

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 2953/Mum/2016 (Assessment Year 2005-06)
ITA No. 2954/Mum/2016 (Assessment Year 2006-07)

The Income Tax Officer 3(1)(2),
Room No.666, 6th Floor,
Aaykar Bhavan,M.K.Road,
Mumbai 400 020

..... Appellant

Vs.

M/s.Brindaban Builders P.Ltd.,
4th Floor, Rahejas Corner of Main-
Avenue of N.P.Road,
Santacruz (W), Mumbai 400 054
PAN:AAACB1815B

.... Respondent

C.O.No.201&202/Mum/2017
(Arising out of ITA No.2953 &2954/Mum/2016,
A.Y.2005-06 & 2006-07)

M/s.Brindaban Builders P.Ltd.,
Mumbai.

... Cross Objector

Vs.

The Income Tax Officer 3(1)(2),
Mumbai.

..... Appellant in Appeal

Revenue by : Shri Suman Kumar
Assessee by : Shri Mayur Kisnadwala

Date of hearing : 26/02/2018
Date of pronouncement : 28/02/2018

ORDER

PER G.S.PANNU,A.M:

The captioned appeals filed by the Revenue and Cross Objections by the assessee pertaining to assessment years 2005-06 and 2006-07 are directed against separate orders passed by CIT(A)-20, Mumbai dated 22/01/2016, which in turn, arise out of orders passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 19/03/2013.

2. The Grounds of appeal raised by the Revenue in ITA No.2953/mum/2016 for assessment year 2005-06 read as under:-

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in deleting the addition of Rs. 50,33,280/- made by assessing officer on account of "Income from House Property" by determining the annual value of the office premises situated at Raheja Centre, Nariman Point at Rs.71,90,400/- u/s, 23(1)(a) of the I.T.Act, 1961.?"*

2. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in deleting addition of Rs.50,33,280/- following the decision of the Hon'ble ITAT in assessee's own case for A.Y. 2008-09 without appreciating the fact that issue of determination of annual value of the property u/s. 23(1)(a) was not the subject matter of appeal before the Hon'ble IT AT for the A.Y. 2008-09?"*

3. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering the elaborate reasons mentioned by A.O. in the assessment order at para 5.5., wherein it was clearly brought out that the facts involved for the A.Y. 2008-09 are clearly distinguishable and therefore decision of the Hon'ble ITAT for A.Y. 2008-09 cannot be applied for the year under consideration?"*

4. *"The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer restored."*

3. In so far as the appeals of the Revenue are concerned, the common issue relates to the nature of income earned by the assessee from its property

situated at Raheja Center, Nariman Point, Mumbai. As per the Revenue, the compensation earned by the assessee for allowing the use of its office premises in Raheja Chambers is an income assessable under the head 'house property' whereas the assessee had declared such income to be assessable as 'business income'.

4. In both the assessment years, the CIT(A) has upheld the stand of the assessee following the decision of the Tribunal in the assessee's own case for assessment year 2008-09 in ITA No.6902/Mum/2011 dated 03/10/2012.

5. In this background, the Ld. Departmental Representative has not disputed that the factual matrix in the instant year is similar to that considered by the Tribunal in assessment year 2008-09 but has referred to the discussion contained in the assessment order.

5.1 Notably, in the assessment order as per paras 5.1 and 5.2, the Assessing Officer has himself noted that assessee is providing varied nature of services and amenities, such as electricity, telephone, security, garden maintenance, office maintenance, staff services, etc. in respect of the use of office premises allowed to three of its group concerns namely M/s. Sea View Developers, M/s. Outlook Publishing(I) P Ltd. and M/s. Gokul Construction Co. Pvt. Ltd. The said factual observation by the Assessing Officer, clearly shows that the use of the premises have been allowed by the assessee not as a tenancy simpliciter but for composite services, which included use of premises. Be that as it may, the decision of the Tribunal dated 03/10/2012(supra), which has been relied upon by the CIT(A), continues to hold the field, inasmuch as, the same has not been altered by any higher authority. The said decision of the Tribunal has made the following discussion, which is relevant:-

5. We have heard the rival submissions and perused the material before us. In order to be taxed under section 22 of the Act, the conditions to be satisfied are (a) the property should consist of buildings or lands appurtenant thereto; (b) the assessee should be the owner; (c) the property should not be used by the owner for the purpose of any business carried on by him the profits of which are chargeable to income-tax. In order to determine whether rent is assessable as income from property or business income, what has to be seen is whether the asset is being exploited commercially by the letting out or whether it is being let out for the purpose of enjoying the rent. The distinction between the two is a narrow one and has to depend on certain facts peculiar to each case. The question whether a particular letting is business has to be decided in the circumstances of each case and in the setting and background of facts. There is no such thing as a natural commercial asset, because an asset becomes a commercial asset by the use to which it is put in business and not because of any inherent qualities. In the case under consideration income from the property in question was being assessed under the head business income for last so many years. Property-in-question, rented amenities-like office equipment & Air Conditioner and for providing cleaning & security services-terms and conditions of letting out were the same as of the earlier AYs. AO has not brought anything new on record to prove that there was something substantially different from the earlier years.

5.1. In our opinion, where the income received is not from the bare letting of the tenement or from the letting accompanied by incidental services or facilities, but the subject hired out is a complex one and the income obtained is not so much because of the bare letting of the tenement but because of the facilities and services rendered, the operations involved in such letting of the property is of the nature of business or trading operations and the income derived is of the nature of business or trading operations. As the income received by the assessee-company is not only from letting out, but it is because of facilities and services rendered, as discussed in paragraph 5, so in our opinion same should be assessed under the head Business Income. Following the decisions of Karnani Properties (supra), Grounds no.1-8 are decided in favour of the assessee-company

6. Quite clearly, the Tribunal came to a finding that the income received by the assessee was not from letting of the tenement or from the letting accompanied by incidental services or facilities, but the subject hiring was a complex one and the income obtained was more for facilities and services provided, therefore, it went on to hold that the income derived there-from is in the nature of business income. At the time of hearing, the Ld. Representative for the assessee pointed out that subsequently for assessment year 2007-08 also the Tribunal vide its order in ITA No. 3453/Mum/2017 &

CO.No.203/Mum/2017 dated 09/10/2017 has upheld the assessment of hiring income as income from business, following the decision of the Tribunal dated 03/10/2012(supra).

7. At the time of hearing, a statement was also made at Bar that right from assessment years 1985-86 and upto 2004-05, similar income has been accepted by the Department to be assessable as business income. For the said reason and also in view of the precedents noted above, which continue to hold the field, in our view, the CIT(A) made no mistake in treating the hiring income earned from the office premises situated at Raheja Chambers, Nariman Point, Mumbai as business income. Thus, on this aspect Revenue has to fail.

8. Before parting, we may refer to some of the points agitated by the Revenue in the afore-noted Grounds of appeal. Firstly, it is canvassed that the facts involved for 2008-09 are distinguishable from the facts in the instant assessment year, and a reference is made to the discussion in para 5.5 of the assessment order. We have perused the same and find that there are no distinguishable features, inasmuch as, it is not in dispute that the transaction involving the use of property at Raheja Chambers is one and the same in both the years. In assessment year 2008-09 also, what was the subject matter of assessment was the income derived by the assessee from leasing of the office premises in Raheja Chambers, Nariman Point, which is the position in this year too. As in the assessment year 2008-09, in this year too the assessee declared income from the leasing as business income, and the Assessing Officer differed and assessed it as income from 'house property'. Therefore,

we find no reason to uphold the stand of the Revenue as manifested in the Grounds of appeal.

8.1 Considering the aforesaid, in our view, the CIT(A) made no mistake in directing the assessment of such income as 'business income', which is hereby affirmed. In the result, appeal of the Revenue is dismissed.

ITA No.2954/Mum/2016:

9. At the time of hearing, it was a common point between the parties that so far as appeal for the assessment year 2006-07 is concerned, the issue raised is similar to the Grounds of appeal dealt with by us in the appeal for assessment year 2005-06. As a consequence, our decision in appeal for assessment year 2005-06 shall apply *mutatis mutandis* in the appeal for assessment year 2006-07 also.

10. The assessee's cross objections are primarily in support of the order of the CIT(A) as well as on the issue of validity of reopening under section 147/148 of the Act, which is rendered infructuous since the corresponding appeals of the Revenue have been dismissed by us in the earlier paragraph.

11. In the result, appeals of the Revenue as well as cross objections of the assessee are dismissed, as above.

Order pronounced in the open court on 28/02/2018

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

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

Mumbai, Dated 28/02/2018
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