

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.2334/M/2016
Assessment Year: 2011-12**

DCIT, Central Circle-1(2), Room No.906, Pratistha Bhavan, 9 th Floor, Old CGO Building Annexe, Mumbai – 400 020	Vs.	M/s. Omega Associates, 514, Dalamal Towers, 211, FPJ Marg, Nariman Point, Mumbai – 400 021 PAN: AAAFO0350M
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Chetan A. Karia, A.R.
Revenue by : Ms. Arju Garodia, D.R.

Date of Hearing : 16.02.2017
Date of Pronouncement : 03.04.2017

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned appeal has been preferred by the Revenue against the order dated 15.02.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to CIT(A) relevant to assessment year 2011-12.

2. The Revenue has taken the following grounds:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 1,38,922/- being depreciation on furniture and fixtures (leased assets) whose lease rent has been offered under the head 'Income from House Property', without appreciating the fact that no depreciation is allowable on any asset, the income of which has been declared under the head 'Income from House Property'.

2. On the facts and in the circumstances of the case and in law, the L d. CIT(A) erred in deleting the proportionate disallowance of expenses of Rs.39,38,460/- out of Rs.2,19,36,152/- relatable to leased property claimed against business income, without appreciating the fact that the above expenses being attributable to both the activities, i.e. business as well as the leasing, are not wholly allowable against the business income of the assessee.

3. The Appellant craves leave to add, to amend and / or to alter any of the grounds of appeal, if need be.

4. The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-47, Mumbai may be set aside and that of the Assessing Officer restored."

Ground No.1:

3. Vide ground No.1, the Revenue has agitated the action of the Ld. CIT(A) in deleting the disallowance of Rs.1,38,922/- being depreciation on furniture and fixtures, the rental income relating to which has been offered by the assessee under 'Income from house property'.

The assessee is a firm engaged in the business of construction, development and leasing activity. During the year under consideration, the assessee derived income from house property by leasing of units as well as business income by sale of flats. The Assessing Officer (hereinafter referred to as the AO) noticed from the fixed assets schedule that assessee had claimed depreciation of Rs.1,38,922/- on furniture and fixtures installed in leased assets/flats. The AO observed that the assessee had offered the receipts from the above stated leasing activity under the head 'Income from house property' and had also claimed standard deduction as per section 24 of the Income Tax Act. He, therefore held that the assessee was not entitled to further claim of depreciation on these leased assets.

Being aggrieved by the above finding of the AO, the assessee preferred appeal before the Ld. CIT(A).

4. The Ld. CIT(A), after considering the submissions of the assessee, observed that the assessee had leased out the flats along with furniture and fixtures installed in the flats. He further observed that there was only one agreement for lease and there was no separate charge in the lease agreement towards the furniture and fixtures. He therefore observed that the assessee had not charged any separate rent for furniture and fixtures. He accordingly

allowed the depreciation claim on the furniture and fixtures installed in the leased units.

Being aggrieved by the above order of the Ld. CIT(A), the Revenue has come in appeal before us on this issue.

5. We have heard the rival contentions of the Ld. Representatives of the parties. Admittedly, no separate lease rent deed has been executed from furniture and fixtures but the said furniture and fixtures are part of the leased units and have not been used for the business purpose of the assessee as the income derived from the said leased units has been offered by the assessee under the head 'Income from house property'. The assessee has also claimed standard deduction as admissible on 'Income from house property' as per provisions of section 24 of the Act. Once the assessee has claimed the standard deduction in relation to the leased property which includes furniture and fixtures, in our view, the assessee is not entitled to further depreciation on such leased asset. This issue is accordingly decided against the assessee and in favour of the Revenue. The findings of the Ld. CIT(A) on this issue are therefore set aside and that of the AO are hereby restored.

Ground No.2

6. Vide ground No.2, the Revenue has agitated the action of the Ld. CIT(A) in deleting the proportionate disallowance of expenditure of Rs.39,38,460/- out of Rs.2,19,36,152/- relating to leased property. The AO noticed that the assessee had booked various expenses in the computation of business income. He observed that since the assessee was also in the activity of leasing, apart from sale of flats, hence the expenditure relating to the leasing activity should be proportionately disallowed out of the total expenditure. He accordingly calculated an amount of Rs.80,17,355/- being the expenditure incurred relating to the leasing activity on proportionate basis. He, however, observed that since the assessee has already disallowed a sum of Rs.40,78,895/- as maintenance expenditure, he, hence, accordingly, further

disallowed a sum of Rs.39,38,460/- and added back the same to the income of the assessee.

7. In appeal, the Ld. CIT(A) deleted the further disallowance made by the AO of Rs.39,38,460/- by observing as under:

“5.2 **Ground 3:** This is against the action of the AO in disallowing various common expenses on a pro rata basis (leased area to total area) as against the appellant identifying the specific expenses relating to the leased flats. From the details filed before me, I find that the appellant is maintaining expenditure details building wise and is able to identify the specific quantum of expense for the leased flats. The appellant is maintaining a separate account for the maintenance charges received from each of the buildings constructed and maintained by it, as well as the expenditure on the maintenance of these buildings. In the said account filed before me, I find that the credit side consists of maintenance income building wise and on the debit side consists of expenses(building wise) such as electricity, house keeping, insurance charges, property tax, repairs and maintenance, security expense and water charges. The deficit or surplus is carried to the P&L A/c as a debit or credit respectively. In the instant case, there is a deficit in this account, which is to say that the appellant has expended more money than what has been recovered from the maintenance of buildings constructed. There is a debit of Rs.1,57,79,303. The AO has no grievance against this claim of the appellant. The AO separately identified the various expenses debited in the P&L A/c over and above the deficit and held that these expenses pertain to both leasing and sale of constructed units. While doing so, the AO has overlooked the fact that the appellant has maintained separate account for maintenance charges and other common expenses incurred. The addition of the AO is therefore misconceived on facts. To reiterate, the appellant has already separated the common expenses on maintenance listed out above and the same are not debited to the P&L A/c. Only the deficit of maintenance income over expense is debited to the P&L A/c. If there is a surplus, the same would have been credited to the P&L A/c as income. It is clear that the AO has not appreciated the facts in proper perspective and therefore the addition made is misconceived on facts. I therefore delete the addition of Rs.39,38,460 made by the AO on this count.”

8. A perusal of the above findings of the Ld. CIT(A) reveals that the Ld. CIT(A) has noticed that the assessee had been maintaining separate account for the maintenance charges received from each of the building rented out and as well as the expenditure actually incurred on maintenance of these buildings. The assessee had maintained separate account for maintenance charges and other common expenses incurred, which means the assessee has segregated out the expenses incurred on maintenance out of the common expenses and the same were not debited to profit and loss account and under these circumstances

there was no question of further making of proportionate disallowance in relation to the maintenance of building/leasing activity. He, therefore, deleted further disallowance made by the AO except the suo-moto disallowance offered by the assessee.

9. After hearing the Ld. Representatives of the parties, we do not find any reason to interfere in the order of the Ld. CIT(A) on this issue. The findings of the Ld. CIT(A) on this issue are therefore upheld.

10. In the result, the appeal of the Revenue is treated as partly allowed.

Order pronounced in the open court on 03.04.2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 03.04.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.