

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos.745 & 746 /Mum/2018

(निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15)

ACIT CIR 6(2)(1) R. No. 504, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. City Centre Mall Nashik Pvt. Ltd. Room No.62, Plot No. 8-9, Parekh Mahal, Lady Jamshedji Road, Sakharam Keer Marg, Mahim, Mumbai-400016.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC6422B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Abi Rama Kartikiyen	
Assessee by:	Shri Rajendra Daga/ Abdul Gani	

सुनवाई की तारीख / Date of Hearing: 06.03.2019
घोषणा की तारीख /Date of Pronouncement: 24/04/019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The above mentioned appeals have been filed by the Revenue against the order dated 23.11.2017 passed by the Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14 & 2014-15.

ITA. NO.745/M/2018:-

2. The revenue has filed the present appeal against the order dated 23.11.2017 passed by the Commissioner of Income Tax (Appeals)-12,

Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14.

3. The Revenue has raised the following grounds: -

- "1. 'On the facts and in the circumstance of the case and in law, whether the LO. CIT(A) was justified in holding that the Assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income received by the Assessee to be taxable as Business Income and not under the head income from House Property?'"
2. "On the facts and in the circumstance of the case and in law, whether the Ld. CIT(A) was justified in ignoring the settled position of law that where the main intention is to simply let out property or any part of it, the resultant income must be assessed as Income from House Property and the amenities such as electricity, cooling towers, elevators and car parking provided by the Assessee to its tenants were incidental to the letting out of the property and could not be termed as complex commercial activities to justify the assessment of rental income as Business income?"
3. "On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in directing the AO to allow deduction u/24(b) of the Act on verification of the claim of the Assessee that processing charges and registration charges have been incurred in connection with borrowing of money, by interpreting the word 'interest' as defined u/s 2(28A) of Act"
- " On the facts and in the circumstance of the case and in law, the Id. IT(A) erred in directing the AO to allow deduction u/s.24(b) after taking into account expenses relating to processing charges and registration charges relating to money borrowed, failing to appreciate that word 'interest' used in section 24(b) as well as u/s.36(1)(iii) of the Act has been used as defined in English Dictionary and as understood by commercial people in common commercial parlance and not as defined u/s.2(28A)?"

5. "on the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the expenses relating to processing charges and registration charges relating to money borrowed, failing to appreciate that deduction is available u/s.24(b) as well as u/s.36(1)(iii) of the Act only to the extent of interest paid on the amount borrowed P The CIT(A) did not consider the fact that the processing charges and registration charges precede the granting of loan by the lender while interest is paid subsequent to borrowing. The CIT(A) failed to take note that processing charges and registration charges do not partake the character of 'interest' u/s.24(b) as well as u/s. 36(1)(iii) of the Act "
6. "On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in directing the AO to allow expenses relating to processing charges and registration charges in connection with money borrowed, failing to appreciate that these expenses (processing charges and registration charges) are not considered as part of 'interest' in the English Dictionary and also by business persons while transacting / making commercial deal P Nowhere legislature has mentioned u/s. 24(b) as well as u/s. 36(1)(iii) that term 'interest' is to be construed while granting deduction in the light of definition given u/s.2(28A) of the Income Tax Act for 'interest' if legislature intended to consider deduction for interest u/s. 24(b) as well as u/s.36(1)(iii) of the Act in terms of definition of interest u/s.2(28A) it would have specifically stated so under section 24(b) as well as u/s. 36(1)(iii) of the Act 2"
- 7 "On the facts and in the circumstance of the case and in law, the 14. C1T(A) has erred in deleting the addition of Rs.2,46,822/ - on account of 14A r.w. Rule 8D, ignoring the fact that the Assessee has to incur the expenditure attributable to the earning of exempt income though there is no exempt income earned during the year."
8. "On the facts and in the circumstance of the case and in law, the Ld. CIT(A) has erred in treating the ground on disallowance u/ s 14A of the Act, as infructuous in view of the directions given in

ground no. 1 to treat income from the mall operations as Income from Business."

9. "The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored."
- 10 "The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary."

4. The brief facts of the case are that the assessee filed its return of income for the A.Y.2013-14 on 30.09.2013 declaring total income at a loss to the tune of Rs3,55,47,857/-. Thereafter, the assessee filed the revised return of income on 11.03.2015 declaring total loss of Rs.3,55,47,857/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee main source of income was from letting out its Mall at Nashik and Investment in Mutual Funds. The assessee received the income from letting out of Mall which has been shown as business income. Since the issue was in dispute, therefore, the notice was given to the assessee and after the reply of the assessee, the income from letting out the mall was treated as income from house property and accordingly assessed. The total income of the assessee was assessed in sum of Rs.8,47,57,106/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 & 2:-

5. Issue nos 1 & 2 are inter-connected, therefore, are being taken up together for adjudication. Under these issues the revenue has challenged the

allowance of the claim of the assessee in connection with the treatment of income from letting out the mall as income from business. The Ld. Representative of the Department has argued that the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is wrong against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case in ITA. No.1783/M/2015 dated 23.09.2016, therefore, in the said circumstances, the claim of the assessee has rightly been allowed by the CIT(A), hence, the issues are liable to be decided in favour of the assessee. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.: -

“8. I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. In this case, the appellant constructed a shopping m at Nasik and commenced its operations during the previous year relevant to &V.2010-11. The appellant declared the income derived from the shopping mall operations under the head Income from business in the return of income filed for A.Y.2010-11 and in the subsequent assessment years, including the assessment year under consideration. In the assessment made for A.Y.2010-11, when the income from shopping mail operations was declared as business income for the first time, the AO did not accept the treatment given by the appellant and held that the income from mall operations is assessable as Income from house property. The treatment given by the AID was upheld by the CJT(A) in the appellate order for A.Y.2010-11. In the written submission, the appellant has pointed out that the Hon'ble ITAT, Mumbai vide order dated 23.09.2016 allowed the appeal of the appellant for A.Y.2010-11 and directed the AO to assesses the income from the shopping Mall as the Business income and therefore the issue raised in this ground for the present assessment year is squarely covered by the said decision of the Hon'ble Tribunal, being identical to the issue decided by the Hon'ble Tribunal in its order for A.Y.2010-11. A copy of the said order of the Hon'ble Tribunal was furnished by the appellant.

9. *Ongoing through the order of the Hon'ble ITAT, Mumbai in the appellant's own case for A.Y.2010-11, where the Issue raised in this ground had arisen for the first time, it is noticed that the Hon'ble Tribunal decided the issue in favour of the appellant at para 11 of the order by relying on the decisions of Hon'ble ITAT, Kolkatta in the case of Pm Mall & Retail Management Vs. ITO (298 ITR (AT) 371) and of Hon'ble, ITAT, Mumbai in the case of ACT Vs. Stellar Developers Pvt. Ltd. (ITA No.4891/Mum/2008). The Hon'ble Tribunal also considered the ratio laid down by the Hon'ble Supreme Court in the cases of Royala Corporation Pvt. Ltd. (Civil appeal No.6437 of 2016 dated 11.08.2016) and Chennai Properties and Investments Ltd. Vs. CIT [2015] 373 ITR 673. The relevant paragraph in the order of the Hon'ble ITAT is extracted as under:*

11. In view of the foregoing, we are of the view that there is merit in the contentions of the assessee that the impugned income should be assessed as business income. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the AO to assess the income from shopping mall as business income.

10. The issue raised in this ground of appeal in the assessment year under consideration is identical to the issue decided by the Hon'ble Tribunal in the appellant's own case for the earlier A.Y.2010-11. Hence, respectfully following the decision of the Hon'ble Tribunal, it is held that the income from letting out a shopping mall and rendering related services to the lessees is assessable as Income under the head Profits and gains of business. The AO is directed accordingly. This ground of appeal is therefore allowed."

6. On appraisal of the above said finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2010-11 in ITA. No. 1783/M/2015 dated 23.09.2016. The CIT(A) has also relied upon some other decision which has been mentioned in the order in which the income from lease and license from the commercial property has been treated as income from business. The facts are not distinguishable at this stage. No law contrary to the law relied by the CIT(A) has been produced before us.

Taking into account of all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

ISSUE NOS. 3, 4, 5 & 6:-

7. All the issues are in connection with the allowance of the claim u/s 24(b) of the Act. Since the income of the assessee has been treated as income from business, therefore, in the said circumstances, no claim is allowable u/s 24(b) of the Act. All these issues moreover has become infructuous.

ISSUE NOS. 7 & 8:-

8. Under these issues the revenue has challenged the deletion of the addition raised in view of the provisions u/s 14A of the Act. Before going further, we deem it necessary to advert the finding of the CIT(A) on this issues.: -

“16. I have carefully examined the facts of the case, the assessment order and the written submissions of the appellant. In this regard, it is noticed from the details of "Other income" furnished in Note No 2.16 to the accounts that the appellant has not earned any dividend income during the year which is exempt from tax. In the following cases, the Hon'ble High Courts have held that no disallowance u/s. 14A is warranted in a year where no tax exempt income was received by the assessee.

1. *Lakhani Marketing Inc 49 taxmann.com 257 (P & H)*
2. *M/s Shivam Motors (P) Ltd 55 taxmann.com 262 (Allahabad)*
3. *Corrtch Energy (P.) Ltd. 45 taxmann.com 116 (Gujarat)*

4 *Cheminvest Ltd 317 ITR 86(Delhi)*

17. Hence, having regard to the decisions of the Hon'ble High Courts cited above, it is held that disallowance u/s. 14A is not warranted in the case of the assessee for the present assessment year in the absence of receipt of any tax exempt dividend income from the investments made by it. The A.O. is accordingly directed to delete the disallowance of Rs.2,46,822/- made u/s 14A of the Act. This ground of appeal is therefore allowed."

9. On appraisal of the above mentioned finding, we noticed that the assessee nowhere earned any exempt income and the CIT(A) has deleted the addition by relying upon the law settled in the case of **Cheminvest Ltd. 317 ITR 86 (Delhi)**. The CIT(A) has also relied upon some other law settled on similar points which has been discussed in the order. Since the assessee has no exempt income, therefore, no doubt the provision u/s 14A of the Act is not applicable. The facts are not distinguishable at this appellate stage also. The CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

In the result, the appeal filed by the revenue is hereby dismissed.

ITA. NO.746/M/2018:-

10. The revenue has filed the present appeal against the order dated 23.11.2017 passed by the Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

11. The Revenue has raised the following grounds: -

- "1. 'On the facts and in the circumstance of the case and in law, whether the LO. CIT(A) was justified in holding that the Assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income received by the Assessee to be taxable as Business Income and not under the head income from House Property?"
2. "On the facts and in the circumstance of the case and in law, whether the Ld. CIT(A) was justified in ignoring the settled position of law that where the main intention is to simply let out property or any part of it, the resultant income must be assessed as Income from House Property and the amenities such as electricity, cooling towers, elevators and car parking provided by the Assessee to its tenants were incidental to the letting out of the property and could not be termed as complex commercial activities to justify the assessment of rental income as Business income?"
3. "On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in directing the AO to allow deduction u/24(b) of the Act on verification of the claim of the Assessee that processing charges and registration charges have been incurred in connection with borrowing of money, by interpreting the word 'interest' as defined u/s 2(28A) of Act"
4. On the facts and in the circumstance of the case and in law, the Ld. IT(A) erred in directing the AO to allow deduction u/s.24(b) after taking into account expenses relating to processing charges and registration charges relating to money borrowed, failing to appreciate that word 'interest' used in section 24(b) as well as u/s.36(1)(iii) of the Act has been used as defined in English Dictionary and as understood by commercial people in common commercial parlance and not as defined u/s.2(28A)?
5. "on the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the expenses relating to processing charges and registration charges relating to money borrowed, failing to appreciate that deduction is available u/s.24(b) as well as u/s.36(1)(iii) of the Act only to the extent of interest paid

on the amount borrowed P The CIT(A) did not consider the fact that the processing charges and registration charges precede the granting of loan by the lender while interest is paid subsequent to borrowing. The CIT(A) failed to take note that processing charges and registration charges do not partake the character of 'interest' u/s.24(b) as well as u/s. 36(1)(iii) of the Act "

6. "On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in directing the AO to allow expenses relating to processing charges and registration charges in connection with money borrowed, failing to appreciate that these expenses (processing charges and registration charges) are not considered as part of 'interest' in the English Dictionary and also by business persons while transacting / making commercial deal P Nowhere legislature has mentioned u/s. 24(b) as well as u/s. 36(1)(iii) that term 'interest' is to be construed while granting deduction in the light of definition given u/s.2(28A) of the Income Tax Act for 'interest if legislature intended to consider deduction for interest u/s. 24(b) as well as u/s.36(1)(iii) of the Act in terms of definition of interest u/s.2(28A) it would have specifically stated so under section 24(b) as well as u/s. 36(1)(iii) of the Act"
- 7 "The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored."
- 8 "The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary."

12. The facts of the present case are quite similar to the fact of the case which has been narrated above while deciding the ITA. No.745/M/2018. However, the figure is different. The matter of controversy is also the same. The finding given by us while deciding the ITA. No.745/M/2018 in connection with the relevant issues is quite applicable to the facts of the present case as mutatis mutandis. Therefore, there is no need to decide each

and every issues separately. In view of the said circumstances, we dismissed the appeal of the revenue on similar lines.

13. In the result, appeals filed by the revenue are hereby ordered to be dismissed.

Order pronounced in the open court on 24/04/2019

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai दिनांक Dated : 24/04/2019

Vijay Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai