorities below. The Ld. CIT(A) has allowed ground no. 1 & 2 of second appeal holding as under:-

“Therefore, I set aside the second Order of Assessment dated 30th September, 2010 passed by the Assessing Officer and direct

that an order giving effect to the Order of the Income tax Appellate Tribunal may be passed by computing the income under the heads, Income from House Property, Income from Business or Profession and Income from Other Sources and considering all the expenses for the previous year as disclosed in the Profit & Loss Account under appropriate head of Income and allowing the losses brought forward if any under chapter VI of the Income tax Act, Ground Nos. 1 & 2 stand disposed off accordingly.”

9. We notice that the coordinate Bench had set aside the said issue to the file of the AO in the first round of appeal vide order dated 14.5.2010 holding as under:-

“9. In view of the above discussion, we are of the considered opinion that the order of the first appellate authority has to be upheld on this issue, with the only modification that income in respect of letting out of computers is to be assessed as income from other sources. For this purpose, we set aside the issue to the file of the Assessing Officer.

10. Coming to the receipt of an amount of Rs. 3,13,000/- as income from consultancy services, the fact find a mention at para 3.2 page 3 of the CIT(Appeals)’s order. Income from consultancy cannot be treated as either income from house property or income from other sources. Hence to this extent, the A.O is directed to verify the facts and bring the same to tax under the head “Income from business or profession.” Thus, we allow this appeal of the assessee in part.”

10. In the light of the above facts we are of the considered opinion that the order passed by the Ld. CIT(A) is in accordance with the order of the Tribunal passed in the first round of appeal. Hence, the Ld. CIT(A) has rightly allowed the appeal filed by the assessee. The Ld. CIT(A) has rightly directed to pass order giving effect to the order of the Tribunal by computing the income under the heads, income from House property,

Income from Business and Profession and Income from Other Sources considering all the expenses in the P&L account and allowing the losses brought forward if any under chapter (vi) of the Act. We, therefore, uphold the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

ITA No. 5216/Mum/2011 for A.Y. 2006-07

This appeal has been preferred by the revenue against order dated 28/04/2011 passed by the Ld. CIT(A) Mumbai for the A.Y. 2006-07, where by the Ld. CIT(A) partly allowed the appeal filed by the assessee against assessment order passed u/s 143(3) of the Act,

11. Brief facts of the case are that original return of income filed by the assessee declaring loss of Rs 46,25,161/- was accepted vide order dated 29.8.2008. Since, the assessee had claimed income from facilities provided under the head business income, the case of the assessee was reopened u/s 147 of the Act and after hearing the assessee the AO computed the total income as under:-

<i>Income from House property:</i>	<i>Rs.35,05,250</i>
<i>Business income:</i>	<i>NIL</i>
<i>Income from Other sources:</i>	
<i>i. Misc. Credit Balance written back</i>	<i>Rs.7,5000/-</i>
<i>ii. Interest on Bank deposits</i>	<i>Rs. 10,727/-</i>
<i>iii. Interest on other deposits</i>	<i>Rs. 30,136/-</i>
<i>iv. Interest on loan</i>	<i>Rs. 4,75,765/-</i>
<i>v. Income from Income Tax Refund off</i>	<i>Rs. 1,71,259/-</i>
<i>Less depreciation on computer:</i>	<i>Rs. 35,614/-</i>
<i>Net taxable income:</i>	<i>Rs. 41,29,410/-</i>

12. Assessee challenged the said order by filing appeal before the Ld. CIT (A), who after hearing the assessee partly allowed the appeal and issued direction to the AO to assess interest on income tax refund of Rs. 1,71,259/- and credit balance written back of Rs.7,500/-amounting to Rs. 1,78,759/-under the head income from business and further allowed expenses of Rs. 60,42,721/-. Against the said order, the revenue has filed the present appeal on the following grounds:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to assess 'Interest on Income-tax refund of Rs. 1,71,259/- and 'credit balances written back of Rs. 7,500/- totaling to Rs. 1,78,759/- under the head Income from Business."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the expenses of Rs. 60,42,721/- without appreciating the fact and that the expenditure claimed by the assessee u/s 30 to 43D was not at all relevant to the incomes earned by the assessee."

13. Before us the Ld. DR relying on the assessment order submitted that the assessment order has been passed by the AO as per the provisions of law and the evidence on record. Interest on income tax refund and credit balances written back cannot be assessed under the head income from business. Similarly, the Ld. CIT(A) has wrongly allowed the expenses without appreciating the fact that expenditure claimed by the assessee u/s 30 to 43 D of the Act was not at all relevant to the income earned by the assessee.

14. With regard to ground No 1, the Ld. Counsel for the assessee fairly conceded that interest on income tax refund and credit balances written back in question are required to be assessed under the head other sources of income, as the same do not fall in the nature of business income. Regarding ground No 2, the Ld. Counsel submitted that the Ld. CIT(A) has rightly allowed the expenses of Rs. 60,42,721/- as the said amount was incurred exclusively for the purpose of Business.

15. We have heard the rival submissions and also gone through the material on record. We find merit in the stand of the revenue that interest on income tax refund and credit balances written back are to be assessed under the head income from other sources as the same fall within the ambit of other sources of income. Hence, we allow this ground of the appeal of the revenue.

16. So far as the second ground of appeal is concerned details of expenses allowable under different heads contained in paper book at page 10 reveal that the assessee had incurred total expenditure of Rs. 1,04,28,048 and the assessee has claimed Rs. 60,42,721/- exclusively incurred for the purpose of its business. Since, the assessee has already excluded the expenses other than the business expenses, there is no reason to disallow the same. Hence, in our considered opinion, the findings of the Ld. CIT(A) are based on the evidence on record and the same does not warrant any interference. We, therefore, uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

ITA No. 8945/Mum/2010 for A.Y. 2007-08

This appeal has been preferred by the revenue against order dated 30.9.2010 passed by the Ld CIT(A) 14, Mumbai pertaining to the assessment year 2007-08, whereby the Ld. CIT(A) partly allowed the first appeal filed by the assessee against the assessment order passed by the AO.

17. Brief facts of the case are that assessee filed its return of income for the relevant assessment year declaring total income of Rs 98,730/-. The same was processed and assessment order was passed determining the income of the assessee at Rs. 56,04,750/-after making certain additions/disallowances. Aggrieved, the assessee challenged the assessment order. The Ld. CIT(A) after hearing the assessee inter alia directed the AO to allow expenses/deduction u/s 30 to 43D of the Act in respect of fees received by the assessee for consultancy services and to tax the income from letting office premises of Rs. 62,94,311/-under the head income from House property.

18. The revenue has challenged the impugned order on the following effective grounds of appeal:-

1. *“On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to allow the expenses/deduction u/s 30 to 43D of the I.T.Act, treating the business of the assessee as in continuation.”*

2. *“On the facts and in the circumstances of the case and in law, the CIT(A) erred in directing the Assessing Officer to tax the income from the letting office premises of Rs. 62,05,500/- under the head Income*

from House Property, after allowing deduction u/s. 24 and to also allow expenses u/s. 30 to 43D of Rs. 64,94,311/- thereby resulting in double deduction to the assessee.”

19. Before us the Ld. DR relying on the findings of the AO submitted that the Ld. CIT(A) has wrongly allowed the expenses treating the business of the assessee ‘in continuation’ without appreciating the fact that no business was carried out by the assessee during the relevant financial year. Similarly, the Ld. CIT(A) has wrongly issued direction to the AO to tax the income from letting office premises of Rs. 62,94,311/- under the head income from House property.

20. Per contra, the Ld. Counsel for the assessee submitted that the Ld. CIT(A) has rightly held the business of the assessee was in continuation during the financial year under consideration, keeping in view the amount received by the assessee from consultancy business during two years before the and two years after the assessment year under consideration. The findings of the Ld. CIT(A) is in accordance with the ratio laid down by the Hon’ble jurisdictional High Court in the case of *Karsondass Ranchhoddass vs CIT, 83 ITR 1(Bom.)*, therefore, this ground of appeal is devoid of merit and liable to be dismissed. As regards the second ground of appeal, the Ld. Counsel submitted that this ground of appeal is misconceived. The Ld. CIT(A) has directed the AO to tax the income from letting office premises amounting to Rs. 62,05,500/- under the head income from the house property in terms of the order passed by the ITAT in assessee’s own case.

21. In our considered opinion, the Ld. CIT(A) has decided ground No 1 in favour of the assessee in accordance with the law laid down by the Hon'ble jurisdictional High Court in *Karsondass Ranchhoddass vs CIT(supra)* in which it has been held that there may be a long period of inactivity and still the business may continue. The relevant portion of the judgment reads as under:

"It is now settled law that there may be a long period of inactivity and still the business may continue. See Inderchand Hari Ram vs. CIT (1953) 23 ITR 437 (All): TC12R.230, where the Allahabad High Court remarked:

"It is not necessary that a business to be in existence should have work all the time. There may be long intervals of inactivity and a concern may still be a going concern though it may, for some time, be quiet and dormant. The mere fact that a businessman has not been able to obtain a contract and the business has for some time been, in that sense, dormant would not mean that it has ceased to exist if the assessee continues to maintain an establishment and incur expenses in the expectation that work would come and the business will be successful. How long he shall remain in hope and in what manner he must carry on his work to gain success is primarily his own concern. The mere fact that for some time he is not able to secure a contract or do the work which he set out to do should not disqualify him from pleading that the expenditure that he had incurred was expended for the purposes of his business."

10. Much the same view was also taken in a recent decision of the Madras High Court, *Mrs. Sarojini Rajah vs. CIT (1969) 71 ITR 504 (Mad) : TC12R.897*, where also a long interval of time had resulted in the Tribunal holding that the assessee had ceased to be a dealer in shares. *Veeraswami, J. (now the Chief Justice)*, after referring to the nature and relevant considerations in the report of the Royal Commission on the Taxation of Profits and Income, 1955, in England, held at page 511 in just such a case like this :

"In our opinion, the only reasonable and necessary inference is that she traded in shares with a commercial motive of making profit. It

is no doubt true that there was an interval between 1948-49 and 1953-54 during which there were no transactions in shares by the assessee, but that, as we think, can hardly make any difference to the fact that her purchase and sale of shares was and has been with a commercial motive. The Tribunal evidently noticed her dealing in shares in the subsequent years, but has not taken it into account in deciding the character of the holding of shares in Vanguard in her hands."

11. Under these circumstances, it seems to us impossible to infer from the interregnum between 1948-49 and 1953-54 that the assessee had ceased to do business in shares. In fact, he has subsequently been held to be doing business in shares and we can only infer from that fact that during the period of inactivity also his intention to do business did not cease."

22. In the light of the ratio laid down by the Hon'ble jurisdictional Court, the Ld. CIT(A) has rightly held that the appellant had not discontinued or abandoned its business so as to disallow the expenses/deduction u/s 30 to 43D of the Act. Hence, we uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

23. So far as the ground No 2 of the appeal is concerned we find that this ground is misconceived. The Ld. CIT(A) has directed the AO to tax the income from letting office premises amounting to Rs. 62,05,500/- under the head income from the house property in terms of the order passed by the ITAT in assessee's own case. The details of expenses allowable pertaining to the previous year submitted by the assessee reveal that out of the total expenditure of Rs. 64,94,311/- incurred under the different head during the previous year, the assessee has claimed the expenditure of Rs. 18,59,102/- incurred exclusive for the purposes of business/profession. Hence, the contention of the revenue that the Ld.

CIT(A) has asked the AO to assess the income from letting office premises after allowing expenses of Rs. 64,94,311/-under section 30 to 40AD of the Act is misconceived. We, therefore uphold the findings of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

ITA No. 6502/Mum/2013 for A.Y. 2005-06

This appeal has been directed by the assessee against the impugned order passed by the Ld. CIT(A) 14, Mumbai whereby the Ld. CIT(A) partly allowed the appeal filed by the assessee against order dated 14.5.2012 passed by the AO u/s 143(3) read with section 254 of the Act.

24. The assessee has challenged the impugned order raising the following effective grounds of appeal:-

1. *"The Order of the learned Commissioner of Income Tax (Appeals)-14 Mumbai, is bad in law and contrary to the facts of the case and evidence on record."*
2. *"The learned Commissioner of Income tax (Appeals) erred in not allowing deductions totaling to Rs. 24,03,514/- and Rs. 13,009/- under the heads 'Income from Business' and 'Income from Other Sources' respectively, by holding that " the only scientific way is to allow the expenses in proportionate to total income under each head in respect of turnover ."*
3. *"The learned Commissioner of Income tax (Appeals) erred in failing to appreciate that the item of deductions totaling to Rs. 24,03,514/- and Rs. 13,009/-, claimed by the Appellant in the computation of 'Income from Business' and 'Income from Other Sources' respectively, were those specifically identified as expenses*

allowable under section 30 to 43D and under Section 57 of the Income Tax Act, out of expenses totaling to Rs. 65,96,618/- debited to the Profit & Loss Account."

25. This appeal of the assessee is liable to be dismissed as infructuous as the same arises from the order of the assessing officer giving effect to the order of the Ld. CIT(A), which has been the subject matter of appeal ITA No 5251/M/2011 dealt with by us in earlier paras. The Ld. Counsel for the assessee quite fairly submitted that the appeal be dismissed as infructuous. Hence, we hold so.

26. In the result, the appeals filed by the revenue for the assessment for the assessment years 2005-06, and 2007-08 are dismissed and the assessment year 2006-07 is partly allowed and appeal filed by the assessee for the assessment year 2005-06 is dismissed.

Order pronounced in the open court on 13th January, 2017

Sd/-
(G.S.PANNU)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 13/01/2017

ITA No.6502/MUM/2013
ITA No. 5215-5216/MUM/2011
Assessment Year: 2005-06 & 2006-07
&
ITA No.8945/MUM/2010
Assessment Year: 2007-08

आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila