

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 382 & 383/JP/2018
निर्धारण वर्ष / Assessment Years : 2012-13 & 2014-15

Rajnandini Construction Pvt. Ltd., C-39, Lajpat Marg, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Circle-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 9510 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B.V. Maheshwari (C.A.)
राजस्व की ओर से / Revenue by : Shri A.K. Rawat (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 13/12/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the order of Id. CIT(A)-I, Jaipur dated 19.01.2018 for A.Y. 2014-15 and dated 02.02.2018 for A.Y. 2012-13 respectively. Since common issues are involved, both the appeals were heard together and are disposed off by this common order.

2. With the consent of both the parties, the assessee's appeal in ITA No. 383/JP/2018 for A.Y. 2014-15 is taken as the lead case for the

present discussion. In this appeal, the assessee has taken following grounds of appeal:-

"1. That the learned A.O. grossly erred in law as well as on the facts of the case in assessing the leasing of Rs. 1,92,55,083/- as rental income U/s 23/24 of the I.T. Act in place of business income which is declared in the return by the company and after allowing the deduction U/s 24(a) & 24(b) the net income assessed at Rs. 1,18,29,943/- in place of Returned Income of Rs. 88,36,390/-. That the Ld. C.I.T.(A) also erred in confirming the said addition though the matter is covered by the order of Hon. ITAT Jaipur in the case of assessee company itself in earlier years.

2. Alternatively and without prejudice to the above GOA-1, the learned AO grossly erred in not allowing the expenditure incurred by the company which too without any discussion in the order. The company incurred all expenses as business expenses since the company is meant for business. That the Ld. C.I.T.(A)-I, Jaipur also erred in not allowing the said expenses, and for that the Ld. CIT(A) also have not done proper discussion in the order."

3. In ground No. 1, the assessee has challenged the action of the Ld. CIT(A) in confirming the order of the Assessing officer in assessing the leasing income under the head "income from house property" as against "income from business/profession" as declared by the assessee in its return of income.

4. The Id. AR has submitted that the assessee company is engaged in the business of leasing and property development. It has developed a commercial complex which is approved by Jaipur Development

Authority (JDA) and the office space therein has been given on lease to M/s Bansal Classes and Nokia India Ltd since financial year 2005-06 onwards. It was submitted that the lease income has been consistently declared as business income right from assessment year 2006-07. It was further submitted that the said position has been accepted by the appellate authorities consistently right from assessment year 2006-07. It was submitted that in the very first year i.e. assessment year 2006-07, the matter was decided by the Id. CIT(A) in favour of the assessee against which Department has not filed any further appeal. In A.Y. 2007-08 & 2008-09, the matter was again decided by the Id. CIT(A) in favour of the assessee and the same has been upheld by the Tribunal. Similarly in A.Y. 2010-11 & 2011-12, the matter was decided by the Id. CIT(A) in favour of the assessee and there has been no further appeal by the Department.

5. It was accordingly submitted by the Id AR that there are no changes in the facts and circumstances of the case and it is the same business which is run from the very first year and therefore, the Rule of consistency should apply and the Department should not be permitted to depart from the position accepted in earlier years at their sweet will in absence of any change in the circumstances of the case. In support, reliance was placed on the decision of Hon'ble Supreme Court in case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 wherein it was held that if there are no change in the facts, a different conclusion was not warranted by the Income tax officials. Further, reliance was placed on the decision of Hon'ble Delhi High Court in case of CIT vs. Neo Poly Pack Pvt. Ltd. (2000) 245 ITR 492 wherein it was observed that the

doctrine of res judicata does not apply to the income tax proceedings since each assessment year is independent of the other, but where issue has been decided consistency in a broad manner for earlier assessment years, for the sake of consistency, the same view should continue in the subsequent years unless there is material changes in the facts.

6. The Id. DR is heard who has relied on the findings of the lower authorities. At the same time, it was fairly submitted that the matter is covered by earlier decisions of the Tribunal but at the same time, the same have not been accepted by the department and an appeal has been preferred before the Hon'ble High Court.

7. We have heard the rival contentions and perused the material available on record. Admittedly the lease rental income has been assessed by the Assessing Officer under the head "income from house property" as against the head "income from business/profession" as declared by the assessee in its return of income. The said contrasting position of the assessee as well as the Revenue has been consistently maintained by them year after year since AY 2006-07.

8. At the same time, as we have noted above, both the Id CIT(A) as well as the Coordinate Benches have consistently upheld the position so adopted by the assessee where the lease rental income has been disclosed and offered to tax under the head "Income from business/profession". The reason why the AO has not accepted the decision of the appellate authorities is that the Revenue has preferred

an appeal before the Hon'ble High Court. However, nothing has been brought on record to suggest that the earlier orders of the Coordinate Benches have been stayed or overruled by the Hon'ble High Court. It thus appears that in order to keep the matter alive and to take care of the situation where the matter may be finally decided in favour of the Revenue, the Assessing Officer is following the same treatment as done in the previous assessment years and assessing the lease rental income under the head "Income from house property".

9. The fact of the matter however is that consistently, the Id. CIT(A) as well as the Coordinate Benches have held that the lease rental income has to be assessed as business income as against income from house property so determined by the Assessing Officer. Given that there are no changes in the facts and circumstances of the case, in light of the decision of the Coordinate Benches for earlier years and following the rule of consistency as upheld by the Hon'ble Supreme Court in case of Radhasoami Satsang (supra), which has been reiterated in the latter decision of Hon'ble Supreme Court in case of Godrej & Boyce Manufacturing Company Ltd. (394 ITR 449) wherein it was held as under:

"38.While it is true that the principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this

Court in Radhasoami Satsang v. CIT [1992] 193 ITR 321/60 Taxman 248 (SC).

"We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

We are of the considered view that there is no basis to change or interfere with the consistent position which has been accepted in the earlier years that is, to assess the lease rental income under the head "Income from business/profession". In the result, the ground no. 1 of the assessee's appeal is allowed. Consequently, the ground no. 2 becomes infructuous and not been adjudicated upon.

10. In the result, the appeal of the assessee is allowed.

11. In ITA No. 382/JP/2018, the assessee has taken following grounds of appeal:

" 1. That the learned A.O. grossly erred in law as well as on the facts of the case in assessing the leasing income of Rs. 1,77,70,150/- as rental income U/s 23/24 of the I.T. Act in place of business income which is declared in the Return by the Company and after allowing the deduction

U/s 24(a) & 24(b) the net income assessed at Rs. 93,51,611/- in place of Returned Income of Rs. 93,03,400/-. That the Ld. C.I.T. (A) also erred in confirming the said addition though the matter is covered by the order of Hon. ITAT Jaipur in the case of assessee company itself in earlier years.

2. Alternatively and without prejudice to the above GOA-1, the learned AO grossly erred in not allowing the expenditure incurred by the company which too without any discussion in the order. The company incurred all expenses as business expenses since the company is meant for business. That the Ld. C.I.T.(A)-I, Jaipur also erred in not allowing the said expenses, and for that the Ld. CIT(A) also have not done proper discussion in the order."

3. That the Ld. A.O. grossly erred in assessing the interest income as income from other sources in place of Business Income, further the Ld. CIT(A) also erred in upholding the said addition made by Ld. A.O. Rs. 1,20,094/-.

4. That the Ld. A.O. grossly erred in making the additions of Rs. 475500/-, being interest on I.T. refund which was not issued to the appellant, it was adjusted against demand, and no intimation was given to assessee. Further the Ld. CIT(A) also erred in holding that the A.O. justified in making said addition of such sum Rs. 475560."

12. Ground Nos. 1 and 2 are identical to grounds of appeal in ITA No. 383/JP/2018. Therefore, our findings and directions contained in

ITA No. 383/JP/2018 shall apply equally in this regard. Ground no. 1 is allowed and ground no. 2 is dismissed as infructuous.

13. In ground no. 3, the assessee has challenged the action of AO in assessing the interest income as income from other sources in place of business income.

14. The Id. AR submitted that the assessee has earned interest on short term deposit of amount with the bank and thereby it has parted with the business capital for the time being in the bank, hence investment of business capital is determination in earnings for business and, therefore, interest earned is rightly shown as business income. The learned A.O. as well as the learned CIT(A) have ignored its discussion and treated it as in income from other sources which is not as per the system and law in the case of the assessee company.

15. Heard both the parties. The interest on short terms deposits has rightly been assessed under the head "income from other sources" and we accordingly do not accede to the contentions of the Id AR and the ground of appeal is thus dismissed.

16. In ground no. 4, the assessee has challenged the addition of Rs. 4,75,500/- being interest from income tax refund. In this regard, the Id. AR submitted that the no such refund was paid to the company on 24.03.2012 for A.Y. 2008-09, the same was processed and adjusted directly against the demand pending payable for A.Y. 2007-08 but for the same, no such intimation was send to the assessee company, even

in the 26AS of the company the same amount was shown as refund adjusted by government and in interest column no amount was shown, on the basis of that, company was not able to adjust and shown interest income in A.Y. 2012-13.

17. It was further submitted that refund of Rs. 22.58 Lacs was given to the company for the earlier years demands taken and or adjusted by the department and on the same amount of interest of Rs. 4,75,560/- was shown in interest income in A.Y. 2015-16 when the actual interest was received by the company. Therefore this should not be added in the income of the assessee in F.Y. 2011-12 because in A.Y. 2011-12 no such refund was issued to the company. If it will add in F.Y. 2012-13 it will cause double tax on the same amount of income which is against the natural justice.

18. Heard both the parties. We find that the Id CIT(A) has duly considered the contentions of the Id AR and his following findings are hereby confirmed:

" 3.3.2 Determination:

(i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. The AO has made an addition of Rs. 4,75,560/- on account of interest on the amount of refund relating to AY 2007-08 received by the appellant during the year under consideration. It was the contention of the appellant that it has shown the same as income in its income tax return for the AY 2015-16 and this amounts to double taxation. It is to be noted that it is a trite law that

the income is to be assessed in the year to which it pertains. There is no dispute that as per the ITS details, the interest of Rs. 4,75,560/- was paid to the appellant during the year under consideration, though through adjustment against the outstanding demand. Therefore, in view of the totality of facts and circumstances of the case, it is held that the AO was justified in making addition of Rs. 4,75,560/- on income tax refund paid to the appellant during the year under consideration and hence, the same is hereby sustained. However, the AO is hereby directed to examine the claim of the appellant that it has declared the same in AY 2015-16 and if found correct, then the same is to be reduced from the income of AY 2015-16 as the same income cannot be taxed twice."

19. In the result, the appeal of the assessee is partly allowed.

In the result, the appeal in ITA No. 383/JP/18 is allowed and appeal in ITA No. 382/JP/18 is partly allowed.

Order pronounced in the open Court on 13/12/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13/12/2018.

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Rajnandini Construction Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 382 & 383/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar.