

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 989/MUM/2015
Assessment Year: 2010-11**

M/s Lake View
Developers
514, Dalamal Towers,
211 F.P.J. Marg, Nariman
Point,
Mumbai-400021.

PAN No. AAFL0589R

Appellant

Addl. CIT-12(3)
Mumbai

Vs.

Respondent

Assessee by : None
Revenue by : Mr. Rajesh Kumar Yadav, DR

Date of Hearing : 07/11/2017
Date of pronouncement : 15/11/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-23, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal filed by the assessee reads as under:

1. a. The Ld. CIT(A) erred in confirming disallowance of depreciation of Rs.36,76,166/- on furniture and fixtures on leased assets.
b. The Ld. CIT(A) erred in stating that depreciation on furniture and fixtures on leased assets is not allowable as income from renting is declared and assessed under the head income from house property.
c. Alternatively, appellant prays that proportionate rent be assessed under the head Income from other sources and depreciation on furniture on leased assets should be allowed u/s 57.

3. Briefly stated, the facts of the case are that the assessee had claimed depreciation of Rs.36,76,166/- on furniture and fixture leased out. The Assessing Officer (AO) observed that as the receipt from the leasing activities has been offered to tax under the head 'Income from House Property', depreciation on the same cannot be allowed. Therefore, he made an addition of Rs.36,72,166/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) agreed with the reasons given by the AO and dismissed the appeal filed by the assessee.

5. Though the case was fixed for hearing on 06.07.2017 and 07.11.2017, neither the assessee nor its authorized representative appeared before the Tribunal on the above dates. However, the assessee filed a submission dated 03.11.2017 submitting that the issue involved in the present appeal is covered by the order of the Tribunal in assessee's own case for the AY 2009-10.

6. The Ld. DR submits that the issue in the present appeal is covered in favour of the Revenue by the said order of the Tribunal.

7. We have heard the Ld. DR and perused the relevant materials on record. We find that the same issue arose before the ITAT 'A' Bench, Mumbai in the case of the assessee for the AY 2009-2010 (ITA No. 3409/Mum/2013). The Tribunal held as under:

“The primary facts are not in dispute. Income of the assessee’s construction business and that derived from leasing activity is, both, returned and assessed as ‘business income’ and ‘income from house property’ respectively. That is, there is no dispute as regards the head of income where-under the lease rental income of the property/s under reference is properly assessable under the Act, i.e., as income from house property. So, however, the assessee claims that as certain furniture and fixture stands also leased along with, depreciation thereon be allowed as deduction. We are unable to appreciate the assessee’s case as there is no provision for allowing depreciation under Chapter IV-C of the Act, i.e., for computing property income. Besides being in breach of the scheme of the Act, i.e., as regards the computation of income assessable under the said head of income, the same violates the well settled law as explained by the Hon’ble Apex Court time and again, and toward which we may reproduce from its constitution bench decision in *Sultan Brothers (P.) Ltd. vs. CIT* [1964] 51 ITR 353 (SC):

‘The several heads of income mentioned in section 6 of the Income Tax Act, 1922, and dealt with separately in sections. 7 to 12 are mutually exclusive, each head being specific to cover the income arising from a particular source, and it cannot be said that any one of these sections is more specific than another. Therefore, a particular variety of income must be assignable to one or the other of these sections. If the income

under consideration is taxable under section 9 or section 10, then it cannot be taxed under section 12.’

[emphasis ours]

The assessee’s claim, therefore, cannot be accepted.”

The Tribunal also rejected the alternate prayer of the assessee that proportionate rent be assessed under the head ‘Income from Other Sources’ and depreciation on furniture and fixture on lease assessed should be allowed u/s 57.

7.1 Facts being similar, we follow the order of the Co-ordinate Bench and uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 15/11/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 15/11/2017

Rahul Sharma, Sr. P.S.

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