

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA NO. 5097/MUM/2016 : A.Y : 2012-13**

ACIT – 9(2)(2)  
Mumbai  
(Appellant)

Vs. E-City Projects Construction Pvt.  
Ltd., 844/4, Fun Republic  
Shah Industrial Estate  
Off. New Link Road,  
Andheri (W)  
Mumbai – 400 053  
(Respondent)  
**PAN : AABCE5486E**

**Appellant by : Shri R.P. Meena  
Respondent by : Shri Jay Bhansali**

**Date of Hearing : 30/10/2017**

**Date of Pronouncement : 30/10/2017**

**ORDER**

**PER G.S. PANNU, AM :**

The captioned appeal by the Revenue is directed against the order of the CIT(A)-16, Mumbai dated 27.05.2016, pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer dated 10.03.2015 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In its appeal, Revenue has raised the following Grounds of appeal:-

(i) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred on facts and in law in not upholding the action taken by the AO in treating the rental income from Operating Family Entertainment Center cum Mall and Maintenance Charges amounting to Rs 12,37,03,004/- and Rs 4,12,56,372/- respectively as "Income from House Property " against the assessee's claim of "Profit and Gains from Business or Profession "*

(ii) *"Whether on the facts and in the circumstances of the case and in law, The Ld.CIT(A) has erred on facts and in law in completely ignoring the decision of the Hon'ble Supreme Court in the case of Shambhu Investment (P) Ltd vs CIT(2003) 184CTR (SC) 91: (2003) 263 ITR 143(SC) wherein it is held that income derived by an assessee by letting out furnished premises on monthly rent basis to various parties alongwith various services, is assessable as income from property and not business income"*

(iii) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the interest expenditure of Rs 1,81,97,47s/- u/s 24 b of the Act by treating the income from House property as business income ignoring the fact that the revenue has not accepted the claim of the assessee in the present A.Y and earlier years and the revenue is in appeal for A.Y. 2008-09, 2009-10, 2010-11 and 2011-12 before the Hon'ble High Court".*

3. At the time of hearing, it was a common point between the parties that so far as the merits of the issues raised the appeals are concerned, the same are fully covered by the decision of the Tribunal in the assessee's own case for the A.Y.2009-10 and 2010-11 which have been applied by the CIT(A). Apart there from, at the time of hearing, the learned representative for the respondent-assessee further pointed out that the decisions of the Tribunal relied upon by the CIT(A) have since been affirmed by the Hon'ble High Court of Bombay also and for that matter he furnished copy of the Judgment of Hon'ble Bombay High

Court in ITA No.149 and others of 2015 dated 18/07/2017. The said factual matrix is also not disputed by the learned DR. In the above background, for the purpose of completeness of the order, the following discussion is relevant.

4. The respondent assessee is a company incorporated under the provisions of Companies Act, 1956, and, *interalia*, engaged in the business of constructing and acquiring immovable properties and more particularly managing, operating and running family entertainment centre cum malls and shopping complex. The income derived by the assessee from the activity of leasing, licensing of family entertainment centres cum malls / commercial complexes were assessed by the Assessing Officer as rental incomes under the head 'income from house property' as against assessee's claim of assessing such income under the head 'Profits and Gains from business or profession'. The Assessing Officer noted that assessee had shown such income under the head operating income comprising of rentals of Rs.12,37,03,004/- and maintenance charges of Rs.4,12,56,372/- besides other income of Rs.9,80,960/-. Following the stand of the assessing authorities in the past years of A.Y.2008-09 to 2011-12, the Assessing Officer proceeded to assess the said income under the head 'Income from House Property as against assessee's claim for treating the same as business income.

5. It is noteworthy that in para 4.4.3 of the assessment order, the Assessing Officer was made aware of the decision of the Tribunal in the assessee's own case wherein such receipts have been held to be taxable as business income. The Assessing Officer noticed that the decision of the Tribunal has not been accepted by the Department and its appeal filed before the Hon'ble Bombay High Court u/s.260A of the Act was

pending. For the said reasons, he has not followed the decision of the Tribunal for earlier years. On the contrary, the CIT(A) followed the decision of the Tribunal and allowed the claim of the assessee for treating such incomes as business income.

6. The Hon'ble Bombay High Court in its order dated 18/07/2017 (supra) has upheld the stand of the assessee that such incomes are liable to be assessed as business income. Following said decision of the Hon'ble Bombay High Court, the impugned stand of CIT(A) is affirmed and thus revenue fails in its Ground of appeal Nos. 1 & 2 as above.

7. In so far as the issue raised in Ground of appeal No.3 is concerned, the same relates to interest paid on loan availed by the assessee from HDFC in respect to a property located at Chandigarh. The Assessing Officer following his decision of earlier years, disallowed the interest expenditure. Accordingly, interest paid in respect of Chandigarh property pertaining to current year of Rs.1,81,97,475/- was disallowed and at the same time he allowed deduction u/s.24(b) of the Act of Rs.8,69,79,453/- (i.e. Rs.10,51,76,928/- - Rs.1,81,97,475/-).

8. The CIT(A) allowed claim of the assessee by noting that the income from lease / rentals was assessed as business income and therefore, the interest expenditure on loans availed from HDFC was an allowable expenditure.

9. On this aspect also, we found no merit in the appeal of the Revenue in as much as it is consequential to the upholding of assessee's stand of the income from lease / rentals being liable to be assessed as business income.

10. At the time of hearing, the learned DR fairly conceded the aforesaid in view of the Hon'ble Bombay High Court order dated 18/07/2017 (supra) in assessee's own case. Thus, on this aspect also Revenue fails.

12. Resultantly the appeal of the Revenue is dismissed.

The above decision was pronounced in the open court in the presence of both the parties at the conclusion of the hearing on 30<sup>th</sup> October, 2017.

Sd/-

**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

Mumbai, Date : 30<sup>th</sup> October, 2017

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

Sd/-

**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai