

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE MS.DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.435/Chd/2017

(Assessment Year : 2013-14)

Y.D. Solutions,
2133, Sector 38-C,
Chandigarh.

Vs.

The Income Tax Officer,
Ward 4(1),
Chandigarh.

PAN: AABFY0386N
(Appellant)

(Respondent)

Appellant by : Shri Rakesh Marwaha, CA
Respondent by : Shri Akhilesh Gupta, Addl.CIT

Date of hearing : 09.05.2018

Date of Pronouncement : 06.08.2018

ORDER

PER ANNAPURNA GUPTA, A.M. :

This appeal has been preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-2, Chandigarh dated 2.12.2016 relating to assessment year 2013-14.

2. The sole issue in the present appeal pertains to the determination of the head under which the rental income earned by the assessee during the year is assessable whether under the head 'income from business' as returned by the assessee thereby claiming deduction of all expenses against the same or under the head 'income from house property' as assessed by the Revenue Authorities allowing only claims admissible under the said head of income as per law resulting in the income being assessed at Rs.30,25,045/-.

3. Brief facts relating to the case are that the assessee is a partnership firm constituted vide partnership deed dated 11.4.2011. During the financial year 2011-12, relevant to assessment year 2012-13, assessee had purchased one industrial Plot No. C-82, Phase-7, Mohali measuring 5000 sq. yards with three storey building (basement, ground plus two floors) from M/s Spray Engineering Devices Limited through an 'Agreement to Sell' dated 26.7.2011 for a total consideration of Rs.28,00,00,000/-. This property was earlier owned and occupied by M/s Spray Engineering Devices Limited. A portion of said property was let out by M/s Spray Engineering Devices Limited to M/s Dishnet Wireless Limited for a monthly rent of Rs.17,50,000/-. After the purchase of the property, the assessee started receiving rent from M/s Dishnet Wireless Limited in continuation of the earlier lease agreement with the initial owner by virtue of a tripartite agreement in this regard. The balance portion of the property was let out to M/s Spray Engineering Devices Ltd, (the previous owner). The assessee had shown the rent received from the above parties as business Income claiming expenses incurred against the same. Before the AO the assessee justified its stand of treating the rental income earned as business income, contending that as per its partnership deed, the business of the assessee was mentioned as "*nature of the business of the partnership shall be to provide, deal, offer, development, run, sell, Outsource Information, Technology, clients need based I.T. Solutions and its activities, space solutions or to do such business or*

businesses as may be decided mutually by the parties from time to time.” The assessee contended that the meaning of 'space solution' mentioned in the partnership deed related to the business of providing space solutions to the parties and while doing so, the firm was providing furnished space to the parties as per their requirement with the furniture, I.T. equipments etc. and submitted that this being the business of the assessee the Income from space rentals had been shown as earned from business . However the Assessing Officer did not agree with the contention of the assessee and assessed the rentals under the head income from House property at Rs.30,25,045/- after allowing standard deduction @ 30% and interest on loan.

4. The matter was carried in appeal before the Ld.CIT(Appeals) who dismissed the assessee's appeal.

5. Aggrieved by the same the assessee has come up in appeal before us raising following grounds:

- “i) That the Ld. CIT (A) has erred on law and facts in confirming the assessing of Rental income from Commercial Complex of the appellant under the head "Income from House Property instead of income¹ under the head "Income from Business" The conclusion drawn is based on surmise. Hence it is prayed that such income of the appellant be assessed under the head "Income from Business".*
- ii) That the Ld. CIT (A) has erred in law by confirming the additions of Rs.67,99,990/- being the difference between expenses claimed by the appellant as per Audited Profit & Loss account and expenses allowed by the Ld. AO u/s 24. (Rs.3,25,74,945 minus Rs.2,57,74,955 allowed u/s 24). Hence, it is prayed that the addition of Rs.67,99,990/- be deleted.*
- iii) That the Ld. CIT (A) has erred on law and facts in confirming Rs.2,88,00,000/- as the Annual value of*

the property where as the actual amount of rent accrued during this period as per the Audited P & L A/c was Rs.2,70,50,000/-. Hence it is prayed that addition made on this account be deleted.

iv) That the Appellant reserves the right to alter, add or delete any grounds of appeal at the time of hearing.”

6. During the course of hearing before us the sole contention of the Ld. counsel for the assessee was that its act of letting out property to M/s Dishnet Wireless Limited and M/s Spray Engineering Devices Limited, was in pursuance of its stated object for which the partnership firm was formed and, therefore, had been rightly returned under the head” Income from House Property”. Heavy reliance was placed on the decision of the Hon'ble Apex Court in this regard in the case of Chennai Properties & Investment td. Vs. CIT (SC) Civil Appeal No.4494 of 2004 dated 9.4.2015 and the decision of the Hon'ble Apex Court in the case of Rayala Corporation (P) Ltd. Vs. ACIT, Civil Appeal No.6437 to 6441 of 2016 dated 11.8.2016. To substantiate its contention the Ld. counsel for assessee drew our attention to the copy of the partnership deed dated 11.4.2011, placed at page Nos.16 and 17 of the Paper Book, by virtue of which the assessee entity came into existence and specifically to the objects mentioned therein for which it was formed mentioned at clause 3 thereof as under:

“3. That the nature of the business of the partnership shall be to provide, deal, offer, develop, run, sell, outsource, Information, Technology, clients need based I.T. solutions and its related activities, space solutions or to do such business or businesses as may be decided mutually, by the parties from time to time.”

7. Referring to the same, the Ld. counsel for assessee pointed out that the assessee firm was formed to provide Information Technology (IT) related services which included providing space solutions. The Ld. counsel for assessee pointed out that for the attainment of this object it had entered into an agreement to purchase a fully operational multi storied commercial complex No.C-82, Phase 7, Mohali from M/s Spray Engineering Devices Limited for a consideration of Rs.28 crores. It was pointed out by the Ld. counsel for assessee that the original owner i.e. M/s Spray Engineering Devices Limited had let out 1st and 2nd floors of complex on lease to M/s Dishnet Wireless Ltd., a company engaged in the business of providing wireless internet excess and cellular mobile telephony services which lease was assigned in favour of the assessee on purchase of the said asset. Further the ground floor of the complex had been rented out to M/s Spray Engineering Devices Limited at monthly rent of Rs.6.5 lacs from November, 2011 onwards after taking the possession of the complex on 31.10.2011. The Ld. counsel for assessee pointed out that since inception it had been engaged in providing space solutions to IT related parties and no other activity and that the words "space solutions" mentioned in the object clause did not particularly mean providing only web services/hosting or space on web to its clients. The Ld. counsel for assessee stated that if that was the object, the assessee would have invested in IT related equipments for the same but had not done so. Thus the object of providing space solutions,

Ld.Counsel for the assessee contended, meant simply letting out the premises to other for I.T. related purposes only. Our attention was drawn to the following documents, placed in the Paper Book and referred to by the Ld. counsel for assessee in the course of its submissions:

1. *Copy of the Partnership Deed dated 11/04/2011 (PB-16-17)*
2. *Copy of Agreement to Sale dated 26/07/2011 between Y.D. Solutions and M/s. Spray Engineering Devices Ltd. (PB-18-23)*
3. *Copy of receipt of full & final consideration Cum Possession of building certificate dated 31/10/2011 (PB-24)*
4. *Copy of documents dated 19/01/2012 issued by Punjab Small Industries & Export Corporation Ltd. (PSIEC) in respect of transfer of property in the name of Y.D. Solution (PB-25-28)*
5. *Copy of Lease deed dated 15/11/2011, lease commencing from 15/06/2011, between M/s Spray Engineering Devices Ltd. and Dishnet Wireless Ltd. (PB-29-43)*
6. *Copy of Assignment of Lease agreement dated 27/02/2012 between Y.D. Solutions, M/s. Spray Engineering Devices Ltd. and Dishnet Wireless Ltd. (PB-44-49)*
7. *Copy of Lease deed dated 18/04/2012 between Y.D. Solutions and M/s. Spray Engineering Devices Ltd. (PB-50-52)*

8. It was also pointed out that in the preceding assessment year when the rental income was first returned and assessment framed u/s 143(3) of the Act, the Assessing Officer had accepted and assessed the same under the head 'business & profession' only. Our attention was drawn to the assessment order for the preceding assessment year i.e. assessment year 2012-13, placed at Paper Book page Nos.78 to 80 in this regard.

9. The Ld. DR, on the other hand, placed heavy reliance on the orders of the authorities below. Referring to the contention of the Ld. counsel for assessee that its stated object was to let out properties on rent for Information Technology related activities, the Ld. DR stated that the word “space solutions” mentioned in the object for which the assessee firm was formed, was to be read with the whole clause and not in isolation as done by the assessee and when read as a whole it implied that the assessee would provide web servicing/hosting or space on web to its clients. The Ld. DR pointed out that the assessee had acquired a commercial property in an I.T. Zone and had been transferred the said plot on 99 years leasehold basis for the manufacture of I.T. industries only. Our attention was drawn to the documents issued by the Punjab Small Industries & Corporation Ltd.(hereinafter referred to as PSIEC) placed at P.B.25, with regard to the transfer of the said plot to the assessee for M/s Spray Engineering Devices Ltd. mentioning the said facts as under:

*“Subject: Transfer of Industrial Plot No. C-82
Phase VII, Indl. Focal Point at Mohali.*

*Reference application dated 27.12.11 from
M/s Spray Engineering Devices Ltd., 25, Indl. Area,
Phase-II, Chandigarh Allottee, seeking transfer of
the said plot in your favour.*

*Transfer of plot No.C-82, Phawse VII, in
industrial focal point, Mohali measuring 5000,
Sq.yds. in your favour on 99 years Lease-hold
basis for the manufacture of IT Industries.”*

10. The Ld. DR pointed out that the assessee had canvassed its object as being I.T. related activities before the

PSIEC for the purpose of acquiring the plot and, therefore, the reference to a space solution in the object has to be read in that context only. The Ld. DR stated that having so canvassed before the PSIEC and thus acquired the plot I.T. related activities, the assessee is now canvassing a totally different object before the revenue authorities for treating the said income as 'income from business & profession'. The Ld. DR pointed out that if the meaning ascribed to "space solution" as renting out of property for I.T. related activities, stated by the Ld. counsel for assessee, was its actual object, the plot could not have been allotted to the assessee in the first place since the said plot was in an I.T. Zone and could have been acquired only for I.T. related purposes. The Ld. DR, therefore, stated that the assessee was taking different stands before the different government authorities for its own purposes & benefit, which could not be allowed. Thus, the Ld. DR contended that the letting out of the property was not in pursuance to its stated object and, therefore, could not be treated as income from business & profession. Alternatively, the Ld. DR contended that the assessee had not let out a commercial property which was evident from the agreement entered into with two lessees. The Ld. DR pointed out from the assessment order that the Assessing Officer had gone through the agreement entered into with the two lessees and had found nothing therein which indicated that the assessee had given facilities as per the requirement of the lessee for I.T related services. The Ld. DR pointed out that one of the lessees M/s Dishnet Wireless

Ltd. was already in occupation in rented accommodation and had been provided facilities as per its requirement by the earlier landlord and the agreement with the assessee only brought out what would be the conditions for the tenant and the rent to be received. There was nothing in the agreement regarding the assessee being engaged in the business of rental income and providing facilities to their tenants as per their requirements. The same was the case with the agreement entered into with M/s Spray Engineering Devices Limited also, it was contended by the Ld. DR. Our attention was drawn to the relevant findings of the Assessing Officer at paras 5.2 to 5.2.2 of the order. The Ld. DR further stated that even the third party verification, done by the Assessing Officer in this regard, from the two lessees had revealed that the nature of payment made by them was office rent and TDS has been deducted on the same by them. The Ld. DR further pointed out that during assessment proceedings the statement of Shri Gurwinder Singh Chadha, person responsible and working as Head (Accounts & Finance) in M/s Spray Engineering Devices Limited was recorded u/s 131 of the Act who had categorically stated that his company was paying rent to the assessee and no extra facility was provided by the assessee except the already existing building. Our attention was drawn to the findings of the Assessing Officer in this regard at para 5.3 of the order. The Ld. DR further drew our attention to the findings of the Assessing Officer at para 5.4 of the order pointing out there from that even the Financials of the assessee firm revealed

no activity being carried on for providing any service to the tenants as contended by the assessee. The Ld. DR pointed out that in fact as per the P & L Account, the assessee was carrying on no activity except of earning rental income and the expenses incurred were the normal organizational expenses and not related to any activity in respect of providing any service to its tenants. The Ld. DR, therefore, contended that clearly the rental income earned by the assessee was not in pursuance to its stated objects and the property let out was not a commercial property but bare premises let out and, therefore, the rental income earned from the same had been rightly assessed under the head 'income from house property'. The Ld. DR contended that as a consequence the assessee had been rightly allowed deduction only of expenses allowable under the said head and the balance income of Rs. 30,25,045/-, therefore, had been rightly assessed to tax.

11. We have heard the rival contentions, perused the orders of the authorities below and gone through the documents referred to before us.

12. As stated above the issue before us relates to determining the head under which rental income received by the assessee is to be assessed whether "business and profession" or under the head "income from house property". The contention of the Revenue that the property let out was not a commercial property and no extra facility was provided by the assessee except the premises, we find, the Ld.Counsel

for the assessee has been unable to controvert. Ld.DR has pointed out that the lease agreements nowhere mentioned letting out of commercial property, third party confirmations from lessees also stated rentals received as office rent, and even one of the persons responsible and working for M/s Spray Engineering Devices Limited stated in his statement that his company was paying rent and no extra facility was provided by the assessee. None of the above contentions have been controverted by the Ld.Counsel for the assessee. Ld.Counsel for the assessee has been unable to point out any clause in the lease agreement showing that premises alongwith IT related facilities was let out .No other evidence was also brought to our notice to show letting out of commercial property. Therefore we hold that the property let out was not a commercial property.

13. Having said so, we now take up the alternate contention of the Ld.Counsel for the assessee that the rental income earned by it was in the nature of its business income since it had been earned in pursuance to its stated object of letting out its property. We have noted the proposition laid down by the Hon'ble Apex Court in the case of Chennai Properties & Investment Ltd. (supra) and Rayala Corporation (P) Ltd. (supra) that the rental income earned in the course of carrying out the business of letting out property is to be assessed under the head 'income from business & profession'. Undoubtedly, the assessee firm was formed for the object of carrying out I.T. related services which

included providing space solutions also. While the assessee has stated that the meaning of the word 'space solution' has to be taken literally and in isolation with other objects of providing I.T. related service and is to be taken to mean as letting out property for I.T. related activities, the contention of the Revenue, on the other hand, is that the meaning has to be derived by writing the word 'space solution' in conjunction with the other objects of the assessee firm and can only mean providing space solution by way of web services/hosting or space on web to its clients i.e. space solution in I.T. terms and not literally. The issue therefore narrows down to the meaning to be ascribed to the words "providing space solutions" mentioned in the objects of the assessee firm.

14. We are not in agreement with the meaning ascribed by the Ld.Counsel for the assessee to the said words . In our view the meaning of the words "providing space solutions" has to be derived from the meaning ascribed to it by PSIEC while granting approval to the transfer of the said property to the assessee for the purposes of carrying out manufacture of IT Industry. As pointed out to us by the Ld. DR the approval letter issued by PSIEC on transfer of plot to the assessee clearly mentions that the same was being transferred in favour of the assessee for the **manufacture of I.T. Industry** (emphasis supplied by us). It is obvious from the same that the assessee could have used the property only for IT Industry purposes. Ld.Counsel for the assessee

has not demonstrated how letting out of property could be treated as IT industry related activity. We therefore find no force in the argument of the Ld.Counsel for the assessee letting out property was its object for which the assessee firm was formed and therefore the rental income earned by it was in the nature of business income.

15. As for the contention of the Ld.Counsel for the assessee that in the preceding year the rental income earned had been accepted by the Revenue as assessable under the head Business and profession in scrutiny assessment, we find no merit in the same. We have gone through the order passed in the preceding year u/s 143(3) and find that the income returned by the assessee was accepted as such with no discussion on the issue of head under which the rental income was assessable. Even the Ld.Counsel for the assessee has been unable to point out with evidence that the issue was inquired into during assessment proceedings. Therefore we hold that no benefit can be derived by the assessee from the order passed u/s 143(3) in the preceding year to the effect that the rental income had been accepted as assessable under the head business and profession.

In view of the above, ground Nos.(i) & (ii) raised by the assessee are dismissed

16. Ground No. iii pertains to taking the receipts from rent as Rs.2,88,00,000/- as against the actual receipts shown in the Profit and Loss account of the assessee at Rs.2,70,50,000/-.

17. The Ld.CIT(Appeals) has discussed the issue as under:

“6.1 As discussed above the assessing officer has assessed the income from the rentals of property under the head income from house property and the annual value was taken as per the agreements with the tenants. Appellant submitted that the value of the rental properties have been taken arbitrarily at Rs.2,88,00,000/- and the gross amount of rent as per the books of accounts be taken as the basis of assessment.

6.2 Submission of the appellant have been considered. As the assessing officer has assessed the rental income under the head ‘Income from House Property’, the annual value of the properties has been taken as per section 23 of the Act on the basis of agreements with the tenants. The same is upheld and the ground of appeal No.3 is dismissed.”

18. The Ld. counsel for assessee has not pointed out any infirmity in the above order of the Ld.CIT(Appeals). We, therefore, see no reason to interfere in the same. Ground of appeal No.iii raised by the assessee is also dismissed.

19. In effect, the appeal of the assessee is dismissed.

Order pronounced in the Open Court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 6th August, 2018

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh