

IN THE INCOME-TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.6376/Mum/2016 (Assessment Year 2012-13)

M/s Saidarshan Business Centres Pvt. Ltd., 405-408, Navbharat Estate, B-Wing, Zakaria Bunder Road, Sewri(W), Mumbai-400015. <b>PAN: AAACS5801J</b>	Vs.	ACIT -8(1)(2), Mumbai.
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Appellant

Respondent

Appellant by : Shri Anuj Kisnadwala (AR)

Respondent by : Ms. Arju Garodia (DR)

Date of Hearing : 19.06.2018

Date of Pronouncement : 19.06.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-tax (Appeals)-14, Mumbai [Id. CIT(A)] dated 10.08.2016 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

The following grounds of appeal are without prejudice to each other.

1. In the facts & circumstances of the case and in law the A.O. erred in treating income from 'Business Centre' being run as "business" (as per object clause of Memorandum of Association) as "Income from House Property" as against assessing the same as "Business Income". The Id. CIT(A) upheld the stand taken by the AO merely based on earlier decision of ITAT in assessee's own case, without taking into account decisions rendered by various Courts & Tribunals & especially decision of Apex Court in Chennai Properties & Investments Ltd. [2015] 56 taxmann.com 456(SC) & Mumbai Tribunal decisions in ACIT vs Stellar Development Pvt. Ltd. [2015] 54 taxmann.com 252(Mum-Tri) & WSN Global Services Pvt. Ltd.[2011] 45 SOT 74 (mum-Tri), Y pronounced subsequent to the order of the ITAT in assessee's own case relied upon by the CIT(A) which were cited during the course of the hearing.

The Ld. CIT(A) failed to follow the judicial discipline while confirming the assessment order.

2. In the facts & circumstances of the case and in law the A.O. was not justified in treating income from 'Business Centre' offered as "Business Income" as "Income from House Property" and consequently erred in not allowing deduction for expenses for operating the 'Business Centre' & depreciation on the immovable properties held by the company.

3. Without prejudice to the above, it is prayed that income from running the Business Centre at the least be held as "Income from Other Sources" & consequently assessee is also entitled to deduction for expenses for operating the 'Business Centre' & depreciation on the immovable properties held by it. The Ld. CIT(A) confirmed the order of the AO merely based on earlier decision of ITAT in assessee's own case, without taking into account decision of Bombay High Court in Dudhsagar Investments Pvt. Ltd.[2014] 49 taxmann.com354(Bom) rendered subsequent to the order of the ITAT in assessee's own case relied upon by the CIT(A). The Ld. CIT(A) failed to follow the judicial discipline while confirming the assessment order.

4. The Learned CIT(A) has erred in law and facts in disallowing depreciation amounting to Rs 10,59,912 to the extent of 50% on Sewri property, although the said property was used for assessee's financing business and business centre activities after sale of Parel property in AY 2004-05.

5. In the facts and circumstances of the case and in law, the assessee prays to allow the additional claim of expenses amounting to INR 24,49,102 which were not claimed by the assessee in its return of Income. The additional claim is being made in" the light of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders Pvt. Ltd. [2012] (349 ITR 336) (Bombay), as it is a natural corollary of rental income being treated as business income.

2. At the outset of the hearing, the ld. Authorized Representative (AR) of the assessee submits that he is not pressing Ground No.4. Considering the submission of ld. AR of the assessee, Ground No.4 of the appeal is dismissed as not pressed. The ld. AR of the assessee further submits that Ground No.1 of the appeal is covered by the decision of Tribunal in assessee's own case for Assessment Year 2010-11. Ground No. 2, 3 & 5 are consequential. On the other hand, the ld. Departmental Representative (DR) for the Revenue after going through the grounds of appeal and the

contents of order in assessee's own case for Assessment Year 2010-11 in ITA No. 1773/Mum/2016 dated 05.01.2018 fairly conceded that the ground of appeal raised by assessee is covered in favour of assessee and Ground No. 2, 3 & 5 of the appeal are consequential in nature. The ld. DR further prayed that Ground No.1 be restored to the file of Assessing Officer to pass the order by following the decision of Tribunal in assessee's own case for Assessment Year 2011-12.

3. We have considered the rival submission of the parties and perused the record. Ground No. 1 relates to treating the income from business centre as "Income from House Property" instead as "income from business". We have noted that similar ground of appeal was raised by assessee in appeal for Assessment Year 2010-11. The co-ordinate bench of Tribunal by following the order of subsequent assessment year i.e. 2011-12 ( ITA No.2026/M/2016), restored the ground of appeal to the file of Assessing Officer. The co-ordinate bench of Tribunal passed the following order:

"4. Issue no. 1& 3 are inter-connected are being taken up together for adjudication. Under these issues the assessee has challenged the treatment of income given by the AO received as rent to the tune of Rs.34,56,600/-. The assessee filed the return of income by showing the rental income to the tune of Rs.34,56,600/- as income from the business. However, the Assessing Officer treated the same as income from house property. Subsequently the finding of the Assessing Officer has been confirmed by the CIT(A). The ld. Representative of the assessee has argued that the Hon'ble ITAT in the assessee's own case has remanded these issues before the AO in ITA. No.2026/M/2016 dated 06.10.2016, therefore, these issues are liable to be

remanded before the AO to decide the matter of controversy afresh in view of the direction raised therein. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Copy of order in ITA. NO.2026/M/2016 for the A.Y. 2011-12 dated 06.10.2016 has been perused. We observed that the these issues have been remanded before the AO to decide the matter afresh. Relevant finding has been given in para no. 6 of the judgment is hereby reproduced below:-

*"6. We have heard the rival submissions perused the relevant finding given in the impugned orders as well as the material referred to before us. From the perusal of the certain ITA. No.1773/M/2016 A.Y. 2011-12 facts noted by the Assessing Officer and CIT (A) it is seen that, assessee is engaged in the business of providing business centre services'. In the year 994-95, the assessee has amended its "Objects" (which fact has been noted at page 2 of the CIT(A)'s order), which reads as under:-*

*"To carry on the business of establishing running operating and maintaining and conducting business services therein, to lease, sub-lease, let, sub-let sub-license, rent, hire or company's land, premises, properties shops, offices, galas, workshops, factories or other placed of business or any part thereof, whether leasehold or free hold or otherwise used, occupied, owned or possessed by the company, with or without any furniture, fixtures, fittings articles, effect or otherwise things therein."*

*In pursuance of the said object, the name of the company was also changed to "Saidarshan Business Centeres Pvt. Ltd." for running of business centre activities, the assessee has been rendering various types of services, which has been elaborated at page 2 & 3 of the appellant order. However, in the a.y. 2003-04, the Tribunal after detailed discussion and following the ratio laid down by the Hon'ble Calcutta High Court in the case of CIT Vs. Shambhu Investment Pvt. Ltd. reported in (2001) 249 ITR 47 which later on was a decision, various expenses have been disallowed in the manner provided by Tribunal. In this year, the case of the Ld. Counsel before us is that, in the light of the latest Supreme Court decisions, the earlier precedence*

*should not be followed because, now the law as has been culled out from these Apex court decisions are that, if the nature of activities carried out by the assessee are in accordance with the "objects" enshrined in the MOA, that is. In; the purpose of systematic business activity then same needs to be examined in that light. We agree with this proposition of the Ld. Counsel, because ultimately, the mandate of the law is that income is to be assessed under the correct head of income and also the statutory deductions and expenditure as admissible under law have to be allowed. The cannot be estoppels against the levy and if Supreme -Court decision any law then it has to reckon as law which aIwyxited. Accordingly, we are setting aside this entire luStahlIitv of income from the business centre' to the Assessing Officer to examine, whether the same is assessed under the head "business income" or "income from house property' in the light of ITA. No.1773/M/2016 A.Y. 2011-12 the aforesaid Supreme Court decisions. The Assessing Officer shall provide sufficient opportunity to the assesses to present its case in this regard. With this observation, ground No.] is treated as allowed for statistical purposes."*

5. In view of the said above mentioned order, we noticed that the matter of controversy is pending before the AO to decide the matter afresh in view of certain instruction raised by the Hon'ble ITAT in the assessee's own case dated 06.10.2016. In view of the said circumstances, we set aside the finding of the CIT(A) on this issue and remand the case before the AO to decide the matter afresh in view of the guidelines/instruction in the order dated 06.10.2016 in the assessee's own case for the A.Y. 2011-12 in ITA. NO. 2026/M/2016. Accordingly, this issue is decided in favour of the assessee."

4. Considering the decision of Tribunal in assessee's own case, the Ground No.1 of the appeal is restored back to the file of Assessing Officer to decide the ground of appeal afresh by following the order dated 05.01.2018 in appeal for Assessment Year 2010-11. In the result, ground No.1 of the appeal is allowed for statistical purpose.

5. Ground No.2, 3 & 5 are consequential to the Ground No.1 of the appeal, therefore, needs no specific adjudication.
6. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 19 .06.2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 19 .06.2018

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "J" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**