

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1673/MUM/2017
Assessment Year: 2012-13**

DCIT-Circle-6(2)(1) Room No.563, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-20	Vs.	M/s. City Centre Mall Nashik Pvt. Ltd. Room No.62, Plot No.8-9, Parekh Mahal, Jamshedji Road, Sakharam Keer Marg, Mahim, Mumbai- 400 016.
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Appellant

**PAN No. AACCC 6422 B
Respondent**

Assessee by : Mr. Milin Bakhai, AR
Revenue by : Mr. H.N. Singh, DR

Date of Hearing : 21/08/2018
Date of pronouncement: 31/08/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-12 [in short 'CIT(A)'], Mumbai and arises out of the assessment order u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to assess the lease rental Income from shopping Mall as income from business
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow deduction of Rs.86,000/- on account of stamp duty and

franking charges and Rs,30,485/- on account of registration charges and service fees under section 24(b) of the Income Tax Act on verification of the claim of the assessee that processing charges and registration charges have been incurred in connection with borrowing of money, by interpreting the word 'interest' as defined under section 2(28A) of the Act?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow deduction @ 1/5th of interest paid amounting to Rs. 1,65,68,461/- under section 24(b) after taking into account expenses relating to processing charges and registration charges relating to money borrowed, failing to appreciate that word 'interest' used in section 24(b) as well as under section 36(1)(iii) of the Act has been used as defined in English Dictionary and as understood by commercial people in common commercial parlance and not as defined under section 2(28A) of the Act?

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow expenses relating to processing charges and registration charges relating to money borrowed, failing to appreciate that deduction is available under section 24(b) as well as under section 36(1)(iii) of the Act only to the extent of interest paid on the amount borrowed? The CIT(A) did not consider the fact that the processing charges and registration charges precede the granting of loan by the lender while interest is paid subsequent to borrowing. The CIT(A) failed to take note that processing charges and registration charges do not partake the character of 'interest' under section 24(b) as well as under section 36(1)(iii) of the Act?

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) observed that the income from letting out of Mall is being shown as business income by the assessee as in the preceding years. The dispute herein is whether the income from letting out of Mall is to be brought to tax as “income from house property” or “ profits and gains of business”. It is the contention of the assessee that the said income is in the nature of contractual payment for rendition of complex, commercial services and that as the revenue generation from the Mall is in the form of fixed monthly charges for providing elaborate infrastructure and complex commercial services plus reimbursement of variable expenses, it partakes the character of business income. The AO treated the said income under the head “income from house property” for the following reasons:-

- (i) The income from Mall operations is directly derived from the property in question for the space provided therein and is therefore clearly in the nature of rent.
- (ii) It is a case of building being let out along with some additional amenities which are integral to the very nature of building and its purpose of use.
- (iii) The very purpose of providing these amenities is to enhance its rental income from the lessees.
- (iv) Irrespective of the variations in the language of the lease agreement from case to case, the underlying arrangement continues to be exploration of the property per se as an asset and therefore, the nature of income remain that of 'House Property Income'.

The AO on perusal of the lease agreements entered into by the assessee with various lessees noted that the income is irrevocably linked to the premises in use and is directly related to the space provided therein. The various other amenities that the assessee is claiming to be in the nature of complex services are in fact basic amenities like water, electricity and security which are not by any yardstick to be termed as complex but are in fact found to be integral to the very nature of the property and therefore not separable from it. In view of the above facts, the AO treated the income shown by the assessee by way of lease rentals from the letting out of Mall as "Income from house property" and assessed accordingly.

4. Aggrieved by the order of the AO the assessee filed an appeal before the ld. CIT(A). We find that the ld. CIT(A) has followed the order of the Tribunal in assessee's own case for AY 2010-11 (ITA No.1783/Mum/2015 dtd.23/09/2016) and allowed the appeal filed by the assessee.

5. Before us, the ld. DR submits that the income from Mall operations is directly derived from the property in question for the space provided therein and is therefore clearly in the nature of rent. Further, it is a case of building being let out along with some additional amenities which are integral to the very nature of the building and its purpose of use. The ld. DR

submits that basic amenities like water, electricity and security are in fact integral to the very nature of the property and therefore, not separable from it. Thus, it is stated that the AO has rightly brought to tax the lease rentals under the head "Income from house property".

6. On the other hand, the Id. Counsel of the assessee submits that the present issue has been decided in favour of the assessee by the Tribunal in assessee's own case in ITA No.1783/Mum/2015 for AY 2010-11 dated 23/09/2016 and ITA No.5514/Mum/2015 for AY 2011-12 dated 20/09/2017.

7. We have heard the rival submissions and perused the relevant material on record. We refer below to para -9, 10 and 11 of the order of the Tribunal in assessee's own case for AY 2010-11 (ITA No.1783/Mum/2015):

"9. In the instant case, we have noticed that the assessee was incorporated with the object, inter alia, to construct and maintain shopping malls. The relevant objects of the Company, as given in the written submissions, read as under:-

(A) Main Object of the Company as per Memorandum of Association:-

Object No.1 :- To acquire by purchase, lease, exchange or otherwise deal in land, estates, building, halls, dwelling houses..... and to do various types of construction of buildings, commercial complexes, houses, halls, officer premises, shops, shopping malls, cinema halls clubs..... And maintaining for shopping arcade, mall, shops, dwelling houses, office premises and other commercial and educational purposes....

(B) Other objects of the Company as per Memorandum of Association:

Object No.34:- To carry on business of running a Super shop, shopping mall, Multi shop, Departmental Stores, chain Stores, Speciality stores....

Object No.35:- To build, construct, establish, own, take on lease, purchase, or exchange or otherwise acquire, hold, maintain and manage industrial, commercial or residential buildings, factory premises,

clubs, theaters, Cinemas or other show houses, meeting and lecture halls, libraries, health resorts and sanitariums, gardens, bazaar, car parks and markets and to let, sublet, give on lease....."

Thus, we notice that the assessee has constructed a shopping mall as per its objects for which it was incorporated and has derived income from running and maintaining the shopping mall. The activities carried on by the assessee, which are extracted above, would show that the assessee is carrying on the activities as its trading/commercial activity.

10. In the case of PFH Mall & Retail management Vs. ITO (298 ITR (AT) 371)(Kol), the Kolkatta bench of Tribunal held that income from Mall operation is assessable as business income, since various services & facilities as well as City Centre Mall Nashik Pvt. Limited other amenities similar to company's operations are provided by the assessee. Further the activities are carried on continuously in an organized manner with a set purpose and with a view to earn profit. Identical view was also expressed in the case of ACIT Vs. Stellar Developers P Ltd (ITA No.4891/Mum/2008)(Mum).

11. In view of the foregoing, we are of the view that there is merit in the contentions of the assessee that the impugned income should be assessed as business income. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to assess the income from Shopping Mall as business income.”

7.1 Facts being identical, we follow the above order of the Co-ordinate Bench and uphold the order of the ld. CIT(A).

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 31/08/2018.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai:
Dated: 31/08/2018
JV., Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai