

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos. 615&616/Coch/2017 & 460&461/Coch/2018
Assessment Years : 2011-12, 2012-13, 2013-14 & 2014-15

Warriar's Hospital and Panchakarma Centre, Puthiyavila, Velanchira, Kayamkulam. [PAN:AAAFW 5661R]		The Deputy Commissioner of Income-tax, Circle-1, Alappuzha.
Assessee-Appellant		Revenue-Respondent

Assessee by	Shri V. Rajasekharan, CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	18/12/2018
Date of pronouncement	20/12/2018

ORDER

Per CHANDRA POOJARI, AM:

These appeals of the assessee are directed against different orders of the CIT(A), Kottayam dated 26/09/2017 and pertain to the assessment years 2011-12 and 2014-15.

2. Since the main issue in all the appeals is with regard to assessment of rental income received from letting out building along with inseparable furniture, fittings, plant and machinery etc. under the head income from other sources

instead of income from house property, they were clubbed together, heard together and are being disposed of by this common order.

2. Since the facts are same, we consider the facts as narrated in ITA No. 615/Coch/2017 for the assessment year 2011-12 which reads as follows:

For this assessment year, the assessee filed return of income on 30/09/2011 declaring total income of Rs.4,74,86,270/-. A portion of the income returned by the assessee was assessed under the head income from house property which was let out to sole distributor, Dhathri Ayurkendra (India) Private Limited. The Assessing Officer assessed the same under the head income from house property and he disallowed depreciation claimed by the assessee at Rs.14,29,528/- since the assessee is only entitled for deduction u/s.24 of the I.T. Act.

3. Against this, the assessee went in appeal before the CIT(A). Before the CIT(A), the assessee reiterated the arguments. However, the CIT(A) decided the issue against the assessee.

4. Against this, the assessee is in appeal before us. The assessee submitted that the income of the assessee received from letting out building alongwith various furniture, fittings, plant and machinery etc. which is to be assessed as income from other sources in view of the provisions of section 56(2)(iii) of the Act which reads as follows:

“Section 56(2)(iii) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head “Profits and gains of business or profession”.

4.1 Accordingly, it was submitted that the assessee is entitled for depreciation on furniture, fittings, plant and machinery etc. in terms of section 57(iii) of the I.T. Act which reads as under:

“Section 57(iii) In the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause(ii) of clause (a) and clause (c) of section 30, section 31 and sub-sections (1) and (2) of section 32 and subject to the provisions of section 38”.

4.2 Further, the assessee filed additional evidence as follows:

- 1. Lease agreement dated 1st day of March, 2010 executed between Warriars Hospital and Panchakarma Centre and Dhathri Ayurkendra (India) Private Limited regarding Hospital assets located at Ernakulam.*
- 2. Lease Agreement dated 1st day of March, 2010 executed between Warriars Hospital and Panchakarma Centre and Dhathri Ayurkendra Private Limited regarding Hospital assets located at Kayamkulam.*
- 3. Lease agreement dated 1st day of March, 2010 executed between Hospital and Panchakarma Centre and Dhathri Ayurkendra Private Limited regarding Hospital assets located at Thiruvananthapuram.*
- 4. Lease agreement dated 1st day of March, 2010 executed between Warriars Hospital and Panchakarma Centre and Dhathri Ayurkendra (India) Private Limited regarding Hospital assets located at Guruvayoor.*

4.3 The above evidences were not filed before the Assessing Officer or the CIT(Appeals), Kottayam since the authorities were firmly holding the view that rental income earned by the assessee was taxable under the head "Income from house property" and therefore the assessee was under the bonafide belief that the above evidences would not be considered to be relevant by them. Hence, it was submitted that the Bench may condone the omission and consider these evidences to render justice. The assessee has also filed petition for admission of additional evidence.

4.4 It was submitted that the assessee had bona fide belief that the income of the assessee was wrongly offered under the head income from house property. This was an inadvertent error. It was also submitted that when there is no doubt regarding the head under which a particular income is to be taxed, there is no option available for the assessee or for the department to change the head with regard to this income. It does not matter in any way how the assessee has chosen to show a particular income in the return of income submitted by it. The assessee relied on the following judgments:

- a) United Commercial Bank Limited vs. CIT (1957) 32 ITR 688
- b) CIT vs. Basanth Rai Takhat Singh (1933) 1 ITR 197
- c) Bihar State Co-operative Bank Limited vs. CIT (1960) 39 ITR 114

5. The Ld. DR had opposed to the admission of additional evidence.

6. We have heard the rival submissions and perused the record. In our opinion, there was inadvertent error committed by the assessee in offering its income under the head income from house property. The Assessing Officer must have called for the documents mentioned above for verification. Neither the Assessing Officer nor the CIT(A) had considered these documents. These documents are very crucial for deciding whether the income is from other sources or from house property. Accordingly, we admit the additional evidence. In our opinion, it is appropriate to remit the entire issue in dispute for all the assessment years to the file of the Assessing Officer for de nova consideration and to take appropriate decision on this issue. Thus, this ground of appeal of the assessee is allowed for statistical purposes.

7. The next ground in ITA Nos. 615 & 616/Coch/2017 is with regard to disallowance of Rs.50,000/- towards expenses. At the time of hearing, the Ld. AR had not put any argument on this issue for both the assessment years. Hence this ground of appeals of the assessee for both the assessment years is dismissed as not pressed. Thus, the appeals of the assessee in ITA Nos. 615 & 616/Coch/2017 & 460&461/Coch/2018 are partly allowed for statistical purposes.

8. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on this 20th December, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 20th December, 2018

GJ

Copy to:

1. Warriar's Hospital and Panchakarma Centre, Puthiyavila, Velanchira, Kayamkulam.
2. The Deputy Commissioner of Income-tax, Circle-1, Alappuzha.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin