

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No. 5511/Mum/2015
(Assessment Year : 2011-12)

The DCIT CC-7(2),
Room No.655,
Aaykar Bhavan,M.K.Road,
Mumbai 400 020

..... Appellant

Vs.

M/s. Shreeji Exhibitors,
Old s No.677, New S.No.7A,
Near Temba Hospitl, Bhayader(W)
Thane 401 101
PAN:ABCFS 4464M

.... Respondent

Appellant by : Shri A.K.Kardam
Respondent by : Shri Shri V. Mohan

Date of hearing : 19/07/2016
Date of pronouncement : 19/08/2016

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the Revenue pertaining to assessment year 2011-12 is directed against an order passed by CIT(A)-49 Mumbai dated 09/09/2015, which in turn arises out of an order

passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 14/03/2014.

2. In this appeal, the only issue relates to the taxability of income received by the assessee from shopping mall. The respondent assessee is a partnership firm, which had constructed a commercial complex and leased out the same. It was also renting multiplex with five screens. The assessee was deriving rentals from various properties in the shopping mall and treated the same as income from business. The Assessing Officer however, following his stand for earlier assessment year of 2010-11, of treated the income so derived as taxable under the head income from house property. The CIT(A) has since disagreed with the Assessing Officer and upheld the plea of the assessee for treating such income as income from business. In coming to such conclusion, the CIT(A) referred to the decision of the Tribunal in assessee's own case for assessment year 2009-10, which was rendered vide ITA Nos. 640/Mum/2014 & 2196/M/2013 dated 14/08/2015. The Tribunal in its order dated 14/08/2015(supra) held that income/loss from the property was liable to be taxed as business income/loss in the present case and not under the head income from house property. Against such a decision of the CIT(A), Revenue is in further appeal before the Tribunal.

3. Before us, it was a common point between the parties that the order of the Tribunal dated 14/08/2015(supra), which has been relied upon by the CIT(A), continues to hold the field as it has not been altered by any higher authority. Therefore, in view of the aforesaid precedent,

we find no error on the part of the CIT(A) in upholding the plea of the assessee. Consequently, the appeal of the Revenue is dismissed.

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

Order pronounced in the open court on 19/08/2016

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

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

Mumbai, Dated 19/08/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai