

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

Before Shri P K Bansal, Vice President &
Shri Pawan Singh, Judicial Member

ITA No.1005/Mum/2015
Assessment Year : 2010-11

ITO 15(3)(1) Mumbai	Vs.	Third Eye Estates Pvt Ltd, B/3301-3302 Oberoi Spring, Off Link Road, Andheri (W), Mumbai
(Appellant)		PAN AACCT1261H (Respondent)

Appellant By : Shri V Justin
Respondent By : Shri Hiro Rai

Date of Hearing : 31.10.2017	Date of Pronouncement : .11.2017
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ORDER

Per P K Bansal, Vice-President:

This appeal has been filed by the Revenue against the order of the CIT(A)-24, Mumbai, dated 27.11.2014, for A.Y. 2010-11. The effective grounds taken by the Revenue read as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in allowing relief to the assessee company without appreciating the fact that the rent was received by the assessee from owned property and, therefore, it was rightly assessed as income from house property."

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made of Rs.44,33,656/-without appreciating the fact that the rent received was income from house property."

2. The brief facts of the case are that the Assessing Officer noted that the assessee is engaged in the business of purchase and sale of real estate. During the year the assessee had no business receipts except the rental income of ₹ 9 lacs and profit on sale of fixed asset amounting to ₹ 39,95,528/- however, it has claimed expenses amounting to ₹ 44,33,656/-. The assessee has shown rental income as "Income from business" but the Assessing Officer was satisfied and he assessed the rental income under the head "Income from house property" and after allowing deduction u/s. 24(1) amounting to ₹ 2,70,000/- considered the "Income from house property" at ₹ 6,30,000/- and disallowed a total sum of ₹ 44,33,656/- as, in his opinion, the assessee has not carried out any business activity during the impugned assessment year. Therefore, the business income has been assessed at 'Nil'. On appeal, the CIT(A) allowed the appeal of the assessee in both the issues as well as other issues by holding as under:

"2.3 I have carefully considered-the submissions and the finding of the AO in the impugned order. In support of its contention that the income should be assessed under the head business, the appellant had furnished copy of the audited balance sheet along with the schedule of fixed assets to show that the premises from which rent was-received was held as a business asset. The A.O himself in the assessment order has brought out the Main objects of the appellant company. The Memorandum indicates that apart from acquisition and sale of flats, provision of convenience commonly provided in the flats, shops and residential and commercial premises was also found to be one of the object. Thus the main object allows the appellant to carry on .the House keeping activity as a business activity apart from other activities. In fact in para 1.2 of the

submission made the appellant had claimed that the facilities such as house keeping, security, telephone, electricity, maintenance etc. and rendering such facilities are embedded in the rent receipts.-- Since the source of income emanates from the business asset the rent received need to be held as business receipt. In view of this, the conclusion drawn by the AO that the rental income needs to be assessed under the head 'Income from house property' cannot be upheld: The ground raised is Allowed.

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3.3 I have carefully considered the submission and the finding of the AO in the impugned order. It is the contention of the appellant that it is engaged in the business of rendering various facilities such as house keeping, security, telephone, electricity, maintenance etc. and rendering such facilities are embedded in the rent receipts. Since the services rendered are in the nature of business activity and to maintain the business assets, appellant need to incur various routine expenditure, such as. salary & bonus to employees, general, administrative expenses, depreciation, interest etc. While adjudicating the Ground of appeal No: 1, I have held that the rent received is in the nature of business receipts, therefore such expenditure was incurred during the normal course of business activity, hence it needs to be allowed. Therefore, the AO is not justified in disallowing the claim of expenses amounting to Rs.44,33,6567-. This ground of appeal is allowed."

3. We have heard the rival submissions and have carefully considered the same along with the orders of the authorities below. It is not denied that the main objects of the assessee not only includes acquisition and sale of flats, provision of convenience commonly provided in the flats, shops and residential and commercial premises but the assessee can also let out the property. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Chennai Properties And Investment Ltd. vs. CIT [2015] 373 ITR

673, we are of the view that this issue is no more res integra. We, therefore, confirm the order of the CIT(A) treating the income as "Income from business" in respect of the rent received.

4. We also do not find any illegality or infirmity in the order of the CIT(A) deleting the disallowance of claim of expenses amounting to ₹ 44,33,565/- which has been incurred by the assessee for maintaining the business assets as the assessee is engaged in the business of renting various business activities such as house-keeping, security, telephone, electricity, maintenance etc. No cogent material or evidence was brought to our notice by the learned DR so that the finding given by the learned CIT(A) could be reversed. We, therefore, confirm the order of the CIT(A) on this account.

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

Order pronounced in the open court on 13th day of November, 2017.

Sd/-

(Pawan Singh)

JUDICIAL MEMBER

Mumbai; Dated: 13th November, 2017

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Sd/-

(P K Bansal)

VICE-PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'E' Bench, ITAT, Mumbai

BY ORDER,

#True Copy #

Assistant Registrar
Income Tax Appellate Tribunal, Mumbai