

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5867/Del./2015
(ASSESSMENT YEAR : 2012-13)**

M/s. Discovery Estates Pvt. Ltd., vs. DCIT, Circle 7 (2),
4/17B, MGF House, New Delhi.
Asaf Ali Road,
New Delhi – 110 002.

(PAN : AABCD4163D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Suman Sapra & Shri Nitin Midha, CAs
REVENUE BY : Smt. Anchal Khandelwal, Senior DR

Date of Hearing : 30.08.2018

Date of Order : 31.08.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, M/s. Discovery Estates Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 17.09.2015 passed by Ld. CIT (Appeals)-3, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

“Ground No.1:

The Ld. Commissioner of Income Tax (Appeals) - III, New Delhi (hereinafter referred to as 'CIT(A)') has erred in law and in the fact & circumstances of the case by passing the order dated 17.09.2015 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') in gross violation of the principles of natural justice.

Ground No.2:

The CIT(A) has erred on facts and circumstances of the case in holding that the AO is correct in treating the lease rental income earned by the Appellant from commercial properties as Income From House Property instead of business income and confirming the assessed income of Rs. 3,03,77,360/- as against the returned income of Rs.2,23,66,420 and thereby confirming the demand of Rs. 36,97,060/- raised by the AO.

Ground No.3:

The CIT(A) has erred on facts and circumstances of the case in confirming the conclusion of AO with regard to the taxing of rental income on account of commercial mall as income from house property instead of income from business on the basis of Hon'ble Delhi High Court order dated 18.02.2013. The Appellant contends that the order of Hon'ble Delhi High Court has not attained finality as the Appellant has already filed an appeal in this regard before Hon'ble Supreme Court.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is into the business of construction of commercial complex and is also having rental income. Assessee has been claiming depreciation on the rental property. AO, following the earlier year decision in assessee's

own case for AY 2007-08 treated an amount of Rs.6,00,40,102/- being the income from house property and not income from business and profession and thereby assessed the total income at Rs.3,03,77,360/-.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has also dismissed the appeal by following the earlier year decisions passed in assessee's own case by the Hon'ble jurisdictional High Court for AYs 2006-07 and 2007-08 cited as 356 ITR 159. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, it is fairly conceded by Id. AR for the assessee that the issue involved in the present appeal has already been decided against the assessee during the earlier years by the Tribunal as well as Hon'ble High Court in AY 2007-08 vide judgment cited as 356 ITR 159 and the SLP filed before Hon'ble Apex Court is pending for hearing. In these circumstances, we have no option but except to follow the decision rendered by the Hon'ble jurisdictional High Court in assessee's own case in the

earlier years and the income claimed by the assessee is treated as income from house property instead of business income and as such, finding no illegality or perversity in the impugned order passed by the ld. CIT (A), present appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 31st day of August, 2018.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 31st day of August, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**