

IN THE INCOME TAX APPELLATE TRIBUNAL“E” BENCH, MUMBAI
BEFORE SHRI RAJENDRA, AM AND SHRI AMARJIT SINGH, JM

I.T.A. No.2956/M/2015
(Assessment Year: 2005-06)

Hercules Hoists Limited Bajaj Bhawan, 2 nd Floor, 226, Jamnalal Bajaj Marg, Nariman Point, Mumbai- 400021.	Vs.	DCIT Circle-15(2)(1), 4 th Floor, Aayakar Bhawan, M. Karve Marg, Mumbai- 400020.
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AAACH2706D		
(Appellant)	..	(Respondent)

Assessee by:	Shri J.D. Mistri
Department by:	Shri V. Vidyadhar (DR)

Date of Hearing: 23.03.2018
Date of Pronouncement: 18.06.2018

ORDER

PER AMARJIT SINGH, JM:

The present appeal has been filed by the assessee against the order dated 03.03.2015 passed by the Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2005-06.

2. The assessee has raised the following grounds: -

“I Assessment of income from house property under section 23(1)(a) of the Act Rs.12,98,899/-

1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition made by the Ld. AO as in previous assessment u/s 143(3) of the Act, by computing

notional income under the head Income from House Property” at Rs.12,98,899/- by invoking the provisions of Section 23(1)(a) of the Act.

1.2 The appellant prays that the addition made by the ld. AO may kindly be deleted and vacancy allowance u/s 23(1)© of the Act may be granted as the premises remained vacant after 23.04.2004 onwards.

II. Disallowance u/s 14A of the Act Rs.2,16,952/-

2.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance u/s 14A of the Act at Rs.2,16,952/-

2.2 The appellant prays that the disallowance u/s 14A of the Act is excessive and unreasonable and may accordingly be deleted.

The appellant craves leave to add to, alter or amplify the above Ground/Grounds of appeal.”

3. The brief facts of the case are that the assessee filed its return of income on 25.10.2005 declaring total income to the tune of Rs.3,63,33,940/- for the A.Y 2005-06. The assessment u/s 143(3) of the Act was completed on 20.12.2007 assessing the total income to the tune of Rs.3,92,42,984/-. Thereafter, the case was reopened u/s 143(3) r.w.s. 147 of the Act and the assessment was completed assessing the total income to the tune of Rs.8,57,77,636/-. Thereafter, the CIT(A) has confirmed the order of the AO and the assessee filed an appeal before the Hon’ble ITAT and the Hon’ble ITAT in ITA. No.4129/M/2009 dated 10.10.2012 restored the matter to the file of the AO for verifying the claim of the assessee on account of this fact that the property was not occupied by its whole time Director and Chairman and the premises remain vacant after 23.04.2004. If the claim of appellant was found correct, therefore, the benefit to the appellant u/s 23(1)(c) of the Act is required to be given. The AO

further verified the claim of the assessee and declined the claim and the CIT(A) again confirmed the finding of the AO, therefore, the assessee filed the present appeal before us.

ISSUE NOS. 1 :-

4. The Ld. Representative of the assessee has challenged the assessment of notional income of the premises occupied by assessee u/s 23(1)(a) of the Act to the tune of Rs.12,98,899/- under head of income from house property. At very outset, the Ld. Representative of the assessee has argued that the assessee has filed the letter dated 17.12.2007 before the CIT(A) which lies at page no. 7 to 8 of the paper book but the said letter was not considered, therefore, in the said circumstances, the notional assessment of rent is wrong against law and facts. It is specifically argued that the premises in question was on rent only for the period of 21 days and remained vacant for the remaining period. Therefore no notional rent is liable to be assessed in the interest of justice. It is also argued that the assessee has filed the nominal electricity bill paid for the year under consideration which leads about the fact that the premises remained vacant. Therefore, the claim of the assessee is liable to be allowed. It is also argued that the premises is in possession of the assessee, therefore, the society was not under obligation to issue the non-occupancy certificate/receipt but the AO and CIT(A) has wrongly applied the wrong notion of occupation, therefore, the finding of the CIT(A) is not justifiable

hence is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The appellant has shown the expiry of lease period on 27.04.2004 and up to that date the receipt of the rent was to the tune of Rs.1,54,843/- on pro-rata basis. Thereafter no rent was received. There is nothing on record to which it can be assumed that the rent was received by the assessee. We also noticed that the assessee has filed the letter dated 17.12.2007 before the CIT(A) in which he represented the matter before the CIT(A) but the same was nowhere examined and discussed by the CIT(A) on record. Claim on the basis of the electricity bill also speaks about the non occupation of the premises being meager amount in comparison to earlier period but this fact was also nowhere properly discussed and examined. Taking into account all the facts and circumstances, we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the finding of the CIT(A) on this issue and remand the issue before the CIT(A) to pass the order afresh after considering the representation filed by the assessee on 17.12.2004 which lies at page no. 7 to 8 of the paper book. It is also desired that all the other relevant evidence is also required to be considered before passing the order. Needless to say that an opportunity of being heard is required to be given to the assessee in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO 2:-

5. Under this issue the assessee has challenged the disallowance of Rs.2,16,952/- in view of provision 14A of the Act. The present assessment year is the year of 2005-06 in which the provision of Section 14A r.w. Rule 8D of the Act is not strictly applicable. Undoubtedly, the assessee has earned the exempt income to the tune of Rs.22,04,802/-. The assessee own fund is to the tune of rs.22,84,27,343/-(share capital Rs.80,00,000/-+ reserves and surplus Rs.22,04,27,343/-) as on 31.03.2005. The assessee's investment was to the tune of Rs.1,72,77,544/-. In this regard the figure has already been submitted before the AO by virtue of letter dated 21.10.2012 and copy of which lies at page no. 38 to 41 of the paper book. The case of the assessee clearly falls within the ambit of decision in the case of **CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)**. The investment made to earn the exempt income is liable to be considered from the own funds of assessee. If, the assessee's own fund is more than the investment. The expenditure is liable to be assessed on reasonable basis. Therefore, we are of the view that to meet the end of justice 2% of the exempt income is sufficient to assess the expenditure to earn the exempt income. Accordingly, we allowed the claim of the assessee.

6. In result, appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 18.06.2018.

Sd/-

(RAJENDRA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 18.06.2018

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

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आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai