

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6375/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

ITO 13(3)(4) R.No. 216B, Aayakar Bhavan, M.K Road, Mumbai 400 020	बनाम/ v.	Zears Developers P. Ltd. Zear Business Centre 4 th Floor, God Gift Tower Hill Road, Bandra West Mumbai-400 050
स्थायी लेखा सं./PAN : AAACZ2097F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.6274/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

Zears Developers P. Ltd. C/o. R. Sanghvi & Co. 104, Rizvi Chambers-2, Jain Mandir Marg, Off Hill Road, Bandra (W), Mumbai-400050	बनाम/ v.	ITO 13(3)(4) R.No. 216B, Aayakar Bhavan, M.K Road, Mumbai- 400020
स्थायी लेखा सं./PAN : AAACZ2097F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri. Rajesh Sanghvi
Revenue by :	Shri. V. Vidhydhar, Sr. DR

सुनवाई की तारीख /**Date of Hearing** : **07-05-2018**

घोषणा की तारीख /**Date of Pronouncement** : **07 -05-2018**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

These cross appeals, filed by the Revenue and Assessee, being ITA No. 6375/Mum/2016 & ITA no. 6274/Mum/2015 respectively for assessment year 2012-13 are directed against the appellate order dated

22.08.2016 passed by learned Commissioner of Income-tax (Appeals)-21, Mumbai (hereinafter called "the CIT(A)") for assessment year 2012-13, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 11.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3)(ii) of the Income-tax Act, 1961 (hereinafter called "the Act"). Both the Revenue and the assessee are aggrieved by the appellate order passed by learned CIT(A), hence these cross appeals.

2. The grounds of appeal raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") in ITA no. 6375/Mum/2016 for AY 2012-13, read as under:-

"1. Whether on facts and in circumstances of the case, the Ld CIT(A) erred in allowing 103,63,284/- received towards amenities to be assessed under the head Income from other sources, without appreciating the fact that (i) the company had no pending stock in trade other than the rented area, for which proportional interest was already allowed, (ii) there was no justification for keeping the loan taken outstanding except loan attributable to rented portion, (iii) the interest on such loan is unjustified, if the same was not used for any meaningful business purpose, (iv) the money could not have been diverted even to other projects of assessee as they were stalled due to legal issues,

2. Whether on facts and in circumstances of the case, the Ld CIT(A) erred in allowing Rs 67,73,634/- income after reducing proportional interest allocable towards Income from House Property against the head business income, without appreciating the fact that the appellant company did not have any other project operative in the concerned A.Y., and there is no proof that such expenditure is incurred for the purpose of business.

3. Whether on facts and in circumstances of the case, the Ld CIT(A) failed to appreciate the fact that in case, the interest expenditure is allowed as business expenditure, then there should have been increase in the value of closing stock to that extent?"

3. The grounds of appeal raised by the assessee in the memo of appeal filed with the tribunal in ITA no. 6274/Mum/2016 for AY 2012-13, read as under:-

"1. In the facts and circumstances of the case and in law, the CIT(A) erred by NOT treating the "Gross Amenities income" of Rs. 1,03,63,284/- which was inextricably linked and arising due to a rental agreement, as Income from house property and further erred in not allowing the proportionate deduction u/s 24 against the said amenities incomes, ignoring Bombay High court judgement of J.K Investors (ITA 1089/2011) and prior year ITAT orders.

2. In the facts and circumstances of the case and in law, the CIT(A) erred by restricting the bank interest expenditure to Rs. 23,60,176/- against Rs. 29,87,565/- (being 25.84 % of total bank interest of Rs. 1,15,61,786/-) allowed by the AO, against income from house property.

3. Your appellant prays for leave to add, amend or alter all or any of the above grounds of appeal.”

4. The brief facts of the case are that the assessee is engaged in the business of real estate development and has derived income from business and house property. Effectively there are two issues in these cross appeals which need to be adjudicated by us. The first concerns itself whether to treat amenities income of Rs. 103,63,284/- received by the assessee as rental income under the head ‘income of house property’ as claimed by the assessee in the return of income filed with the Revenue and consequentially allowing benefit u/s. 24 , or whether the said amenities income is chargeable to tax under the head ‘Income from Business or Profession’ as was held by the AO in its assessment order or whether the same is chargeable to tax under the head ‘Income from other sources’ as was held by learned CIT(A) in its appellate order. The Second issue concerns itself with the claim of interest expenditure claimed by the assessee as deduction under the head ‘Income from House Property’ in the return of income filed with the Revenue , which was partly allowed by the AO to the tune of 25.84% of the total interest expenditure under the head ‘income from house property’ wherein Rs. 29,87,565/- stood allowed by the AO in its assessment order and the balance interest expenditure of Rs. 85,74,221/- stood disallowed as deduction even as business expenditure by the AO, while the learned CIT(A) allowed Rs.23,60,176/- under the head ‘Income from House Property’ and the balance interest expenditure of Rs. 67,73,634/- under the head ‘income from Business or Profession’ . Both assessee and Revenue are aggrieved by the appellate order of learned CIT(A) and hence these cross appeals filed before the tribunal.

5. The factual matrix of the case is similar to that of AY 2010-11 and 2011-12 except that the learned CIT(A) deviated by bringing to tax income from amenities under the head ‘Income from other sources’ as against in earlier years when it was held by learned CIT(A) to be chargeable to tax under the

head 'income from business or profession' . While w.r.t. claim of deduction of interest expenditure , it was observed by learned CIT(A) that the total interest expenditure incurred by the assessee was to the tune of Rs.1,15,61,786/- as against which the assessee itself made a claim of deduction of Rs. 91,33,810/- under the head 'Income from House Property' while the rest amount of interest expenditure to the tune of Rs.24,27,976/- was not voluntarily claimed by the assessee in return of income filed with the Revenue as deduction under any head of income at all and hence whatever allowance under any head of income is to be made of the interest expenditure is to be considered in context with the claim filed by the assessee in return of income and the voluntary disallowance itself made by the assessee cannot be allowed under any head of income. We have also observed that the AO while framing assessment orders dated 11.03.2015 u/s. 143(3)(ii) of the 1961 Act has referred to assessment year 2010-11 with respect to both the aforesaid issues and have stated that the Revenue has filed an appeal before the ITAT which is pending for disposal . The Tribunal has now adjudicated both the appeals for AY 2010-11 and 2011-12, vide orders in ITA no. 5615/Mum/2013 dated 26-05-2015 for AY 2010-11 and orders in ITA no. 3891/Mum/2015 in AY 2011-12 vide orders dated 07-03-2017. Both the aforesaid orders of the Tribunal are placed in paper book filed by the assessee with the tribunal.

6. The Ld. Counsel for the assessee submitted that both the issues have stood concluded by the tribunal in ITA no. 5615/Mum/2013 for AY 2010-11 vide orders dated 26-05-2015 and ITA no. 3891/Mum/2015 vide order dated 07.03.2017 for AY 2012-13, it is stated by Ld. Counsel for the assessee that factual matrix in the instant AY 2012-13 is similar to earlier years i.e. AY 2010-11 and 2011-12 and the issues are covered by the aforesaid decisions of the tribunal . The learned counsel for the assessee submitted that the assessee will have no objection if the said decisions are followed by the tribunal and part interest is allowed to the tune of 25.84% under the head 'income of house property' based on proportion of constructed area in 'Link Square Mall' which is not sold by the assessee and was let out to Infinity Retail Limited (CROMA), while rest of the interest expenses is to be allowed under the head 'Income from business or

Profession'. It was submitted that loans were availed from bank for constructing 'Link Square Mall' at Off Linking Road, Bandra(W), Mumbai , out of which 74.16% of the constructed area was sold by the assessee in earlier years while rest is retained by the assessee which is let out to CRIOMA. It was submitted that bank loan was not repaid and sale proceeds of the constructed area was utilised for other real estate projects undertaken by the assessee. It was submitted that the assessee even after constructing the aforesaid mall at Bandra(W) continued with its real estate business activities. It was submitted that on these basis the interest was allowed for earlier years by the tribunal which is acceptable to the assessee as facts have not changed in the impugned assessment year vis-a-vis earlier years. The learned counsel for the assessee submitted that the assessee continued to be in the business of real estate and the said business has not closed down and balance interest expenses are to be allowed as business expenses. Our attention was drawn to an MOU entered into by the assessee for real estate project with 'Grace Property India Private Limited' wherein total of Rs. 4.96 crores were released to the said company for acquiring property at Andheri for real estate business till the end of year i.e. 31-03-2012 . The ledger account of Grace Property India Private Limited is also placed in paper book/page 105. The MOU dated 28-03-2011 entered into by the assessee with said Grace Property India Private Limited is placed in paper book/page 106-118. It was submitted that Rs. 8.25 crores was earned by the assessee as 'Premium' on cancellation of the said agreement for non completion and non allotment of the property by Said 'Grace Property India Private Limited' in subsequent year, vide cancellation deed dated 04-05-2012 entered into by the assessee with the said 'Grace Property India Private Limited'. The said deed of cancellation is placed in paper book/page 119-123. It was submitted that Intention of Disapproval(IOD) was issued by MCGM in favour of the assessee on 29-12-2011 for Shivsathan project which is placed in paper book/page 124-132 which also evidences that the real estate business activities are carried out by the assessee even during the relevant period under consideration. Thus it was submitted that there are enough evidences on record to show that the assessee real estate business was in operations and was not closed during relevant period under consideration. It was submitted that it is correct that funds to the tune of around Rs. 9 crores

were raised from the bank for constructing commercial complex namely 'Link Square Mall' situated at Off Linking Road, Bandra(W), Mumbai wherein the Mall so constructed by the assessee was sold in earlier years to the extent of 74.16% but the sale proceeds were not remitted to bankers towards refund of loan rather the assessee continued to utilise the said funds for other real estate business activities , while the rest 25.84% of the constructed area was never sold by the assessee which was let out to Infinity Retail Limited(CROMA). The assessee submitted that interest paid on the bank loans outstanding of around 9.00 crores is to be apportioned to the tune of 25.84% being constructed area which is still owned by the assessee in Mall at Bandra(W) namely which was let out to CROMA under the head 'Income from House Property' , while the balance interest of 74.16% needs to be allowed as business deduction as the same were utilised for business activities as detailed above. It was submitted that the tribunal in AY 2010-11 and 2011-12 allowed the total interest in the above proportion and the issue in the impugned assessment year 2012-13 is covered by the decision of tribunal in assessee's own case for AY 2010-11 and 2011-12, which needed to be followed.

With Respect to second issue , our attention was drawn by learned counsel for the assessee to the 'amenities agreement' as well 'Leave and License agreement' both agreements dated 25-01-2008 which were entered into by the assessee with Infinity Retail Limited (CROMA) with respect to letting out of the area retained by the assessee in Link Square Mall at Bandra(W) , both these separate agreements are placed in paper book at page no. 70 to 82 and 83-104 respectively . The learned counsel for the assessee submitted that the amenities provided by the assessee vide amenities agreement are linked to the property situated at Link Square Mall, Bandra(W) which is rented out by the assessee to CROMA and these amenities are inseparable from the property let out such as lift, generator, transformer, fire fighting system, electric cabling, plumbing, toilet, flooring etc. and the said list is placed in paper book being part of amenities agreement vide Annexure -A which is placed in paper book / page no. 78 to 82. The learned counsel for the assessee also relied upon the decision of Hon'ble Bombay High Court in the case of CIT v. J.K. Investors (Bombay) Ltd. in ITA No. 1089 of 2011 dated

25.07.2012 and our attention was drawn to the said decision to contend that income arising from amenities agreement is to be brought to tax under the head 'Income from House Property'. It was submitted that tribunal in assessee's own case has ordered to assess the income from amenities agreement under the head 'Income from House Property' in AY 2010-11 and 2011-12 vide orders in ITA no. 5615/M/2015 dated 26-05-2015 for AY 2010-11 and ITA no. 3891/Mum/2015 vide order dated 07-03-2017 for AY 2011-12. It was submitted that facts are identical in this year i.e. AY 2012-13 and the issue is covered by the aforesaid decisions of the tribunal in assessee's own case for AY 2010-11 and 2011-12 and the aforesaid decisions of the tribunal are required to be followed as there is no change in the factual matrix of the case.

The Ld. DR on the other hand relied on the order of the AO but fairly agreed that both the issues are covered by decision of the tribunal in assessee's own case for AY 2010-11 and 2011-12.

7. After considering the submission of both the parties and perusing the material on record , we are of the considered view that factual matrix as is emerging from the records is similar in the previous year relevant to impugned assessment year 2012-13 before us vis-a-vis factual matrix in AY 2010-11 and 2011-12 . The facts are discussed by us in extenso in preceding para's . Both the rival parties have also agreed that the tribunal orders for AY 2010-11 and 2011-12 in assessee's case needs to be followed as factual matrix has not changed in this year under consideration in this appeal. After going through the entire factual matrix of the case , we also concur that the tribunal orders in assessee's own case for AY 2010-11 and 2011-12 are to be followed as factual matrix continued to be similar in AY 2012-13 which is under consideration before us . The tribunal orders for both the years which dealt with both the issues under this appeal are reproduced here under in their entirety for reference:-

Tribunal Order in ITA no. 5615/Mum/2013 for AY 2010-11, dated 26-05-2015 in assessee's own case is reproduced hereunder:

“The Revenue is aggrieved by the impugned order dated 28/06/2013, of the Id. First Appellate Authority, Mumbai.

Grounds no. 1 and 2, raised by the Revenue pertains to treating amenities income amounting to Rs. 90,35,556/- as “Income from House Property” and allowing deduction @ 30% u/s. 24(a) of the Act without appreciating the facts that there were two sets of agreement, one for the rent and other for the amenities provided thus the income from amenities should have been treated as “Business Income”.

2. At the time hearing, the Id. DR, Shri Vijay Kumar Bora, advanced his arguments which are identical to the ground raised by submitting that the substantial income arose out of amenities should have been treated as business income and not income from House Property. The assessment order was defended. On the other hand, Shri Rajesh Sanghvi, learned counsel for the assessee contended that the amenities are interconnected, therefore, cannot be considered in isolation and thus the amenities will stand with rent and it is actually an income from house property. The impugned order was defended.

2.1 We have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee is in the business of Real Estate Development, declared loss of Rs. 42,66,877/-. The learned Assessing Officer determined the income at Rs. 83,09,550/-. The assessee earned gross rental receipts to the tune of Rs. 1,39,87,808/- which was consisting of Rs. 44,52,252/- (treated as rental income) and Rs. 78,35,556/- (from amenities) and further a sum of Rs. 12,00,000/- on account of amenities from Croma and another Rs. 2,00,000/- as rent from Vodaphone. The learned Assessing Officer, while completing the assessment treated the income emanating from amenities as business income. This stand of the Assessing Officer was challenged in appeal before the Id. Commissioner of Income Tax (Appeals) on the plea that the amenities like flooring, HBAC, Generator, Electrical Cabling, Plumbing, Sprinklers, Hydrants, Signage, Anchor space etc. are part and partial of the rent agreement. The Id. Commissioner of Income Tax (Appeals) agreed with the submission of the assessee against which the Revenue is in appeal before the Tribunal.

2.2. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the Id. respective counsels, if kept in juxtaposition and analyzed, we find that while coming to a particular conclusion the Id. Commissioner of Income Tax (Appeals) justifiably analysed the rent and the amenities agreement and followed the decision from Hon’ble jurisdictional High Court in J.K. Investors (Bombay Ltd.) ITA No. 1089 to 2011 and Bhaktavar Construction Pvt. Ltd. 162 ITR 452 holding that amenities agreement cannot operate in isolation of the rent agreement. The amenities are part and partial of the rent agreement, thus the amount received as amenities is part and partial of the rent thus it is income from house property, therefore, the stand of the Id. Commissioner of Income Tax (Appeals) is affirmed.

3. So far as allowing interest of Rs. 93,65,760/- as business expenditure is concerned the learned DR placed reliance upon the conclusion drawn in the assessment order, whereas the learned counsel for the assessee defended the conclusion arrived at in the impugned order.

3.1 We have considered the rival submissions and perused the material available on record, we find that the claim of the impugned amount was declined by the Assessing Officer as claimed business loss on the plea that no meaningful business was carried out. The Id. Commissioner of Income Tax (Appeals) found that the assessee booked sales of 191.52 lakhs from sale of 773 sq.ft. of commercial space, this factual matrix is was also accepted to be correct in para 5.7 of the Assessment Order itself. The account of the assessee further shows unsold stock of Rs. 6,49,82,508/-. In the Assessment Order it has been specifically mentioned that two other projects "Shiv Asthan" & "Anita Apartments" were stopped due to legal problems. Thus, it cannot be said that the business was completely stopped. There is a possibility that sometimes there may be sale or lull in the sale but it cannot be inferred that the Assessee-company has closed down fact remains that the assessee made sales of Rs. 1.91 Crores during the relevant period therefore, we are not in agreement with the observation made in the assessment order that there was no sale or no meaningful business. The Ld. Assessing Officer allocated part of the interest expenses towards house rented and disallowed balance interest more specifically when the assessee is a going concern. The Id. Commissioner of Income Tax (Appeals) even considered the reply the queries raised to the assessee claiming that the assessee started work on the dormant project and proposal for residential complex was responded vide letter dated 03.05.2013 evidencing that the assessee is ongoing concern, thus we find no infirmity in the conclusion drawn by the Id. Commissioner of Income Tax (Appeals). Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of Id. representatives from both sides at the conclusion of the hearing on 26/05/2015."

Tribunal order in ITA no. 3891/Mum/2015 for AY 2011-12, dated 07.03.2017 in assessee's own case is reproduced hereunder:

"This is an appeal filed by the revenue against the order dated 20.4.2015 passed by the Id.CIT(A)-51, Mumbai for the assessment year 2011-12.

2. The revenue has taken following grounds of appeal:

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing balance interest of Rs.82,30,294/- as business expenditure, without appreciating the fact that there is no proof that such expenditure is incurred for the purpose of business?"

2. "Whether on the facts and in the circumstances of the case, the Ld. IT(A) has not appreciated the fact that in case, the interest expenditure is allowed as business expenditure, then there should have been increase in the value of closing stock to that extent?"

3. "Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in deleting the disallowance of Rs.27,10,667/-, being standard deduction @ 30% claimed against income from amenities, without appreciating the fact that there are

two sets of agreements, one for rent and the other for amenities provided and as such income from amenities should have been taken as business income?"

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

3. At the outset, the Id. Counsel submitted before us that the issue raised by the revenue in grounds of appeal no.1 to 3 is regarding allowing interest of Rs. 82,30,294/- as business expenditure and allowing Rs.27,10,667/- as standard deduction at the rate of 30% claimed against the income from amenities by the FAA. The Id. AR filed a copy of form no.36 along with the grounds raised in the earlier year AY 2010-11 and the decision of the co-ordinate bench of the Tribunal in ITA No.5615/Mum/2013 (AY-2010-11) dated 26.5.2015 submitting thereby all these issues were fully covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case (supra) and therefore the appeal of the revenue deserved to be dismissed.

4. On the other hand, the Id. DR appeared to be fairly agreed with the contention raised by the Id.AR.

5. We have carefully considered the rival contentions, perused the material placed before us including the orders of authorities below and case law relied upon by the assessee. We find that the issues raised in grounds no.1 and 2 qua allowing the interest of Rs.82,30,294/- by the Id.CIT(A) as business expenses is identical to one as decided by the co-ordinate bench of the Tribunal in assessee's own case (supra). For the sake of ready reference, we reproduce the observations and finding of the Tribunal as under :

"3. So far as allowing interest of Rs. 93,65,760/- as business expenditure is concerned the learned DR placed reliance upon the conclusion drawn in the assessment order, whereas the learned counsel for the assessee defended the conclusion arrived at in the impugned order.

3.1 We have considered the rival submissions and perused the material available on record, we find that the claim of the impugned amount was declined by the Assessing Officer as claimed business loss on the plea that no meaningful business was carried out. The Id. Commissioner of Income Tax (Appeals) found that the assessee booked sales of 191.52 lakhs from sale of 773 sq.ft. of commercial space, this factual matrix is was also accepted to be correct in para 5.7 of the Assessment Order itself. The account of the assessee further shows unsold stock of Rs. 6,49,82,508/-. In the Assessment Order it has been specifically mentioned that two other projects "Shiv Asthan" & "Anita Apartments" were stopped due to legal problems. Thus, it cannot be said that the business was completely stopped. There is a possibility that sometimes there may be sale or lull in the sale but it cannot be inferred that the Assessee-company has closed down fact remains that the assessee made sales of Rs. 1.91 Crores during the relevant period therefore, we are not in agreement with the observation made in the assessment order that there was no sale or no meaningful business. The Ld. Assessing Officer allocated part of the interest expenses towards house rented and disallowed balance interest more specifically when the assessee is a going concern. The Id. Commissioner of Income Tax (Appeals) even 5 M/s Zears Developers P. Ltd considered the reply the queries raised to the assessee claiming that the assessee started work on the dormant project and proposal for residential

complex was responded vide letter dated 03.05.2013 evidencing that the assessee is ongoing concern, thus we find no infirmity in the conclusion drawn by the Id. Commissioner of Income Tax (Appeals). Finally, the appeal of the Revenue is dismissed.”

6. Respectfully following the decision of the Tribunal in assessee’s own case, we are inclined to dismiss the appeal of the department on this issue as raised in ground no.1 and 2 by upholding the order of Id.CIT(A).

7. The issue raised in ground no.3 also stands covered in favour of the assessee and against the revenue by the same decision as mentioned above. The relevant part of the judgement is reproduced below for the sake of convenience as under :

“Grounds no. 1 and 2, raised by the Revenue pertains to treating amenities income amounting to Rs. 90,35,556/- as “Income from House Property” and allowing deduction @ 30% u/s. 24(a) of the Act without appreciating the facts that there were two sets of agreement, one for the rent and other for the amenities provided thus the income from amenities should have been treated as “Business Income”.

2. At the time hearing, the Id. DR, Shri Vijay Kumar Bora, advanced his arguments which are identical to the ground raised by submitting that the substantial income arose out of amenities should have been treated as business income and not income from House Property. The assessment order was defended. On the other hand, Shri Rajesh Sanghvi, learned counsel for the assessee contended that the amenities are interconnected, therefore, cannot be considered in isolation and thus the amenities will stand with rent and it is actually an income from house property. The impugned order was defended.

2.1 We have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee is in the business of Real Estate Development, declared loss of Rs. 42,66,877/-. The learned Assessing Officer determined the income at Rs. 83,09,550/-. The assessee earned gross rental receipts to the tune of Rs. 1,39,87,808/- which was consisting of Rs. 44,52,252/- (treated as rental income) and Rs. 78,35,556/- (from amenities) and further a sum of Rs. 12,00,000/- on account of amenities from Croma 3 M/s Zears Developers P. Ltd and another Rs. 2,00,000/- as rent from Vodaphone. The learned Assessing Officer, while completing the assessment treated the income emanating from amenities as business income. This stand of the Assessing Officer was challenged in appeal before the Id. Commissioner of Income Tax (Appeals) on the plea that the amenities like flooring, HBAC, Generator, Electrical Cabling, Plumbing, Sprinklers, Hydrants, Signage, Anchor space etc. are part and partial of the rent agreement. The Id. Commissioner of Income Tax (Appeals) agreed with the submission of the assessee against which the Revenue is in appeal before the Tribunal.

2.2. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the Id. respective counsels, if kept in juxtaposition and analyzed, we find that while coming to a particular conclusion the Id. Commissioner of Income Tax (Appeals) justifiably analysed the rent and the amenities agreement and followed the decision from Hon’ble jurisdictional High Court in J.K. Investors (Bombay Ltd.) ITA No. 1089 to 2011 and Bhaktavar Construction Pvt. Ltd. 162 ITR 452 holding that amenities agreement cannot operate in isolation of the rent agreement.

The amenities are part and partial of the rent agreement, thus the amount received as amenities is part and partial of the rent thus it is income from house property, therefore, the stand of the Id. Commissioner of Income Tax (Appeals) is affirmed."

8. Respectfully following the decision of the Tribunal in assessee's own case, we hereby uphold the order of the Id.CIT(A) and dismiss the appeal of the department.

9. In the result, the appeal of the revenue is dismissed."

Respectfully following the above decisions of tribunal in assessee's own case for AY 2010-11 and 2011-12 , we allow the appeal of the assessee and the appeal of the Revenue stood dismissed. We order accordingly.

Order pronounced in the open court on 07.05.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 07.05.2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 07.05.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI