IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, JM AND SHRI N. K . PRADHAN, AM

आयकर अपील सं/ I.T.A. No.3398/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2012-13)

Deputy Commissioner of Income Tax Central Circle 4(2) R. No.1918, 19th Floor, Air India Building, Nariman Point, Mumbai – 400 021	**बनाम** / Vs.	M/s. Rockfort Estate Developers Pvt. Ltd. 1, Leela Baug, Sir M. V. Road, Andheri(E) Mumbai - 400059
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AABCR7896K		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri Manoj Kumar Singh (Sr.DR)
Assessee by:	Shri Rahul Hakani

सुनवाई की तारीख / Date of Hearing: 16.01.2019
घोषणा की तारीख /Date of Pronouncement: 30.01.2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 03.02.2017 passed by the Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2012-13.

2. The brief facts of the case are that the assessee filed its return of income declaring total income to the tune of ₹8,32,310/-. The return of income was processed u/s.143(1) of the Income Tax Act, 1961 (in short "the Act"). The assessment was selected for scrutiny under CASS. Consequently, notices u/s.143(3) and 142(1) r.w.s.129 of the Act were issued and served upon the assessee. The assessee is a company engaged in

the business of real estate and has developed Leela Business Park at Andheri Kurla Road, Andheri (East), Mumbai. The assessee has given the property on lease wherein it gets lease income and maintenance charge from various tenants. The assessee has shown the income from house property to the tune of Rs.28,56,95,449/- and also claimed deduction u/s.23 and 24 of the Act. The Assessing Officer treated the said rental income as income from business or profession and disallowed the deduction u/s.24 of the Act. The total income of the assessee was assessed at loss of Rs.78,45,685/- and book profit at loss of Rs.95,10,309/-. Feeling aggrieved the assessee filed the appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NO.1:-

3. Under this issue, the revenue has challenged the treatment of rental income as income from house property instead of income from business or profession. The assessee received the rental income of Rs.28,56,95,449/- and claimed the deduction u/s.24 of the Act. However, the Assessing Officer treated the said rental income as income from business or profession. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record. The relevant finding has been given in the para 7 of the CIT(A) which is reproduced below:-

> *"7. I have considered the facts of the case, submissions and contentions of the appellant and order of the AO. It is seen that identical issue came up for consideration before my learned predecessor, in appellant's own for A.Y.2010-11. Observing that in A.Y.2007-08 to 2009-10, the CIT(Appeals) had held the*

rental income to be assessable as income from house property and that the AO had not brought on record any distinguishable fact regarding the nature of rental income as compared to the earlier years, my learned predecessor held vide order dated 13.3.2013 that for A.Y.2010-11 also, the rental income from property was assessable under the head income from house property and all statutory deductions under the head should be allowed thereon. Respectfully following the orders of my learned predecessors for A.Y.s 2007-08 to 2010-11, I direct the AO to assess the rental income from property as income from house property and allow all statutory deductions under the head, as per law, in this year also. These grounds of appeal are, accordingly, allowed."

4. On appraisal of the above mentioned order, we noticed that the CIT(A) has allowed the claim of the assessee in connection with the treatment of rental income as income from house property instead of income from business and profession on the basis of the decision of the CIT(A) in the assessee's own case for A.Y.2007-08 for A.Y.2007-08 to 2010-11 and accordingly treated the rental income as income from house property. We also noticed that the issue in question has also came before the Hon'ble ITAT in ITA No.7453/Mum/2012 and others for A.Y.2004-05 to 2010-11 dated 06.04.2016 in which Hon'ble ITAT has also decided the issue in favour of the assessee and treated the income as income from house property. The relevant finding has been given in the para 9,10,& 11 which is reproduced as below:-

"9. We have heard the submission made by the parties and carefully gone through the record as well as order passed by learned CIT(A). We find hat learned CIT(A) has considered the submissions of both the parties and passed the order on this ground. Operative para of the order of learned CIT(A) is as under:-

3.3. I have carefully gone through the observations of A.O. and submissions of the appellant. The appellant has correctly stated that the method of computing the Rental Income under the head Income from House Property was accepted by Assessing Officer's predecessors in all earlier assessments orders passed u/s.143(3) of the Income Tax Act right from A.Y.2004-05 to 2006-07,

copies of those orders were placed on record. There is no change in the position compared o those years and current assessment year. Further, the appellant followed the same method in the subsequent years also. Therefore, there is merit in appellant's contention that the A.O. cannot change his stand according to his convenience unless there is change in facts. The authorized representative has also given the reason why the building under construction was shown under Inventory. Even in that case also, there is no change in the facts in comparison to earlier years.

3.4 As rightly pointed out by the A.R. decision of Hon'ble Supreme Court in the case of Shambhu Investments Pvt. Ltd. is clearly in the favour of appellant and said Apex Court decision supersedes the decisions quoted by the A.O.

3.5 In view of the above, the method consistently followed by the appellant in computing the rental income under the head "Income from House Property" should be up held as valid method and accordingly the Assessing Officer is directed to compute the rental income under the head 'income from house property' and allow statutory deduction of Rs.2,20,69,233/- claimed by the appellant. Therefore, the first ground of appeal is allowed in favour of the appellant.

10. As per the order of learned CIT(A) it is clear that learned CIT(A) has found that there is no change in the position compared to those assessment years i.e. A.Y.2004-05 to 2006-07, wherein rental income of the assessee under the head income from house property' was accepted by the Assessing Officer's predecessors in all earlier assessment orders passed u/s.143(3) of the Act. Further it was also appreciated by learned CIT(A) that the assessee followed same method in the subsequent year also. Learned AR before learned CIT(A) has given the reason why the building under construction was shown under inventory and even in that case also, learned CIT(A) has not found any change in the facts in comparison to earlier years. Learned CIT(A) has rightly applied the principles laid down by Hon'ble Supreme Court in the case of Shambhu Investments Pvt. Ltd. (supra).

11. We have also considered the Judgment passed by Hon'ble Bombay High Court in the case of Sane and Doshi Enterprises (377 ITR 165), wherein it was held that income from house property – business income – income from property or business income – assessee engaged in construction of property – unsold property let out – rent assessable as income from house property. Even as per the aforementioned decision rental income was treated as 'income from house property'. Learned CIT(A) has judicially passed his order after considering facts and circumstances of the case and there is no need to interfere his order from our side. Hence we uphold his order and reject ground raised by the Revenue."

5. The CIT(A) has followed order passed by Hon'ble ITAT in assessee's own case in I.T.A. No.5209/Mum/2014 dated 28.09.2016. The facts are not distinguishable at this appellate stage. No law contrary to the law relied by the learned representative of the assessee has been produced

by the learned representative of the department. Taking into account of all the facts and circumstances and by honouring the order passed by the Hon'ble ITAT in the assessee's own case (supra), we are of the view that the CIT(A) has decided the matter of controversy judicially and correctly which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2

6. Under this issue the revenue has challenged the deletion of the addition raised in view of the provision u/s.14A r.w.Rule 8D of the Act. Learned representative of the department has contended that the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable and the order of the Assessing Officer is liable to be restored in connection with the assessing the expenditure incurred to earn the exempt income. However, on the other hand the learned representative of the assessee has strongly relied upon the order passed by the CIT(A) and it is specifically argued that the assessee has no exempt income, therefore, the provision u/s.14A read with Rule 8D is not applicable to the facts of the present case.

7. On appraisal of the order passed by the Assessing Officer as well as CIT(A) and relevant record, we noticed that the assessee nowhere earned any exempt income. Moreover, the assessee nowhere claimed any expense while computing the income. At the time of argument, the learned

representative of the assessee has placed reliance on the decision of Hon'ble ITAT 'A' Bench in case tilted as Kamat Hotels (India) Ltd. Vs. Deputy Commissioner of Income Tax (OSD) 8(2) [2018] 89 taxmann.com 225 Mumbai Tribunal. It is specifically held that the assessee has no exempt income, therefore, no provision u/s.14A read with Rule 8D would be applicable. While passing the above mention order, the Hon'ble ITAT Mumbai Bench relied upon the decision of Special Bench in case titled as CIT Vs. Vireet Investment (P.) Ltd. [2017] 165 ITD 27/82 taxmann.com 415. Where there is no exempt income then no expenditure to earn the exempt income is liable to be assessed in view of provisions of u/s 14A r.w. Rule 8D of the Act. Taking into account of all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judicially and correctly which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this 30.01.2019.

Sd/-	Sd/-
(N.K.PRADHAN)	**(AMARJIT SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 30.01.2019
MP

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai