

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 2001/Mum/2017
(Assessment Year 2012-13)

BRT LIMITED,
Neville House, J.N.Heredia Marg,
Ballard Estate, Mumbai 400 001
PAN: AAACB 2433K Appellant

Vs.

The ACIT, Cir.2(1)(1)
Mumbai - 400 020 Respondent

Appellant by : Ms. Arati Vissanji
Respondent by : Ms. M. Hemalatha

Date of hearing : 02/08/2017
Date of pronouncement : 25/10/2017

ORDER

The captioned appeal filed by the assessee pertaining to assessment year 2008-09 is directed against an order passed by CIT(A)-3 Mumbai dated 19/01/2017, 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 28/02/2015.

2. In this appeal, assessee has raised the following Grounds of appeal:-

"1. The learned CIT (A) erred in treating the License fees received by your appellant as income under the head " Income from house property", in respect of the same business property on which depreciation has been claimed and allowed for many years.

2. *The learned CIT (A) further erred in not following the judgment passed by the honorable Supreme Court (SC) in the case of M/s Rayala Corporation Pvt. Ltd. vs. Assistant Commissioner of Income tax pronounced on August 11, 2016 in which the honorable SC has followed its own judgment in the Case of M/s Chennai Properties & Investments Ltd. vs. the Commissioner of Income Tax, Tamilnadu -I pronounced on April 2015 wherein it duly accepted the position that in a case where the assessee is not engaged in any other business activity and renting is the only activity it is carrying on, the rental income generated from the said activity should be treated as income from Business and Profession only. The said judgment was brought to the notice of CIT(A) during the appellate proceedings through submissions.”*

3. Although assessee has raised multiple Grounds of appeal but in sum and substance the solitary dispute revolves around the nature of income earned by the assessee from letting out its premises including land and factory building, facilities and other amenities to one M/s.Navnit Motors Pvt. Ltd. In brief, the relevant facts are that earlier assessee was engaged in the business of manufacture of rings travelers, textile rings and open end rotors spinning machine components, etc. The said business is now discontinued and during the year under consideration assessee had shown income of Rs.90,99,756/- from licence fee, compensation of amenities, etc. The said income was derived in terms of two agreements dated 04/01/2010 entered into with M/s.Navnit Motors Pvt. Ltd. Firstly, as per a Leave and Licence agreement dated 04/01/2010, assessee had leased out its land and factory premises to M/s.Navnit Motors Pvt. Ltd. for a period of 60 months in terms of which it was to receive compensation of Rs.2,80,000/- per month for the first 36 months and thereafter @ Rs.3,22,000/- per month for the balance of 24 months. The aforesaid income earned by the assessee during the year under consideration was treated as business income, whereas the Assessing Officer treated the same as an income assessable under the head house property. As a

consequence, the Assessing Officer adopted the rental income at Rs.90,99,756/- and after allowing statutory deduction under section 24 of the Act, the income under the head 'income from house property' was assessed at Rs.63,69,829/-. The primary reason prevailing with the Assessing Officer to assess the said income under the head 'income from house property' was that assessee intended to earn a stable rental income through the leave and licence agreement and that no complex amenities or services were provided. According to the Assessing Officer, it was a case of providing a property on lease with the pre-existing amenities which were part and parcel of the property. The said action of the Assessing Officer was challenged in appeal before the CIT(A), who has also affirmed the decision of the Assessing Officer. Against such a decision, assessee is in further appeal before the Tribunal.

4. Before me the Ld.Representative for the assessee has referred to the copies of the two agreements entered into with M/s.Navnit Motors Pvt. Ltd., which has been placed in the Paper Book. It has also been pointed out that the Memorandum and Articles of Association of the assessee company, inter-alia, provide that one of the objects of the assessee was to derive income by way of leasing, etc. On this basis, it is sought to be pointed out that the income has been rightly declared by the assessee to be business income. In the course of hearing, the Ld.Representative for the assessee has also referred to the judgments of the Hon'ble Supreme Court in the cases of Chennai properties & Investment Pvt. Ltd. vs. CIT, 373 ITR 673(SC) and Rayala Corporation Pvt. Ltd. vs. ACIT, Civil Appeal No.6437 of 2016 dated 11th Aug.2016.

5. On the other hand, the Ld. Departmental Representative has reiterated the reasoning advanced by the lower authorities, which have been noted in the earlier para and are not being repeated for the sake of brevity.

6. I have carefully considered the rival submissions. Factually speaking, there is no dispute to the fact that the assessee had discontinued its business of manufacturing and has instead leased out its land, factory buildings as well as attendant facilities and amenities to M/s.Navnit Motors Pvt. Ltd. for a period of five years. At the time of hearing it was specifically put to the Ld.Representative for the assessee as to whether the discontinuation of business was a temporary phenomena or it was stopped with no intention of reviving it. In response it has been pointed out that the discontinuation of manufacturing was not a temporary closure. In this background, it is appropriate to infer that assessee has stopped its business of manufacture of rings travelers, textile rings and open end rotors spinning machine components, etc. with no intention of reviving it again. Thus, in such a background, the leasing out of its property comprising of land factory premises alongwith attendants amenities is not a case of a temporary means of exploiting the property. In such a situation, the judgment of the Hon'ble Supreme Court in the case of Universal Plast Ltd. v. CIT,237 ITR 454(SC) squarely covers the controversy and it has to be held that that the licence fee, etc. earned in terms of the leave and licence agreement with M/s. Navnit Motors Pvt. Ltd. is not assessable as business income, as canvassed by the appellant.

6.1 Apart from the above, it is notable that a pertinent factual finding has been arrived at by the lower authorities, which is to the effect that no specialized or complex arrangement has been entered by the assessee in order to derive the impugned lease income. The aforesaid finding has not been negated on the basis of any cogent reason and, thus, it is a case where income has been earned through a rental arrangement simpliciter. Thus, in this view of the matter the income has been rightly held to be taxable under the head 'income from house property'. Thus, the order of the lower authorities on this aspect is hereby confirmed.

6.2 Before parting, I may also refer to the reliance placed by the appellant on the judgments of the Hon'ble Supreme Court in the case of Chennai properties & Investment Pvt. Ltd. (supra) and Rayala Corporation Pvt. Ltd.(supra). A perusal of the aforesaid judgments clearly reveal that the same are totally inapplicable in the context of the fact-situation in the instant case. In both the aforesaid judgments, the Hon'ble Supreme Court was not dealing with a situation where assessee had totally discontinued its business and leased out land and buildings. Thus, the aforesaid decisions relied upon by the assessee do not help the assessee in this case. In this view of the matter, the stand of the assessee deserves to be negated. I hold so.

7. In so far as the plea of the assessee regarding depreciation is concerned, the same is also not tenable, inasmuch as, none of its properties can be said to have been put to use for business. Thus, the claim of the assessee for depreciation has also been rightly denied by the lower authorities. I hold so.

8. In the result, appeal of the assessee is dismissed, as above.

Order pronounced in the open court on 25/10/2017.

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

Mumbai, Dated 25/10/2017

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