

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

Before Shri D.T. Garasia (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.3842/Mum/2012 - AY 2008-09

I.T.A No.4329/Mum/2012 - AY 2009-10

The Manjari Stud Farm Pvt Ltd, 41/44, Shapoorji Pallonji Centre, Minoo Desai Marg Colaba, Mumbai-400 005 PAN :AAACT1947J	vs	The Joint CIT-2(2)(4), Mumbai
APPELLANT		RESPONDEDNT

I.T.A No.4807/Mum/2012
(Assessment year 2009-10)

The Joint CIT(OSD), Circle-2(2)(4), Mumbai J	vs	The Manjari Stud Farm Pvt Ltd, 41/44, Shapoorji Pallonji Centre, Minoo Desai Marg Colaba, Mumbai-400 005 PAN :AAACT1947
APPELLANT		RESPONDEDNT

Assessee by	Shri Chetan Karia
Revenue by	Shri R.S. Arneja (CIT-DR) / Shri Suman Kumar

Date of hearing	26-09-2017
Date of pronouncement	10-11-2017

ORDER

Per G Manjunatha, AM :

These cross appeals by the assessee and the revenue for the assessment year 2009-10 and the appeal filed by the assessee for the assessment year

2008-09 are directed against separate, but identical orders of the CIT(A)-5, Mumbai dated 25-04-2012 and 01-03-2012 for the assessment years 2008-09 & 2009-10. Since, the facts are identical and issues are common in these appeals, for the sake of convenience, they were heard together and are disposed of by this common order.

2. The brief facts of the case extracted from ITA No.4807/Mum/2012 are that the assessee company is engaged in the business of development of information technology, infrastructure services, development of residential township and development of special economic zones, filed its return of income for the assessment year 2009-10 on 29-09-2009 declaring total income at Nil. The case was selected for scrutiny and notices u/s 143(2) dated 24-08-2010 and u/s 142(1) dated 08-02-2011 along with questionnaire were issued calling for various details. In response to notices, the authorized representative of the assessee appeared from time to time and furnished the details, as called for. The assessment was completed u/s 143(3) on 29-12-2011 determining the total income at Rs.179,50,73,585 interalia making additions / disallowances towards unexplained share capital, expenses attributable to income from house property, professional fees to be amortised, depreciation on service apartments, interest disallowance on assets not put to use and unexplained credits. Aggrieved by the assessment order, the assessee

preferred appeal before the CIT(A).

3. Before the CIT(A), the assessee has filed elaborate written submissions to challenge each and every additions made by the AO. The CIT(A), for the detailed reasons recorded in his order dated 25-04-2012, partly allowed appeal filed by the assessee, wherein he sustained additions towards disallowance of proportionate expenses attributable to income from house property, depreciation on service apartments, interest disallowance on assets not put to use; however, deleted additions made by the AO towards professional fees to be amortised, unexplained credits and addition towards share capital u/s 68 of the Income-tax Act, 1961. Aggrieved by the order of CIT(A), the assessee as well as the revenue are in appeal before us.

I.T.A No.4807/Mum/2012

4. The revenue in its appeal, has raised the following grounds of appeal:-

"1.(a) "On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in coming to the conclusion that the share capital contribution amounting to US \$ 2,02,62,114, equivalent to INR 168,00,78,431/- by M/s. Strand Developers Mauritius Ltd., stands explained by the communications dated 22-12-2011 of Mauritius Revenue Authority, without scrutinising and bringing on record the reasons for the difference in the communication of Mauritius Revenue Authority dated 21-11-2011 on which the addition u/s. 68 had been made and the later communication dated 22-12-2011."

(b) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in technically not giving an opportunity to the A.O to comment on the difference between the two communications of Mauritius Revenue Authority and drawing a

unilateral conclusion."

1. (a) *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in coming to a conclusion that the assessee had discharged the onus, relying upon the reconciliation provided by the appellant assessee, when there were no thorough enquiries made under section 250(4) either by himself or through the A.O."*

(b) *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in failing to follow principles of natural justice by failing to provide an opportunity to the A.O. to rebut the evidence furnished by the assessee during the appellate proceedings **iii** clew contravention of Rule 46A of Income Tax Rules."*

5. The first issue that came up for our consideration is addition towards share capital u/s 68 of the Act. The Ld.DR submitted that the Ld.CIT(A) erred in coming to the conclusion that share capital contribution amounting to US\$2,02,62,114 equivalent to INR 168,78,00,431 of M/s Strand Developers Mauritius Ltd stands explained by the communications dated 22-12-2011 of Mauritius Revenue Authorities, without scrutinizing and bringing on record the reasons for the difference in the communication of Mauritius Revenue Authorities dated 21-11-2011 on which addition u/s 68 had been made. The Ld.DR further submitted that the Ld.CIT(A) erred in technically not giving opportunity to the AO to comment on the difference between the two communications of Mauritius Revenue Authorities and drawing a unilateral

conclusion. The CIT(A) erred in coming to the conclusion that the assessee had discharged the onus cast upon it relying upon the reconciliation provided by the assessee without there being no enquiry made either by himself or through the AO. The Ld.DR further submitted tht the initial communication received from Mauritius Revenue Authorities on 21-11-2011 contains income-tax returns filed by Strand Developers Mauritius Ltd with Mauritius Revenue Authorities does not indicate any investment by the creditor in the assessee company. The letter received from the Mauritius Revenue Authorities clearly states that the company had filed income-tax returns as per which it has returned a net loss of Mauritius Rs.3,802 and the balance-sheet attached with the communication does not show any investment in the assessee company. The subsequent income-tax return filed by Strand Developers Mauritius Ltd, though contains the details of investment in Indian company, the said document has not been relied upon by the AO because it had not been received through proper channel. The Ld.DR further submitted that any information with regard to the investment from outside India, verification can be conducted through FT & TR Division of Department of Revenue, under the Ministry of Finance as the said authority is the designated authority under the bilateral treaty with each country u/s 90 of the Income-tax Act, 1961. The initial communication received from the Mauritius Revenue Authorities

through FT & TR clearly establishes a fact that Strand Developers Mauritius Ltd does not have capacity to invest such a huge amount in the assessee company. Therefore, the AO came to the conclusion that the assessee has not discharged the onus of proving the capacity and creditworthiness of the investor. Though the subsequent communication received from Mauritius Revenue Authorities through proper channel indicates investment in assessee company by Strand Developers Mauritius Ltd, the reasons for difference between the two communications received from Mauritius Revenue Authorities has not been explained by the assessee to the satisfaction of the AO. The CIT(A), without conducting any further enquiry with regard to the communication received from Mauritius Revenue Authorities and also without affording any opportunity to the AO to offer his comments on such deviation, deleted addition made by the AO towards share capital simply on the basis of second communication received from Mauritius Revenue Authorities by holding that the assessee has proved the genuineness and creditworthiness of the party.

6. The Ld.AR for the assessee, on the other hand, strongly supported the order of the CIT(A) and submitted that the Ld.CIT(A) deleted the addition made by the AO towards share capital u/s 68 of the Act, on the basis of letter dated 22-12-2011 received from Mauritius Revenue Authorities through proper channel, i.e. the FT & TR Division of Department of Revenue, Ministry of

Finance which is the authorized agency under the bilateral treaty with each country by India u/s 90 of the Income-tax Act, 1961. The communication received from Mauritius Revenue Authorities through FT & TR clearly establishes the fact that the assessee company has received share capital and share application money from M/s Strand Developers Mauritius Ltd. The Ld.AR further submitted that the Mauritius Revenue Authorities in their letter dated 26-12-2011 explained the reasons for difference in earlier communication sent vide letter dated 21-11-2011 which states that the earlier letter sent along with the income-tax return filed with Mauritius Revenue Authorities was incomplete and computer print out of the return, where all the details had through oversight not been input. The subsequent communication dated 22-12-2011 contains the return filed by M/s Strand Developers Mauritius Ltd, which establishes the fact of investment in assessee company. The said communication also forwarded the full details like name, address and citizenship of directors, copy of share certificate issued by the assessee, bank statements of M/s Strand Developers Mauritius Ltd, the business customer information and account opening form of HSBC Bank Mauritius Ltd, the income statement of Strand Developers Mauritius Ltd. All these documents were received from the Mauritius Revenue Authorities which was forwarded by the Under Secretary (FT & TR) to CBDT FTD Division-II on 10-01-2012. Based on

these details, the CIT(A) has come to the conclusion that the assessee has discharged the identity, genuineness of transaction and creditworthiness of the parties.

7. The Ld.AR further submitted that under the present law, in case amount received from outside India, the required enquiry to be carried out by the AO should be through FT & TR Division of Department of Revenue, under the Ministry of Finance and hence, the AO cannot ignore the documents received through proper channel to hold that the assessee has failed to discharge its onus in proving the credits. Neither the AO, nor the assessee had any power to cause necessary enquiry except requesting the designated authority. In this case, the AO has received the information through FT & TR Division which has been forwarded by the AO to the CIT(A) in the appellate proceedings and the CIT(A) has given opportunity of hearing to the assessee on the said communication which is evidenced from the fact that the CIT(A) in his order has clearly stated that he had the benefit of discussion with the AO on the subject matter. Therefore, there is no merit in the argument of the revenue that the CIT(A) has decided the issue without conducting necessary enquiries and also not giving proper opportunity to the AO. The assessee has fully discharged its onus by furnishing necessary evidence to prove the genuineness of share capital received from M/s Strand Developers Mauritius Ltd and hence,

the CIT(A) was right in deleting the addition made by the AO and his order should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO made addition towards share capital on the ground that the assessee has failed to discharge onus cast upon it by filing necessary evidence to prove genuineness of transactions and creditworthiness of the parties. The AO never disputed the identity of the shareholder. The AO has accepted the fact that the assessee has received share capital as well as share application money from M/s Strand Developers Mauritius Ltd. The AO made addition solely on the basis of communication received from Mauritius Revenue Authorities which suggest that the Mauritius company did not have funds to make investment in assessee company. Based on the reply and evidences furnished by the FT & TR, Department of Revenue, the AO came to the conclusion that the assessee has failed to discharge capacity and creditworthiness of the shareholder. The contention of the assessee is that it has discharged the initial onus cast upon it by proving identity, genuineness of the transaction and creditworthiness of the party. The assessee further contended that though initial communication received from Mauritius Revenue Authorities did not contain full details about investment made by M/s Strand Developers Mauritius Ltd, subsequent

communication received on 21-12-2011 from Mauritius Revenue Authorities proves the fact of investment made by M/s Strand Developers Mauritius Ltd in the share capital and share application money of the assessee company. The assessee further contended that the Mauritius Revenue Authorities in their letter dated 21-12-2011 has clarified the reasons for difference for two communications sent about M/s Strand Developers Mauritius Ltd and also clarified such difference in the earlier communication is on account of incomplete computer print out of the return where all details had through oversight had not been considered. The Mauritius Revenue Authorities has sent a subsequent communication as per the request of the AO though it has received by the AO subsequent to completion of assessment, the said communication received from the Director General of Mauritius Revenue Authorities contains all necessary details required by the AO like name, address and citizenship of directors, copy of share certificate issued by the assessee company, income-tax return filed by Mauritius company with Mauritius Revenue Authorities, bank statements of M/s Strand Developers Mauritius Ltd, the business customer information cum account opening form of HSBC Mauritius Ltd and financial statement of M/s Strand Developers Mauritius Ltd for the year ended 31-03-2009. The said communication has been received through proper channel, through, the FT & TR Division of

Department of Revenue, Ministry of Finance which was forwarded by the Under Secretary, FT & TR-II, CBDT on 10-01-2012 to the jurisdictional AO. The AO has forwarded the second communication received from the Mauritius Revenue Authorities to the CIT(A) in the remand report and submitted that copy of return and balance-sheet furnished by Mauritius Revenue Authorities was found to be correct.

9. The fact with regard to the identity of the shareholder, M/s Strand Developers Mauritius Ltd has not been disputed by both the authorities. The AO has disputed the fact that there is a difference in two communications received from Mauritius Revenue Authorities which has not been properly explained by the assessee with necessary evidences. The AO has never disputed the subsequent communication received from the Mauritius Revenue Authorities through proper channel. The AO also not disputed the fact that such communications can be received only through FT & TR Division, Department of Revenue, Ministry of Finance as the said authority is the designated authority under the bilateral treaty with each country by India u/s 90 of the Income-tax Act, 1961. The second communication received from the Mauritius Revenue Authorities contains full details sought by the AO including the name, address and citizenship of directors, copy of share certificate issued by the assessee company, income-tax return filed by Mauritius company with

Mauritius Revenue Authorities, bank statements of M/s Strand Developers Mauritius Ltd, the business customer information cum account opening form of HSBC Mauritius Ltd and financial statement of M/s Strand Developers Mauritius Ltd. The AO also not disputed the fact that the reasons for difference in two communications sent by the Mauritius Revenue Authorities has been clarified by the Director General of Mauritius Revenue Authorities in their communication dated 21-12-2011 which has been extracted by the CIT(A) in his order at para 3.4.1. The other documents sent by the Mauritius Revenue Authorities has also been listed by the CIT(A) in the same paragraph. By these documents, a clarification has been received from the Director General of Mauritius Revenue Authorities which was forwarded by the Under Secretary, FT & TR-II, CBDT directly to the AO. Therefore, we are of the view that there is no merit in the arguments of the Ld.DR that the CIT(A) has not considered the necessity of further enquiry with regard to the genuineness of transactions and creditworthiness of the parties. We further are of the opinion that once communication received from the designated authority through FT & TR which is the authorized agency for exchanging information between two countries u/s 90 of the Income-tax Act, 1961 and such information has been received through proper channel, then there is no scope for the AO as well as the CIT(A) to conduct further enquiries with regard to the creditworthiness of the parties.

10. Coming to the other arguments of the Ld.DR. The Ld.DR submitted that the CIT(A) has not given proper opportunity to the AO to comment on the difference between two communications received from Mauritius Revenue Authorities and also failed to conduct necessary enquiries either by himself or through AO which violates Rule 46A of the Income-tax Rules, 1962. We do not find any merit in the argument of the Ld.DR for the simple reason that the CIT(A) has relied upon the document received through a designated authority which has been forwarded by Under Secretary, FT & TR-II, CBDT directly to the AO. The AO has forwarded such information in a closed cover to the CIT(A) and also stated in the remand report that the information received from the Mauritius Revenue Authorities including the financial statement of M/s Strand Developers Mauritius Ltd was found to be correct. We further notice that the CIT(A) has given a categorical finding in his order to the effect that he had an occasion to discuss with the AO on the communication received from the Mauritius Revenue Authorities and hence, there is no merit in the argument of the revenue that the CIT(A) has passed the order in violation of Rule 46A in the back of the AO. We further notice that the communication received from the Mauritius Revenue Authorities has proved the fact that M/s Strand Developers Mauritius Ltd has investment in the share capital of the assessee company and also that such investment has been disclosed in their income-tax return filed

with the Mauritius Revenue Authorities. We further notice that the letter of the Mauritius Revenue Authorities dated 21-12-2011 forwarded by the FT & TR Division to the Commissioner vide letter dated 28-12-2011 clearly stated to the Commissioner of Income-tax that after examining the above received information, if any further information is required, the same may be informed to them. Even the second letter of the Mauritius Revenue Authorities dated 26-12-2011 was forwarded by FT & TR Division to the AO again clearly stated to the AO that if any further information was required, the same may be informed to them. The AO, after receipt of information from the FT&TR Division has not chosen to call for any other information with regard to the amount received from M/s Strand Developers Mauritius Ltd and now accusing the CIT(A) of not giving proper opportunity to comment on the difference between the two communications of Mauritius Revenue Authorities. We further observe that the reasons for difference between two communications sent by Mauritius Revenue Authorities has been clarified by the Director General of Mauritius Revenue Authorities in their second communication dated 21-12-2011 which clearly states that the initial communication sent along with income-tax return of M/s Strand Developers Mauritius Ltd is incomplete and also subsequent income-tax return copy is a full fledged return filed by the assessee which clearly establishes investment made in assessee

company. The other details like share certificate issued by the assessee company and bank statement of M/s Strand Developers Mauritius Ltd clearly establishes receipt of money by the assessee company. The assessee also furnished copies of FCGPR and other compliances with respect to RBI and Foreign Inward Remittance Certificate which clearly proves the identity, genuineness of transactions of investment received from M/s Strand Developers Mauritius Ltd. The subsequent communication received from Mauritius Revenue Authorities alongwith the income-tax return further prove the fact of creditworthiness of the share and capacity to invest in assessee company. Therefore, we are of the considered view that the AO was incorrect in holding that the assessee has failed to discharge the genuineness of transactions and creditworthiness of the parties. The CIT(A), after considering relevant facts has rightly deleted additions made by the AO towards share capital received from M/s Strand Developers Mauritius Ltd. We do not find any error or infirmity in the order of CIT(A). Hence, we are inclined to uphold the order of CIT(A) and dismiss the ground raised by the revenue.

11. In the result, the appeal filed by the revenue is dismissed.

ITA No. 3842/Mum/2012 & ITA No.4329/Mum/2012 – Assessee’s appeals

12. The next issue that came up for our consideration from assessee’s appeal for the assessment year 2008-09 and 2009-10 is disallowance of proportionate

administrative and other sales and marketing expenses attributable to Income from house property. The factual matrix of the impugned addition are that the assessee company is in the business of developing and rendering information technology and infrastructure park called 'Ozone IT Park' at Pune. The assessee generally enters into two separate agreements, one for letting out of premises and another one for letting out of amenities. Income from letting out of premises is offered to tax under the head income from house property and income from letting out of amenities is offered to tax under the head Income from business or profession. The assessee has prepared consolidated books of account for its business activity. The assessee has claimed various expenditure in the P&L account, predominantly most of the expenditure are in the nature of general administration and other expenses. The expenses, specifically relates to income from house property has been suo moto disallowed by the assessee in the computation of income. The assessee has treated income from letting out of premises under the head Income from house property and computed income by allowing statutory deductions provided u/s 24(a) & (b). During the course of assessment proceedings, the AO called upon the assessee to explain as to why administrative and other expenses should not be proportionately disallowed in proportion to Income from house property and Income from business. In response to the show cause notice, the assessee

submitted that it has disallowed expenses specifically related to the activity of income from house property in the computation of income. The assessee further contended that the remaining expenses are in the nature of general administrative and other expenses, but mainly incurred in the business activity of the assessee, therefore, no further disallowance is called for in proportion to income earned from the activity of letting out of premises and letting out of fit outs.

13. The AO, after considering the explanation of the assessee observed that the revised return filed by the assessee rejected in view of the fact that it has barred by limitation. The AO further observed that the assessee's business consists of letting out of premises alongwith fit outs. The assessee itself has admitted the fact that in some cases, the premises were let out along with fit outs and in some other cases, only premises were let out. The assessee company has entered into separate agreements for premises and fit outs. The assessee has not maintained separate account for its business activity and its income from house property. The assessee has maintained consolidated accounts wherein it debited various expenditure including expenditure attributable to the activity of income from house property. The assessee also claimed separate deduction u/s 24(a) @30% of the annual letting value (ALV) in computing income from house property. However, the assessee has not

disallowed proportionate expenditure debited to the P&L Account which are relatable to the activity of income from house property. Therefore, considering the total expenditure, the AO has worked out proportionate expenses relatable to the activity of income from house property and determined total disallowance of Rs.3,11,63,455. The AO has determined expenses relatable to the activity of income from house property on the basis of income earned by the assessee from various heads of income. Since the assessee has already disallowed an amount of Rs.1,17,97,918, the balance amount of Rs.1,93,65,537 has been added to the income of the assessee.

14. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee has reiterated its submissions made before the AO. The assessee further contended that the AO was incorrect in disallowing proportionate expenditure on the basis of gross income from various heads of income ignoring the fact that the assessee itself has disallowed expenses which are directly relatable to the activity of income from house property while computing the income from business. The assessee further submitted that the method followed by the AO to determine the disallowance is incorrect inasmuch as he has taken proportionate disallowances on the basis of gross income excluding certain expenses already disallowed by the assessee. The CIT(A), after considering relevant submissions

of the assessee and also relying upon the decision of Supreme Court in the case of Goetze (India) Ltd 328 ITR 323(SC) observed that the assessee could have claimed deduction of property maintenance expenses u/s 37 of the I.T. Act only by filing a revised return. Since the assessee has not filed the revised return within the time, the AO was right in not entertaining the claim of the assessee and also disallowance of proportionate expenses out of the administrative and selling and other expenses which are relatable to the activity of income from house property. Aggrieved by the order of CIT(A), the assessee is in appeal before us.

15. The Ld.AR for the assessee submitted that the Ld.CIT(A) was erred in upholding the disallowance of property maintenance expenses incurred by the assessee for the purpose of earning income taxable under the head 'Profits and gains of business' on the ground that the claim of the assessee is not made in the return of income. The Ld.AR further submitted that the assessee itself has disallowed certain expenses directly attributable to the activity of income from house property and the AO while working out proportionate disallowance has not considered the expenses already disallowed by the assessee like rates and taxes, property maintenance expenses, donation and professional fees. The Ld.AR further referring to the decision of Hon'ble Supreme Court in the case of Rajasthan State Warehousing Corporation vs CIT 242 ITR 451 (SC)

submitted that once the assessee is into the undivisible business, disallowance of administrative and other expenses on the basis of income received from various activities cannot be disallowed. The Ld.AR further submitted that if at all disallowance is required towards administrative and other expenses, disallowances worked out by the AO is incorrect as he did not consider certain expenses disallowed suo motu by the assessee in the return of income and expenses in nature of corporate and routine expenses allowable u/s 37 of the Act, therefore, if at all any expenditure is disallowable, it can be disallowed to the extent of Rs.36,29,367 but not the disallowance worked out by the AO of Rs.1,17,97,918. The assessee has filed a paper book explaining the defects in disallowance worked out by the AO and also filed copy of disallowance worked out explaining the reasons for exclusion of certain expenses.

16. The Ld.DR, on the other hand, strongly supported the order of the CIT(A). The Ld.DR further submitted that the AO has rightly worked out proportionate expenses as the assessee has failed to disallow expenses incurred in relation to income from house property out of total administrative and other expenses incurred. Though the assessee has incurred various expenditure, failed to disallow expenses relatable to the activity of income from house property even though it has claimed separate deductions towards income from house property u/s 24(a) of the Act. Since the assessee has failed to disallow

expenditure and also maintained a common set of books of account for both the activities, the AO was right in disallowing proportionate expenditure on the basis of income generated from various activities.

17. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The AO has disallowed proportionate expenses debited in the P&L account on the basis of income earned from different heads of income. The AO has disallowed expenses relatable to income under the head 'Income from house property' on the ground that the assessee has claimed separate deductions as provided u/s 24(a) & 24(b) in the computation of income under the head 'Income from house property' whereas failed to disallow corresponding expenditure debited in the P&L Account while computing income under the head 'Income from business'. The AO has determined total disallowance of Rs.1,85,29,602, the calculation of which is reproduced in the order of CIT(A) at para 3.3. on page 10. It is the claim of the assessee that while computing disallowance of expenses incurred in relation to house property, the AO has wrongly excluded expenditure suoto moto disallowed by the assessee in its computation to the extent of Rs.97,94,884 as against total disallowances made by the assessee for Rs.1,20,45,714. The assessee further contended that it had disallowed expenses like rates and taxes, property maintenance expenses, professional

fees and donations which works out to Rs.1,20,45,714. The assessee has filed working explaining the computation for disallowance by the AO and actual disallowances required to be made while computing income under the head 'Income from business. According to the assessee, the AO has failed to exclude rates taxes, donation and professional fees. The assessee further contended that expenses in the nature of corporate / routine expenses allowable u/s 37 exclusively pertains to business activity of the assessee also has been included by the AO in determining the total disallowances. The assessee further contended that all expenses relatable to the activity of income from house property has been suo moto disallowed by it in the computation and if all further disallowance is required towards general administrative and other expenses including sales and marketing, the same shall be worked out excluding the disallowances already made by the assessee in its computation and also routine corporate and other expenses, which are purely relatable to the business activity of the assessee.

18. Having heard both the sides, we find force in the arguments of the Ld.Counsel for the assessee that the AO while calculating disallowance of expenditure relatable to income from house property has allowed deductions towards property maintenance expenses already disallowed by the assessee in its computation and failed to deduct rates and taxes, professional fees and

donations without any reason. We further observe that the assessee has already disallowed on its own expenses directly relatable to the activity of income from house property. The other expenses debited in the P&L Account are purely in the nature of corporate / routine expenses allowable u/s 37. The AO has not given any reasons for not considering the expenses already disallowed by the assessee in its computation and also corporate and other routine expenses, which are allowable u/s 37. Therefore, we are of the considered view that the issue needs to be examined by the AO in the light of the submissions of the assessee that it had already disallowed expenses of Rs.1,20,45,714 out of total expenses debited in the P&L Account and also certain expenses are purely in the nature of corporate / routine expenses allowable u/s 37 of the Act. Hence, we set aside the issue to the file of the AO and direct him to consider the issue afresh in accordance with law after giving opportunity of hearing to the assessee.

19. Insofar as assessment year 2009-10 is concerned, the assessee has not challenged the disallowance of proportionate expenses worked out by the AO on the basis of income generated from the activity of income from house property, income from business and income from other sources, except to the extent of Rs.1,17,97,918 being property maintenance expenses. The assessee has disallowed a sum of Rs.1,17,97,918 while computing income under the

head 'Income from house property' in its original return of income. During the course of assessment proceedings, the assessee has filed revised return claiming property maintenance expenses disallowed in computing income from house property against gross receipt received from the activity of property maintenance charges from the tenants. The assessee further contended that by mistake it has suo moto disallowed expenditure incurred towards property maintenance like security, watch and ward and other expenses which are incurred exclusively in connection with property maintenance charges recovered from the tenants which is deductible against income from business. The assessee further contended that it has filed a revised return revising its claim in respect of property maintenance charges. However, the AO has disallowed its claim merely on the ground that the revised return filed by the assessee is belated and hence cannot be allowed in view of the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd vs CIT (supra). The assessee further submitted that the AO has not disputed the fact that property maintenance expenditure has been incurred against property maintenance charges received from the tenants. He denied the claim on technical ground that return filed by the assessee is barred by limitation.

20. Having heard both the sides and considered material available on record, we find that the assessee has suo moto disallowed property maintenance

expenses of Rs.117,97,918 while computing income from business on the ground that such expenditure cannot be allowed as deduction. The assessee further contended that it has revised its return of income revising the claim of disallowance of property maintenance expenses against income from house property. The assessee further contended that expenditure incurred under the head 'property maintenance expenses are in the nature of security, watch and ward and other expenses incurred against property maintenance charges received from the building. We further observe that the AO has not disputed the fact that expenses incurred by the assessee have nexus with the income earned from the property. The AO has denied the deduction only on the ground that the revised return filed by the assessee is beyond limitation. We do not find any merits in the findings of the AO for the reason that it is settled position of law that just assessment does not depend on as to what is claimed by the assessee, but on proper computation of income deduced based upon the provisions of law. The assessing authority cannot allow the claims of the assessee if the related facts and provisions of law did not approve it and similarly, it is also the duty of the AO to allow even those benefits about which the assessee is ignorant, but otherwise legally entitled to. There is no estoppels against the proper application of law. The Hon'ble Bombay High Court in the case of CIT vs Prithvi Brokers & Shareholders Pvt Ltd 349 ITR 336

(Bom) observed that if a claim is not made before the AO it can be made before an appellate authority. The jurisdiction of the appellate authority to entertain such a claim has not been negated by the Supreme Court in the case of Goetze (India) Ltd vs CIT (supra). The Hon'ble Bombay High Court also observed that the Supreme Court in Goetze (India) Ltd has made a point that issue in the case of powers of the assessing authority and the judgement does not impinge on the powers of the Tribunal to entertain and allow additional claims.

21. In this case, admittedly, the assessee has filed revised return during the course of assessment proceedings to make a claim of deduction towards property maintenance expenses against business income which has not been taken cognizance on account of limitation. Therefore, we are of the considered view that considering the facts and circumstances of the case and also relying upon the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd and Bombay High Court in the case of CIT vs Prithvi Brokers & Shareholders Pvt Ltd (supra), the claim of the assessee with regard to the deduction towards property maintenance expenses against business income needs to be considered in the lights of the facts without going into the technicality of the issue of limitation of filing revised return. Therefore, we set aside the issue to the file of the AO and direct him to consider the issue afresh

after affording reasonable opportunity of hearing to the assessee.

22. In the result, appeal filed by the assessee in ITA No.3842/Mum/2012 and ITA No.4329/Mum/2012 are allowed for statistical purpose. The appeal filed by the revenue in ITA No.4807/Mum/2012 for the assessment year 2009-10 is dismissed.

Order pronounced in the open court on 10th November, 2017.

Sd/-

sd/-

(D.T. Garasia)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 10th November, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai