



ITA.No.3153/Mum/2014  
Starwing Construction Private Limited  
Assessment Year-2009-10

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

जोगिन्दर सिंह ,न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI JOGINDER SINGH, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.3153/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Starwing Construction Private Limited</b> 501, Kaatyayani Business Center MIDC, Andheri(East) Mumbai-400 093	<b>बनाम/</b> Vs.	<b>Commissioner of Income Tax -8</b> Room No.259 Aaykar Bhavan, M.K.Road Mumbai -400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AABCS-6521-Q</b>		
(पीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Gajendra Golchha,Ld. AR
<b>Revenue by</b>	:	Manjunatha Swamy, Ld. DR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	16/05/2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	17/05/2018

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by assessee for Assessment Year [AY] 2009-10 contest the invocation of revisional jurisdiction u/s 263 by the Ld. Commissioner of Income Tax-8 Mumbai [CIT] on 24/03/2014 by raising the following grounds of appeal:-

1. *The learned Commissioner of Income Tax has erred in passing an order u/s 263 of the Income Tax Act,1961. The reasons assigned by him for doing the same are*



ITA.No.3153/Mum/2014  
 Starwing Construction Private Limited  
 Assessment Year-2009-10

*wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same. Regard being had to the fact and circumstances of the case, the said Order u/s 263 ought not to have been passed.*

*2. The learned Commissioner of income Tax has erred in directing the Assessing officer to assess the Composite Activity of Income from Sub-Letting and from maintaining the Guest House in the property known as 'Kailash Bunglow' as Income from House Property instead of assessing under the Head Income from Business and Profession. The learned Commissioner of Income Tax has failed to appreciate the fact that the same has been consistently declared and assessed as Income from Business in earlier previous years. Also, it may please be noted that depreciation on the Improvements made by the appellant has been consistently claimed and allowed. The reasons assigned by him for doing the same are wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same. Regard being had to the facts and circumstances of the case, the said direction given by the learned Commissioner of Income Tax needs to be quashed.*

*3. The learned Commissioner of Income Tax has erred in directing the Assessing officer to assess Let out Income arising out of the other 3 Office premises situated in 'Labella' as Income from House Property. The learned Commissioner of Income Tax has failed to appreciate that the 3 Office premises concerned are business assets on which depreciation was consistently claimed by assessee and allowed by the department. The reasons assigned by him for doing the same wrong and insufficient. Provisions of the act ought to have been properly construed before doing the same. Regard being had to the facts and circumstances of the case, the said direction given by the learned Commissioner of Income Tax needs to be quashed.*

*4. Order passed is bad in law and contrary to the provisions of the Act.*

2. Briefly stated the assessee being *resident corporate assessee*, engaged as *real estate builders & developers* was assessed u/s 143(3) on 23/12/2011 by *Ld. Income Tax Officer-8(3)-2, Mumbai* determining total income at Rs.7.53 Lac as against '*Nil*' return filed by the assessee on 30/09/2009. During assessment proceedings, it was noted that the assessee offered *rental income* from various House Properties viz. three office premises situated at *La Bella Co-op Hsg Society Ltd.* and one bungalow situated at *Kailash Chakala* taken on lease from one of its directors. This rental income was being reflected by the assessee for the past several years. As evident from the quantum assessment order, this rental income was offered by the assessee as *Business Income* which has been accepted by the revenue in quantum assessment.



3. Subsequently, the said assessment order was subjected to exercise of revisional jurisdiction u/s 263 by Ld. CIT vide *show cause* notice dated 13/01/2014 on the premise that since the assessee was not the owner of *Kailash Bungalow* and had *sub-let* the same, the income earned there-from was taxable under the head '*Income from other sources*' as against *Business Income* as assessed by Ld. AO. Secondly, the income from leasing of three office premises, in the opinion of Ld. CIT, was assessable under the head *Income from House Property*. After considering the assessee's submissions, the quantum order was set aside and Ld. AO was directed to reframe the assessment with certain directions. Aggrieved by the directions of Ld. CIT, the assessee has by way of the appeal, challenged invocation of revisional jurisdiction u/s 263.

4. The Ld. Authorized Representative for Assessee [AR], while drawing our attention to the documents placed in the *paper book*, submitted that Ld. AO has taken a possible view in the matter with due application of mind and therefore, Ld. CIT erred in assuming jurisdiction u/s 263. Our attention has been drawn to the fact that specific queries were raised during quantum assessment in this regard and complete details of the *rental income* was furnished by the assessee with justification of head of income and Ld. AO, after fully appreciating the same, framed the assessment. Per *Contra*, Ld. DR submitted that failure to consider certain vital facts by Ld. AO has resulted into loss to the revenue and therefore, the jurisdiction u/s 263 was rightly invoked which was the only remedy available to the revenue.



5. We have carefully heard the rival contentions and perused relevant material on record. From the perusal of documents placed before us, it is noted that Ld. AO, during assessment proceedings, by way of notice u/s 142(1) dated 23/08/2011, *inter-alia*, raised a specific query as to why the rental income should not be taxed under the head *Income from House Property*. In reply dated 08/11/211, the assessee has furnished details thereof and justified the assessment thereof as '*Business Income*' by way of note which is extracted below:-

**Note on Rental Income should not to be taxed under the head  
 "Income Form House Property"**

The Assessee is deriving Rental Income from the following Parties-  
 (Rs.)

(A) Axiom Optimals Pvt.Ltd (5 months) Flat No.2 La Bella	99,000.00
(B) Space Office Sytems (I) Pvt.Ltd. (5 months) Flat No.2 La Bella	2,01,604.00
(C) Space Office Systems (I) Pvt.Ltd Flat No.6 La Bella	3,00,000.00
(D) Space Office Systems (I) Pvt.Ltd Flat No.13 La Bella	2,27,236.00
(E) Wipro Ltd. Kalash Bunglow	47,19,000.00

Out of the above, the offices at La-Bella were purchased by the assessee with a view to expand its business. However, the assessee was not able to use the said resources. As such they have temporarily let out the premises. Till date, the assessee has treated the above premises [As above from (A) to (D)] as business asset. As such any income arising on account of business asset should be taxable as business income.

In so far as, rent from property at Chakala [As above (E)] is concerned, it is brought to your good self kind notice that the assessee has sub-letted the property. As such, the income from sub-letted property is taxed as "Business Income" and not as "Property Income", since the assessee is not the owner of the property.

In view of the above, the rental income received by the assessee is treated as "Business Income".



Further submissions have been made by the assessee in this regard by way of reply dated 07/12/2011 wherein the assessee has justified his stand for treating the rental income as *Business Income*. The assessee, in support, had file the order of first appellate authority for AY 2001-02.

6. The above factual matrix reveal that the Ld. AO, with due application of mind, accepted the stand of the assessee and took one of the possible view in the matter and assessed the rental income as *Business Income*. This being the case, the order could not be said to be erroneous or prejudicial to the interest of the revenue so as to justify invocation of proceedings u/s 263. The action of Ld. AO, as aforesaid, may be prejudicial to the revenue but the same could not be termed as erroneous since the view taken by him was one of the possible view with due application of mind. Therefore, the prime twin conditions viz. *erroneous and prejudicial to the interest of the revenue*, in our opinion, have remained unfulfilled and therefore, invocation of proceeding u/s 263 was not justified. Hence, we have no hesitation in setting aside the same.

7. Resultantly, the assessee's appeal stand allowed in terms of our above order.

*Order pronounced in the open court on 17<sup>th</sup> May, 2018.*

Sd/-

**(Joginder Singh)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



ITA.No.3153/Mum/2014  
Starwing Construction Private Limited  
Assessment Year-2009-10

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**