

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
**IN THE INCOME TAX APPELLATE TRIBUNAL
 SURAT BENCH, SURAT**

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
 AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No. 3&4/Ahd/2014/SRT
निर्धारण वर्ष/Assessment Year : 2005-06 & 2006-07

Udhna Udyognagar Sahakari Sangh Ltd, Central Road No.10, Post Box No.1224, Udyognagar, Udhna, Surat. PAN: AAAAT 2932K	Vs.	Income-tax Officer, Ward.3(1), Room No.116, 1st floor, Aayakar Bhavan, Majuragate, Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
निर्धारिती की ओर से /Assessee by		Shri Viresh I. Rudalal & Shri Rushi J. Parekh, C.A.
राजस्व की ओर से /Revenue by		Shri J.K. Chandnani, Sr. DR

सुनवाई की तारीख/ Date of hearing:	19.06.2018
उद्घोषणा की तारीख/Pronouncement on	27.06.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. These are two appeals by the Assessee are directed against the order of learned Commissioner of Income tax (Appeal)-II, Surat (in short “the CIT(A)”) dated 12.12.2013 and 16.12.2013 for the A.Y. 2005-06 and 2006-07 respectively in the matter of assessment order u/s. 143(3) of the Act. (in short ‘Act’) dtd. 05.09.2007 and

14.11.2008 passed by the Income-tax Officer, Ward.2(1), Surat.
(in short the “A.O”).

ITA No.03/Ahd/20/14/SRT/A.Y.2005-06.

2. Though the assessee has taken as many as 10 number of grounds of appeal, however, same are relates to treating the income of Rs.5,26,472/- as business income instead of income from house property as claimed by the assessee Society.

3. Short facts of the case are that the assessee co.operative society is engaged in the development and maintenance of the same. The assessee has shown house property income at Rs.3,68,630/- after claiming set off of statutory deduction u/s. 24(1) of the Act. The gross house property income is shown by the assessee at Rs.5,29,953/- . The A.O. has held that the assessee is industrial co.operative and hence, nature of business in the estate only letting out the property is recurring in nature on long term basis. With a view to earn rental income, through frequent exercise of activity for making building available to others for a charge for a limited period. Therefore, letting out is not main business of the assessee neither it was held as stock in trade of the

assessee nor as trading assets. Therefore, the A.O. was of the view that house property owned by the assessee and used by him for his own business or profession, depreciation is allowable u/s. 32 of the Act., Therefore, the A.O. noted that the assessee has not given property on rent/lease i.e. same was used for some other reason i.e. for business, therefore, asset used are classified commercial asset which are being let out to other person i.e. BSNL and Post Office for use in their business or trade. But commercial asset is exploited by the owner of the business. The A.O. held that total house property income included under the head net income from house property at Rs.5,26,455/- as income from business and profit.

4. Being aggrieved, the assessee filed an appeal before the CIT (A). The CIT(A) observed that the appellant has claimed that the income is assessable under the head house property, if same is accepted disallowance out of repair and maintenance expenses is required to be made. If the estimate is taken at the rate of 30% of the rent received in respect of building, it will make no difference whether income from house property or income under the head business income. If it is under the head income from house property, the appellant get statutory deduction, but 30% of rent

being estimated expenses on repair and maintenance expenses debited by the appellant will have to be deleted u/s. 37(1) from the business expenditure and the business income will increase by correspondence amount. The CIT(A) further observed that the co-operative society has been formed to develop and maintain the industrial estate comprising of factories, roads, lanes, sewage system, office building, shops and other facilities. Therefore, the activity is business activity, it was noticed that the assessee collect and administrative charges from those persons and same income is shown under the head business income. The CIT (A) further observed that as per the direction of ITAT relying the basis of classification of assets commercial or non commercial, the assessee did not file the relevant leasing agreement since inception as the rental income is used by the appellant for achieving the main object of the society i.e. maintenance of industrial estate and rental income is one stream for revenues for carrying out the said activity. The sale of revenue of these receipts are shown as business income hence, CIT(A) treated the income show under house property shown by the assessee business income, consequently, appeal was dismissed.

5. Being aggrieved, the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the society has been showing the house property income from the inception. During the year, the assessee has shown income from house property at Rs.5,26,472/- on which statutory deduction of Rs.1,57,942/- at the rate of 30% u/s. 24(a) was claimed. However, the same was disallowed by the A.O. by treating the income as business income and accordingly statutory allowance of Rs.1,57,942/- was disallowed. The ITAT vide ITA No.2021/Ahd/2008 dtd. 24.09.2010 has set-aside the issue for limited purpose to the file of the CIT (A). However, the CIT(A) has dismissed the appeal of the assessee. The learned A.R. filed copy of agreement with BSNL and Post Office and submitted that the perusal of the same will show that the agreement one of that property and no profit for earning is given. The assessee construct the building with a view to earn more profit and rent it out which is to the main business of the assessee. The assessee has not constructed property during last ten years. The A.R. referring to the computation of income for A.Y. 2008-09 to 2010-11 submitted that the claim of the assessee allowed by the A.O. accepting the income under the head income from house property

for these assessment years and allowed the claim at 30% being statutory deduction. Therefore, as held by Hon'ble S.C. in the case of Radha Sowami Satsang Mandal at 93 ITR 321 (SC) held that consistency in the assessment proceedings should be maintained. The learned counsel further placed reliance in the case of M/s. Rayala Corporation Pvt. Ltd. vs. ACIT [Civil appeal No.6437/2016 dtd. 11.08.2016] has allowing the assessee's claim of treating the income from rent under the head income from Business and Profession on the plea that the assessee's only income is from leasing out the properties on rent. Here in assessee's case, since the assessee's main object was to develop of the properties owned by the assessee as is mentioned and showing there is no profit treated as stock in trade in balance sheet claim any depreciation, repair and maintenance expenses for rental income. The assessee has also filed certificate from CA placed paper book page 43 which says that the assessee has not claimed depreciation in the return of income nor any repairs and maintenance thereon has been claimed as expenses in profit and loss as verified for last three years prior to year under appeal. The assessee further referred the pager 44 of the paper book being land and other assets from the last 31.03.2000 to 31.03.2006 . Therefore, it was submitted that

the CIT (A) was not justified in treating the rental income as income from business and profit.

6. Per contra, the learned SR. D.R. relied on the order of the CIT (A).

7. We have considered the facts perused the material on record. It is seen that the assessee society is receiving rent from BSNL, Post Office, for the property given on rent and same is being shown as income under the head income from house property from A.Y. 1995-96 to 1999-2000. This income has been assessed as income under the head income from house property. Similarly, in the above stated assessment year in subsequent scrutiny for assessment year 2008-09 and A.Y.2009-10, the A.O. has accepted this as income from house property. As no addition on account of income from house property treating as business income has been made. It is also clear from the C.A. certificate, placed at paper book page-43 that no expenditure on account of repairs, maintenance and depreciation thereon has been claimed by the assessee society in its business income. Therefore, we are of the considered opinion that income from rent is assessable as income from house property as shown by the assessee. Further, though res-judicate does not apply to the Income-tax proceedings,

however, rule of consistency should be maintained in income-tax assessments, as held by the Hon'ble S.C. in the case of Radha Sowami Satsang Mandal 193-ITR 321 (SC) and in the case of Rayala Corporation Pvt. Ltd. vs. ACIT [Civil Appeal No. 6437/2016 dtd.11.08.2010]. Therefore, considering the facts and the law relied by the ld. counsel, we are of the considered opinion that the CIT (A) was not justified in treating the income as income from business and profit. Accordingly, the A.O. is directed to treat the income as income from house property and allow statutory deduction u/s. 24(a) of the Act. Accordingly, ground No.1 to 10 of the assessee's appeal are allowed.

8. In the result, appeal for A.Y.2005-06 is allowed.

ITA No.4/Ahd/2014/SRT/ A.Y.2006-07

9. Ground No.1 to 10 of appeal are relates to treating the income of Rs.5,33,012/- as business income instead as income from house property.

10. Since, the facts and grounds in A.Y. 2006-07 are same, as in A.Y.2005-06 hence, finding given as in A.Y. 2005-06 would mutatis-mutandis apply to this year also. Therefore, following the said reasoning, the appeal for A.Y. 2006-07 is allowed infavour of the assessee.

11. In view of above, appeal for A.Y. 2005-06 and 2006-07 is allowed.

12. Order pronounced in open court on 27.06.2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

Surat, dated : 27.06.2018

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी/ The Appellant;
2. प्रत्यर्थी/ The Respondent;
3. आयकरआयुक्त)अपील (/ The CIT(A),
4. Pr. CIT
- 5.विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, सूरत/ DR, ITAT, Surat;
6. गार्डफाईल / Guard file.

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

By order

/ / TRUE COPY / /

Assistant Registrar, Surat

BVC