



ITA No.5310/Mum/2017
Prashant Jayantilal Patel
Assessment Year :2013-14

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.5310/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Prashant Jayantilal Patel 3-3A, 1 st Floor Churchgate House 32/34, Veer Nariman Road, Fort, Mumbai-400 001.	बनाम/ Vs.	DCIT, Circle-4(2)(1) Room No.642, 6 th Floor New Marine Lines Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABPP-2156-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Devendra Jain-Ld.AR
Respondent by	:	Abhi Rama Kartikeyan- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12/03/2019
घोषणा की तारीख / Date of Pronouncement	:	03/04/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-9, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-9/Cir.4/45/2016-17* dated 31/05/2017 on following grounds of appeal: -



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*Being aggrieved by the order dated 31.05.2017 passed by the learned Commissioner of Income Tax (Appeals)-9, Mumbai. ["Ld. **CIT(A)**"] u/s 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:*

1. *On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the disallowance of depreciation of Rs.4,34,854/- on the office premises. The Ld. CIT(A) erred in not appreciating that this office premises being part of the block of asset, depreciation ought to have been allowed thereon notwithstanding the fact that, during the year under appeal the office premises was let out by the appellant. Your appellant, therefore, prays that the depreciation of Rs.4,34,854/- be allowed on this office premises."*

The assessment for impugned AY was framed u/s.143(3) on 27/02/2016 by Ld. Deputy Commissioner of Income Tax-4(2)(1), Mumbai [AO] wherein the income of the assessee was determined at Rs.119.93 Lacs after certain adjustments and disallowances as against returned income of Rs.50.15 Lacs e-filed by the assessee on 30/09/2013. The assessee being *resident individual* was stated to be engaged in the *financial service sector as Share Broker*.

2.1 The sole subject matter of present appeal is to adjudicate whether the assessee would be eligible to claim depreciation on certain premises, which although forms part of *block of assets*, has been let out during the impugned AY & earned certain rental income which has been assessed as *Income from House Property* against which statutory deduction has been allowed to the assessee u/s 24.

2.2 During assessment proceedings, it transpired that the assessee earned rental income by letting out certain office premises during the impugned AY. The said income was assessed as *Income from House Property* and accordingly, against the same, statutory deduction u/s 24 was allowed to the assessee. The assessee had claimed office



maintenance charges of Rs.4.14 Lacs & depreciation for Rs.4.34 Lacs against these premises as business expenditure which has been disallowed by Ld. AO. The quantum assessment order records a finding that the representative for assessee admitted to the fact the such expenditure was not allowable to the assessee.

3. However, the assessee agitated the same without any success before first appellate authority wherein the assessee while controverting the findings of Ld. AO, submitted that once an asset forms part of the block of assets, it loses its independent identity & depreciation is fully allowable against the same irrespective of user condition *qua* a particular asset forming part of the block. Reliance was placed on certain judicial pronouncements in support of the same. However, not convinced, Ld. CIT(A) confirmed the disallowance by observing as under: -

*8.3.1. I have **considered** the stand of the AO as well as the written submissions dated 30/05/2017 filed by the AR and his oral arguments. The undisputed facts are that during the year the office unit was actually let out by the appellant and rental income received from the same was offered to tax as income from house property and standard deduction u/s.24 of the Act was also claimed by him. The AO has assessed this rental income as income from house property after allowing deduction u/s.24 as claimed by the appellant. I find that under the scheme of income from house property there is no provision for allowing any depreciation on the property, standard deduction allowable u/s.24 of the Act takes care of all possible deductions other than – interest on borrowings. Therefore, in my view, once the appellant is allowed standard deduction u/s.24 of the Act, claiming deduction for depreciation is nothing but making a claim for double deduction which is not permissible under the law. Law is well settled that there cannot be double taxation of same income. Similarly, there cannot be double deduction. As regards the decisions cited by the AR, I find that the facts were different. There the asset was not actually used for the business purpose during the year, but there was no letting out of the asset income from which was assessed under some other head of income where some standard deduction was allowed. Therefore, all those decisions are not applicable to in this case.*



Aggrieved as aforesaid, the assessee is in further appeal before us. The Ld. AR has reiterated the contentions as raised before Ld. first appellate authority whereas Ld. DR submitted that the impugned order required no interference.

4. Upon careful consideration, the undisputed position that emerges is that the assessee has earned rental income from certain office premises which forms part of the block of assets. The rental income from these premises has been assessed under the head *Income from House Property* against which statutory deduction u/s 24 has already been allowed to the assessee. The assessee is not disputing the disallowance of office maintenance charges claimed against the premises as business expenditure but disputing the claim of depreciation against office premises. The perusal of block of asset, as placed on record, reveal that the assessee is in possession of various *Galas*, 12 to be precise, out of which few *galas* have been let out during the year and few *galas* have been used by the assessee for its own use. The depreciation on *galas* used for the business purposes is not under dispute. However, depreciation on *galas* as given on rent amount to Rs.4.34 Lacs which have been disallowed by Ld. AO. It is pertinent to note that against the rental income, the assessee has already been allowed statutory deduction u/s 24 and this depreciation is being claimed as business expenditure over and above the statutory deduction which has been allowed u/s 24. The primary condition as envisaged by Section 32 to claim the depreciation is that the assets should be used for the purposes of assessee's business which has remained unfulfilled for *galas* given on



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rent. Therefore, we are unable to concur with the stand of Ld. AR, in this regard.

5. The Ld. AR, during hearing, cited few decisions which we find factually different. The decision of this Tribunal rendered in *G.R.Shipping Ltd. Vs DCIT [ITA No.822/Mum/2005]* deal with a situation wherein depreciation was claimed against *barge* which could not be used by the assessee for the purpose of business as it met with an accident and remained non-operational. Similarly, the decision of Hon'ble Gujarat High Court rendered in *CIT Vs. Sonal Gems Industries [322 ITR 542]* gives a finding that once it is held that assets are used for business, it is not necessary that all items falling within plant & machinery have to be simultaneously used for being entitled to depreciation. In both the case laws, the assets on which depreciation was claimed were not diverted for non-business purposes and the same did not generate income for the assessee, which is the factual situation in the present appeal. Therefore, these case laws, in our considered opinion, are distinguishable on facts.

6. Keeping in view the same, we do not find any infirmity in the impugned order.

7. The appeal stands dismissed.

Order pronounced in the open court on 03rd April, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/04/2019
Sr.PS, Jaisy Varghese



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**