

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

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.438/M/2015  
Assessment Year: 2011-12**

M/s. Bharat Tiles & Marble Pvt. Ltd., 4/27, Kamal Mansion, Arthur Bunder Road, Colaba, Mumbai-400 005 <b>PAN: AAACB1727A</b>	Vs.	Dy. Comm. of Income Tax, Circle 2(1), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ishwar Prakash Rathi, A.R.  
Revenue by : Shri Ram Tiwari, Sr. D.R.

Date of Hearing : 29.12.2018  
Date of Pronouncement : 14.02.2018

**ORDER**

**Per D.T. GARASIA, Judicial Member:**

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter referred to as the CIT(A)] dated 05.12.2014 and it pertains to assessment year 2011-12.

2. The assessee has raised the following grounds of appeal:

“That the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.72,00,000/- being entire amount of remuneration paid to the directors of the company.

2. That the learned Commissioner of Income Tax (Appeals) has erred in confirming

the disallowance of following expenses incurred in relation to the motor car used for the purpose of the business of the company;

a) Interest on car loan	Rs. 3,04,198/-
b) Motor car expenses	Rs. 5,82,318/-
c) Motor car insurance	Rs. 1,13,847/-
d) Depreciation on motor car	Rs. 5,83,233/-

3. Your appellant craves leave to add, alter, amend or furnish fresh and detailed grounds of appeals.”

3. The assessee has also filed a petition for admission of additional grounds on 26.09.17 by raising the following additional grounds of appeal. The additional grounds raised by the assessee are reproduced as below:

“On the facts and circumstances of the case and as per the provision of law, the learned Assessing Officer has erred in assessing the compensation / rental income of Rs. 1,89,70,520/- under the head income for house property as against declared and claimed under the head business income. Further while allowing the aforesaid income under the head business the disallowance of various expenses related to income from house property amounting to Rs. 32,05,660/-, entire remuneration paid to directors Rs. 72,00,000/- and entire expenses incurred in relation to the motor car Rs. 15,83,596/- may please be allowed as business expenses as the same was incurred for the purpose of such business.”

4. The Ld. A.R. for the assessee submitted that the additional grounds raised by the assessee taking a legal plea of assessing the compensation/rental income under the head “Income from house property” as against declared and claimed under the head “Income from business” emanates from the orders of the lower authorities and no new facts or evidences brought in support of additional grounds. Therefore, the additional grounds raised may be admitted and decide on merits.

5. On the other hand, the Ld. D.R. opposed admission of additional grounds.

6. Having heard both the sides and considered material available on record, we find that the additional grounds raised by the assessee challenging the action of the AO in assessing the compensation/rental income under the head "Income from house property" as against declared and claimed under the head "Income from business" emanates from the order of the lower authorities and no new facts or evidences brought on record to support the same. Therefore, we are of the considered view that the additional grounds raised by the assessee need to be admitted and decided on merits. Hence, we admit the additional grounds raised by the assessee and proceed to dispose of on merits.

7. The brief facts of the case are that the assessee company is engaged in the business of development of property and rent collection. The assessee filed its return of income for assessment year 2011-12 on 27.09.2011 declaring total income of Rs.60,76,280/-. The case has been selected for scrutiny and accordingly notices under section 143(2) and 142(1) along with detailed questionnaire were issued. In response to notices, the authorised representative of the assessee appeared from time to time filed the details as called for. During the course of assessment proceedings, the AO noticed that the assessee has derived rental income from two properties and treated the same under the head

“Income from business and profession”. The AO further observed that the assessee has earned interest income of Rs.6,44,553/- and considered it as part of business receipt. It was further observed that the assessee has treated rental receipts as its business receipts and claimed various expenses against business income and offered the resultant surplus under the head “Income from business and profession”. Therefore, called upon the assessee to explain as to why the rental income received from letting out properties shall not be treated as income from house property and also interest earned from loans and advances shall not be assessed under the head “Income from other sources”. In response to show cause notice, the assessee vide its submission dated 25.11.13 submitted that it has earned rental income from letting out of properties which were once used by themselves for the business purpose in the past. However, as the business of manufacturing tiles is closed down, they have given the premises on lease to others so as to earn rental income and accordingly it is termed rent under the head “Income from business or profession”, which is in accordance with law and also supported by its main objective clause in memorandum of association. The assessee, in so far as interest receipts is concerned, no specific reply has been furnished to justify interest income as it is business receipts.

8. The AO after considering rival submissions of both the parties and also relying upon the decision of Hon’ble Supreme Court in the case of Shambhu Investment P. Ltd. vs. CIT (SC) 263 ITR 143, observed that rental income received from letting out of properties is

assessable under the head “Income from house property”, but not under the head “Income from business or profession” and accordingly considered rental income under the head “Income from house property” and recomputed income from house property, after allowing deductions towards property tax and standard deduction under section 24(a) of the Income Tax Act and determined net income of house property at Rs.1,31,29,691/-. The AO also treated interest received of Rs.6,44,553/- under the head “Income from other sources”. Further, the AO has disallowed expenses being remuneration paid to directors for Rs.72 lakhs, on the ground that once rental income has been treated as income from house property consequent deductions towards expenses under section 24(a) have been given. Therefore, no further deductions can be given towards remuneration to directors under the head “Income from house property”. The AO further observed that the expenses incurred by the assessee has not been incurred wholly and exclusively for the purpose of business. Hence, he disallowed the remuneration paid to directors and added back to the total income of the assessee. Similarly, the AO has disallowed expenses being interest on car loan, motor car expenses, motor car insurance and depreciation on motor car on the ground that the car is in the name of director and also the assessee failed to establish with any evidences the use of motor car in the business of the assessee.

9. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee

has submitted that the AO was erred in disallowing remuneration paid to directors without appreciating the fact that the directors are devoting their full time to the activities carried out by the company and also the payment is fully supported by necessary evidences. The assessee further submitted that it has lot of properties, in order to protect their rights and to get the optimum utilisation and to make financial benefits the directors are engaged on a day to day basis. Therefore, payment of remuneration to directors is for the services rendered to the company and hence cannot be disallowed. In so far as disallowance of motor car expenses and depreciation on motor car is concerned, merely because the car is in the name of the director of the company the usage of the car for the business purpose cannot be ruled out. The assessee is using the motor car for the purpose of business of the company and hence rightly claimed motor car expenses and depreciation. Therefore, the AO was incorrect in disallowing the motor car expenses only on the ground that car is in the name of the director of the company. The Ld. CIT(A), after considering the relevant submissions of the assessee and also relying upon certain judicial precedents observed that once the rental receipts have been treated under the head "Income from house property" consequent deductions towards expenses have been allowed under section 24(a) of the Act @ 30% of rental value and hence, further deductions towards directors' remunerations which is not incurred wholly and exclusively for the purpose of business cannot be allowed. In so far as disallowance of motor car expenses including depreciation, the assessee has failed to justify expenses

incurred towards maintenance of motor car and payment of interest on loan borrowed including depreciation with necessary evidences, when the AO specifically asked to produce log book etc. the assessee failed to file any evidences. Therefore, the AO was right in disallowing motor car expenses including depreciation. With these observations, the Ld. CIT(A) dismissed the appeal filed by the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

10. The Ld. A.R. for the assessee referring to the additional grounds of appeal raised, submitted that the AO was erred in assessing the compensation/rental income under the head "Income from house property" as against declared and claimed under the head "Income from business or profession" even though the assessee has discontinued its manufacturing activity and continued the activity of letting out of properties which is also in accordance with its main objects. The assessee further submitted that it was in the business of renting its properties after discontinuation of its manufacturing activity and received rent from properties which has been taxed under the head profit and gains of business or profession. The AO without appreciating the fact has assessed rental income under the head "Income from house property". The assessee further submitted that once the income has been considered under the head "Income from business or profession" the total expenditure incurred by the assessee towards rental income, remuneration paid to directors and expenses incurred in relation to motor car also needs to be allowed

against business receipts. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Rayala Corporation Pvt. Ltd. vs. ACIT (2016) 386 ITR 500 (SC) and also the decision of ITAT Mumbai SMC Bench in the case of Distinct Developers Pvt. Ltd. in ITA No.6943/M/2016 dated 03.05.17.

11. On the other hand, the Ld. D.R. strongly supported the order of the Ld. CIT(A). The Ld. D.R. further submitted that merely because the assessee considered the rental receipts under the head "Income from business" the charter of income does not change. The assessee has derived rental income from letting out of properties which is assessable under the head "Income from house property". Hence, the AO was right in considering the rental receipts under the head "Income from house property" and also disallowing certain expenses including remuneration paid to the directors and motor car expenses claimed against such rental receipts.

12. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. It is admitted fact that the assessee has discontinued its manufacturing activity and continued the activity of letting out its properties and derived rental income. The activity of assessee is also supported by main objects clause in memorandum of association. We further noticed that except letting out properties the assessee has not carried out any other business activity. Once the assessee has carried out its main activity of letting out properties to derive rental income, such

rental income should be considered under the head “Income from house property”. This legal proposition is further supported by the decision of Hon’ble Supreme Court in the case of Rayala Corporation Pvt. Ltd. vs. ACIT (supra), wherein under similar circumstances the Hon’ble Supreme Court observed that once the assessee had only one business that was of leasing its property and earning rent there from, the income so earned should be treated as business income and such income was to be subjected to tax under the head “Profit and gains of the business or profession”. This legal proposition is further supported by the decision of ITAT Mumbai SMC Bench, in the case of Distinct Developers Pvt. Ltd. (supra) wherein under similar circumstances the co-ordinate Bench by following the decision of Hon’ble Supreme Court in the case of Rayala Corporation Pvt. Ltd. vs. ACIT (supra) has held that rental income received from letting out of properties should be considered under the head “Income from business”.

13. Considering the facts and circumstances of this case and also following the ratio of Hon’ble Supreme Court in the case of Rayala Corporation Pvt. Ltd. vs. ACIT (supra), we are of the considered view that if the main activity of the assessee is of letting out properties and derive rental income without any other business activity, then such rental income should be considered under the head “Income from business or profession” but not under the head “Income from house property”. Therefore, we direct the AO to

assess rental income under the head “Income from business or profession” as claimed by the assessee.

14. Coming to disallowance of expenses being directors’ remuneration and motor car expenses including depreciation on motor car. The AO disallowed remuneration paid to directors on the ground that the expenditure was not wholly and exclusively incurred for the purpose of business of the assessee. The AO further observed that once the rental income has been considered under the head “Income from house property” after allowing the deductions available towards expenses as per the provisions of section 24(a), further deductions towards expenses cannot be allowed. We do not find any merits in the arguments of the AO for the reason that the allowability of expenses has to be considered in the light of the nature of business of the assessee and its relevance. Since we have already directed the AO to consider rental income under the head “Income from business”, the AO is directed to consider expenses incurred by the assessee against such income. In this case, the assessee has paid remuneration to directors and also furnished evidences for payment of remuneration for services rendered by the directors to the company. Therefore, we are of the view that the AO was incorrect in disallowing remuneration paid to directors by holding that the expenses were not wholly and exclusively incurred for business and also which is excessive and unreasonable. Hence, we direct the AO to allow expenses claimed by the assessee against business receipts.

15. In so far as motor car expenses and depreciation on motor car, the assessee has used motor car for the purpose of business even though the car is in the name of director. Merely because the car is in the name of director the usage of car for the purpose of business cannot be ruled out. However, the fact remains that when the AO has specifically asked for production of log book, the assessee failed to furnish log book to prove the use of vehicle for the purpose of business. Therefore, we are of the view that the issue needs to be examined by the AO in the light of the claim of the assessee that the motor car has been used for the business purpose. If the assessee substantiates its claim with necessary evidences and also by producing the log book to prove that car is used for business purpose, then the AO is directed to allow motor car expenses including depreciation on motor car.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

**Order pronounced in the open court on 14.02.2018.**

**Sd/-**  
**(G. Manjunatha)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(D.T. Garasia)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 14.02.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.