

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

**Before Shri G. MANJUNATHA, Accountant Member and
Shri RAVISH SOOD, Judicial Member,**

**ITA Nos.7048 & 7050/Mum/2017
Assessment Years: 2012-13 & 2014-15**

DCIT, Central Circle-4(1), R. No.1916, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021	बनाम/ Vs.	M/s Runwal Developers Pvt. Ltd. 5 th Floor, Runwal & Omkar Square, Off. Eastern Express Highway, Sion (East), Mumbai-400021
(राजस्व /Revenue)		(निर्धारिती / Assessee)
P.A. No.AAACR0395J		

राजस्व की ओर से / Revenue by	Shri Sanjay Singh
निर्धारिती की ओर से / Assessee by	Shri Gaurav Kabra

सुनवाई की तारीख / Date of Hearing :	28/02/2019
आदेश की तारीख / Date of Order:	10/04/2019

आदेश / O R D E R

Per G. Manjunatha, (Accountant Member)

These two appeals filed by the Revenue are directed against separate, but identical orders of the Ld. CIT(A)-52, Mumbai, both dated 05/09/2017 and they pertain to Assessment Years 2012-13 and 2014-15. Since facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

2. The Revenue, has more or less filed common grounds of appeal for both assessment years. For the sake of brevity, grounds of appeal taken for Assessment Year 2012-13 are reproduced hereunder:-

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in directing the AO to allow the claim of expenses from the Business Income after verification, despite the assessee not apportioning any expenses towards earning the rental income, which is incidental to its Core Business Activity?"

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s decision in allowing the claim of expenses from the Business Income of the assessee is perverse to the facts that the assessee has failed to discharge its onus of proving that the various expenses claimed in its books have been wholly and exclusively incurred for the purpose of earning its business income?."

3. The brief, facts of the case are that the assessee company is engaged in the business of residential, commercial and mall construction and running and managing mall. The assessee has filed its return of income for Assessment Year 2012-13 on 30/09/2012, declaring total income at Rs.23,97,99,030/- and the same has been revised by filing revised return of income on 20/07/2013, declaring total income at Rs.24,14,83,100/-. During the assessment proceedings, the AO observed that the assessee derives leave and license fees from running and managing mall and renting of premises and such rent was assessed under the head "income from house property" whereas, other incidental receipts of mall of maintenance including car parking, etc are assessed under the head "income from business". The assessee has computed income from house property after claiming standard deduction @ 30% u/s 24(a) of the Income Tax Act, 1961 (hereinafter the Act') on gross total income. However, while computing income under the head "income from business", the assessee has not apportioned total expenditure debited into profit &

loss account towards expenditure pertain to the activity of income from house property and expenditure pertains to income assessable under the head "income from business or profession". Therefore, after considering the expenditure debited in the profit & loss account apportioned expenses pertains to income assessable under the head "income from house property" and income assessable under the head "income from business" and made disallowance of Rs.1,29,32,222/- after giving set off for expenditure of Rs.17,61,837/- suo-moto disallowed by the assessee on the ground that the assessee has already claimed standard deduction towards repairs and other maintenance expenses in respect of 'income from house property'.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A).

5. Before the Ld. CIT(A), the assessee has filed elaborate written submissions which has been reproduced at para 5.2 of page 3 to 6 of the order of Ld. CIT(A). The sum and substance of the arguments of the assessee before the Ld. CIT(A) are that the assessee has made suo-moto disallowance of expenses relates to income from house property which is based on actual expenditure incurred in respect of income from house property, but debited into the profit & loss account, whereas, the AO has determined disallowance on ad-hoc basis taking into account income declared under the head income from house property and income from other sources without any basis. The Ld. CIT(A), after considering the relevant submissions of the assessee and also by following the decision of ITAT, Mumbai, in assessee's own case for Assessment Year 2010-11 &

2011-12 held that the ITAT has set-aside the issue to the file of the AO with a specific direction to examine the expenses claimed under the heads “business promotion”, advertisement expenses, etc for quantifying the disallowance of expenses related to Runwall Mall being claimed by the assessee while computing income under the head ‘income from business’. Therefore, by following the decision of ITAT, Mumbai, set-aside the issue to the file of the AO and direct him to re-compute the disallowances in the light of findings of ITAT.

6. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

7. The Ld. AR for the assessee, at the time of hearing, submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT, Mumbai, in assessee’s own case. The ITAT, Mumbai, ‘D’ Bench in ITA No.4824/Mum/2014 for Assessment Year 2011-12 had considered similar issue and by following its earlier order for the Assessment Year 2010-11 set-aside the matter to the file of the AO for verification of various expenses like business promotions expenses and other expenses. Therefore, a similar direction may be given to the AO to verify the suo-moto disallowance made by the assessee in the light of findings of the Tribunal.

8. The Ld. DR, on the other hand, fairly accepted that the issue is covered in favour of the assessee by the decision of the ITAT in assessee’s own case by earlier order.

9. We have heard both the parties, perused materials available on record and gone through the orders of authorities below. The issue involved in the present appeal is a

recurring issue, which is subject matter of consideration by the Co-ordinate Bench of ITAT Mumbai "D" Bench in assessee's own case for earlier Assessment Years, where under identical set of facts, the issue has been set-aside to the file of the AO to determine the disallowance considering various expenses debited by the assessee into the profit & loss account, including business promotion expenses, advertisement expenses and other expenses which are directly attributable to earning lease rental income and which is assessable under the head "income from house property. The relevant findings of the Tribunal are as under:-

"10. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee has received leave and license fees amounting to Rs. 6,03,27,131/- from the tenants. We have observed that as contended by the Id. Counsel, this issue is covered by the decision of the co-ordinate bench of this Tribunal in assessee's own case for assessment years 2010-11 in ITA No. 4777/Mum/2013 vide Tribunal orders dated 12th April, 2016 whereby the Tribunal has discussed the issue in detail and in the instant appeal the facts are identical. The findings of the Tribunal is reproduced below:-

"2. The brief facts qua first issue are that, assessee is in the business of builders and developers, generation and sale of electricity and has also rented out properties during the year. The AO noted that, assessee has leased out immovable property owned by it in the form of 'R Mall, LBS Marg, Mulund (West), Mumbai. From leasing of such property, the assessee has earned leave and license fees of Rs.5,36,46,388/-. Besides this, the assessee has also earned other rental income of Rs.3,82,456/- and Rs.19,58,050/-. All these receipts have been shown "rental receipts" chargeable under the head "Income from House Property". While computing the income from house property, the assessee has reduced property tax of Rs.23,92,857/- and also the standard deduction @ 30% under section 24(1) on account of repairs and accordingly, sum of Rs.3,75,15,126/- was offered as taxable income. The AO observed that the assessee, while computing its income from business has failed to apportion and disallow expenses debited to the profit and loss account which can be attributable to rental income earned by it. Since the assessee had taken the advantage of 30% repair allowable by the statute as a standard deduction, therefore, it should have suo moto apportioned certain expenses to the rental income and disallow the same in its computation of income while filing its return. In response to the show cause notice by the AO, the assessee submitted details of direct expenses incurred for the business carried out by it. It was also pointed out that expenses to the tune of Rs.13,11,0361- on account of electricity charges for pertaining to Mall was suo-motto disallowed by the assessee. As regards administrative and other expenses they were universal expenses which were incurred for the running of the business, irrespective of whether or not projects were being executed or rental activity was there or not. These

expenses have been incurred to continue the corporate set up of the company and for maintaining its corporate identity. There would not have been any change in the claim of expenses even if assessee would not have leased out any of its properties. Further, this issue of allocation of expenses had never arisen in the past assessment years.

3. However, the Ld. AO rejected the assessee's contention and observed that, except for property tax, no other implicit disallowance have been made by the assessee towards rental receipts. The assessee has not apportioned any of the expenses debited to the profit and loss account which has been claimed as business expenditure towards the rental receipts. He held that the assessee's contention that as on going concern and business enterprise it has to incur certain expenditures even if no rental income would have arisen, is not tenable, because earning of income from leasing out of premises of "R. Mall" is incidental to its business activities. The expenses stated to have been incurred in the course of other business activity may have been used for earning of rental income also, for example, salary paid to the employees, electricity charges paid for the office and other such expenses may have a component towards earning of rental income. Thus, there has to be some allocation of the expenses and accordingly, disallowance should be worked out. The assessee has claimed huge standard deduction of 30% and municipal tax as deduction from rental income, but while calculating the business income, the assessee has not apportioned any of the expenses towards its rental receipts. Lastly, in the earlier years, the assessing officers and departmental authorities had not examined this aspect of the matter, therefore, this is the new issue which has been raised in this year. So accordingly, he made a disallowance of Rs. 1,60,77,911/- in the following manner:-

'6.5 It is very difficult to pin point at the expenses that have been directly incurred for the sake of earning rental income by the assessee. Even the assessee has not given any such working, even though it was asked to do so, without prejudice, in the notice dated 02.01.2013. Therefore such expense has to be estimated on the basis of the available facts and information. Now in order to compute the disallowance of expenses to be made on account of the above discussion, there are two choices available with the undersigned:

1. To disallow the same amount of deduction from the business expenses, as the amount of deduction claimed Rs. 1,60,77,911/- as 30% repairs as per the law. The same can be disallowed at first choice.

2. To disallow the fraction of total expenses claimed by the assessee, as is the proportion of income from rent to the gross income of the assessee as per the P&L account, i.e. in the proportion of

$$\frac{5,59,85,895}{7,20,08,371} = 16,60,380$$

$$242,80,30,091$$

6.6 Keeping in mind the above computation the first choice is exercised in the interests of the revenue. Therefore a disallowance of Rs. 1,60,77,911/- is made out of the business expenses claimed by the assessee in its return. This amount of disallowance is added to the business income of the assessee.

4. Before the CIT(A), assessee submitted that, expenses directly related to the rental income being municipal taxes of Rs.23, 92,887/- and electricity charges of Rs. 13,11,0361- had already been disallowed by the assessee. The other expenses debited

to the profit and loss account mainly related to other business segment carried out by the assessee and or for general & administrative expenses incurred were purely for running of the business, irrespective of whether or not Projects being executed or rental activity was there or not. These expenses are essentially for running of company and maintaining its corporate identity. One very important fact which was brought to the notice of and in the record of the CIT(A) was that, assessee had entered into an agreement with M/s Veer Property Pvt. Ltd., for running and managing the Malls and the said company handled all the work related to the Mall and, therefore, assessee did not had to incur any expenditure for the maintenance of the Malls. Further, it was the onus of the AO to prove that the expenses debited by the assessee has not been incurred for the other business income. Alternatively, it was submitted that, if any amount is disallowable then same should be restricted to 2%.

5. The Ld. CIT(A) after considering the assessee's submissions and also the finding of the AO, observed that, despite opportunity given by the AO as well as in the course of the appellate proceedings, the assessee could not establish direct correlation with the expenses which were directly related to the business income other than rental income. under the head "Administration and Selling Expenses" assessee has debited salary amount of Rs.292.85 lakhs; Directors' remuneration of Rs.21 lakhs; Conveyance expenses of Rs.24.60 lakhs; electricity expenses of Rs.28.95 lakhs; office repairs and maintenance expenses of Rs. 11.5 lakhs; professional fees of Rs. 47.28 lakhs; Society charges of Rs. 12.06 lakhs; Staff welfare expenses of Rs. 13.06 lakhs; and travelling expenses of Rs. 14.44 lakhs, which assessee could not prove that same was exclusively for the purpose of other business income and did not relate to earning of rental income. The onus is on the assessee to show that the expenditure have been incurred wholly and exclusively for the purpose of the business. He also referred to certain decisions for the proposition that, the burden to prove that expenditure have been incurred for the business is on the assessee. These decisions have been referred in pages 5 & 6 of the appellate order. As regards the agreement with MI Veer Properties P. Ltd. for the maintenance of the Mall, the assessee could not produce any details and break-up of expenses incurred by the said company for maintenance of the Mall and hence this argument of the assessee is not substantiated. Lastly, the assessee's contention that it has suo moto disallowed property tax payment and electricity payment is not relevant, because the AO has disallowed the expenditure from the administration and selling expenses which is there in Schedule "E". Accordingly, he confirmed the entire disallowance made by the AO of Rs. 1,60,77,991/-

6. Before us, the Ld. Counsel for the assessee Mr. Rakesh Joshi, after explaining the entire facts submitted that, the assessee is having huge business income from construction activities and other receipts. The receipts from the construction activity itself was more than Rs.235 crores. That apart, the assessee had other receipts which were also taxable under head "business income", which is evident from profit and loss account appearing at page 6 of the Paper-book. The total income shown by the assessee is more than Rs.244 crores. Under the head "Administration and Selling Expenses" the amount debited is approximately Rs. 7.20 crores. Now, on these facts, whether there can be any occasion for apportionment of expenses for earning of a rental income of Rs.5.59 crores. As there is no dispute that these lease and rental income are assessed as "income from house property". Once an income has been assessed under a particular head then same has to be computed in the manner provided under that specific head only. Accordingly, there was no requirement for any apportionment of expenses debited in the profit and loss account for other business

activities towards earning of rental income. He further submitted that, one very important fact which has not been properly appreciated by the Ld. CIT(A) is that, the assessee had an agreement with M/s Veear Property Pvt Ltd. whereby the assessee has given the entire management, running and maintenance of the Mall to this party, vide agreement dated 29th March, 2009. For carrying on the maintenance by the said company, the assessee does not have to make any payment, as the said company collects the maintenance charges from the tenants, owners and occupiers of the complexes of shops in the Mall directly and uses it for the maintenance. The entire electricity, air-conditioner charges for the common areas are all run and maintained by this company, therefore, in view of this agreement, the assessee does not have to incur any expenditure at all. How, this company runs its maintenance business or incurs any expenditure, the same is not the concern of the assessee at all therefore, the Ld. CIT(A) has completely misdirected himself in holding that, the assessee has failed to establish the expenses incurred by M/s Veear Property Pvt Ltd. Thus, on these facts, no apportionment of expenses should be made.

7. On the other hand, Ld. DR strongly relied upon the order of the of the CIT(A) and submitted that the assessee is running composite activities, that is, construction business and also renting out of the properties. If a composite activity is being carried out then, possibility of common expenditure cannot be ruled out. Thus, some allocation of expenses towards the earning of rental income has to be made from "Administration and Selling Expenses". In any case before the CIT(A), the assessee itself has offered that 2% of the expenditure should be disallowed on proportionate basis. Thus, the alternate contention of the assessee itself goes to show that some, expenses needs to be allocated.

8. We have heard rival submissions, perused the relevant finding given in the impugned orders and also material referred before us. The assessee is in the business of builders and developers"; generation and sale of electricity; and is also earning income from lease and license of a Mall from which the income has been shown assessable under the head "income from house property". From the perusal of the P&L Account as appearing at page 6 of the paper book, it is seen that, assessee's receipts from construction activity is at Rs.235,35,40,254/-. Besides this, there are other huge receipts from other activities also. The details of the income shown in the profit and loss account for the year ending 31st March, 2010 are as under:-

Particulars	Sch. No.	Of the year 31.3.2010	Previous year
INCOME:			
Construction activity Receipts	A	2,353,540,254	6,584,000
Business facilities receipts	B	55,985,895	56,277,222
Other receipts	C	6,252,523	6,710,720
Promotional Receipts	D	12,251,419	37,901,560
Electricity Generation		14,919,121	16,799,949
Stock of shops at R.Mall -Mulund		191,249,041	190,209,429
Increase/ /Decrease) in Stocks	10	(218,729,175)	274,555,611
Closing Work in Progress			
Runwal Pride -Mulund		280,615,633	270,651,123
Runwal Symphont/-Santacruz		356,049,199	-
Gabriel Property Mulund		1,071,378,683	859,137,846
Total Rs.		4,123,562,393	1,718,827,459

Under the head 'Mall Upkeep and Promotional expenses', the assessee has debited Rs. 11,67,480/-, break-up of which is as under:

SCHEDULE -G-Mall upkeep and Promotional Expenses		
Electricity Charges	1,311,036	(41,018)
Insurance Charges	-	254,330
Repairs & Maintenance Expenses	-	38,005
Licence fees	137,584	172,633
Legal & professional fees	-	1,500
Water charges	(281,140)	593,333
	1,167,480	1,018,783

Out of this amount, the assessee had already disallowed expenditure of Rs. 13,11,036/- on account of electricity charges, as stated by the assessee and also admitted by the Department. Under the head "Administration & Selling Expenses", the assessee had debited Rs. 72,008,371/-. The details of these expenses are appearing in Schedule "E" which for the sake of ready reference, same is reproduced hereinbelow:

SCHEDULE -E Administration & Selling Expenses		
Audit Fees	110,300	110,300
Advertisement	2,866,136	329,526
Books & Periodicals	88,680	18,688
Business Promotion Expenses	4,914,399	1,256,890
Brokerage	2,500,000	-
Computer Expenses	333,474	534,751
Conveyance Expenses	2,460,762	1,882,279
Electricity Charges	2,895,436	535,350
Directors Remuneration	2,100,000	2,100,000
Fees & Form	105,513	126,976
Housekeeping expenses	108,730	-
Insurance premium	312,035	-
Membership & Subscription	324,300	48,540
Misc. Expenses	49,549	56,778
Mor. Car expenses	975,632	1,045,939
Office Repairs & Maintenance	1,159,892	391,043
Postage & Telegram	39,837	33,713
Printing & Stationery	723,837	696,109
Professional fees	4,728,139	2,224,312
Profession Tax	2,500	2,500
Rates & Taxes	30,450	-
Rent	2,148,925	4,648,660
Salary	29,285,555	22,846,216
Sales Tax Paid	-	98,465
Sales Promotion Expenses (R. Mall)	-	294,420
SCHEDULE -E Administration & Selling Expenses		
SECURITY EXPENSES	344,189	
Car parking refund	3,00,000	

Sundry balances W/off	56,293	-
Society Charge for Flats	-	228,089
Society Charges for Sion Office	1,206,952	-
Staff Welfare Expenses	1,360,764	1,594,243
Telephone Expenses	1,787,842	1,479,259
Travelling Expenses	1,444,932	759,405
Training Expenses	-	84,270
Web Designing	28,930	100,722
Donations	6,00,000	8,225,000
(Subletting charges Payable)	1,214,388	1,243,764
	72,008,371	52,996,206

9. The revenue's case is that, for earning of rental income, amount of Rs. 1,60,77,911/- should be disallowed on the ground that, this much amount should be allocated for the earning of the rental income from the amount of expenses debited under the head "Administration & Selling Expenses" as appearing in Schedule "E" above. Income earned from leasing out of "Mall premises" is incidental to its business activities and the expense incurred in the due course of its business activities must have also been used for the purpose of earning of rental income. Therefore, some amount of salary, electricity and other such expenses should be attributable for the earning of the rental income. We are unable to appreciate or upheld such a reasoning; firstly, the assessee is having huge business receipts from construction activity and other business activities which is much far more than Rs.250 crores and once assessee is claiming that expenditures debited under the head "Administrative & Selling Expenses" have been incurred directly for its business activity, then without examining the accounts relating to business activity and the nature of expenses debited, the AO and the Ld. CIT(A) cannot shift the onus to the assessee to prove, whether any such expenditure is attributable for the earning of rental income. Because it is the revenue which is carving out a premise for allocation of expenditure for the purpose of earning of rental income, and for that, it has to demonstrate having regard to the accounts maintained by the assessee and nature of expenditure debited are also applicable for the earning of the rental income. Only if such premise is established then onus shifts upon the assessee to show that, how much amount of expenses debited is attributable for such income. But, if revenue fails in the first instance then without any material and basis on record, no such allocation can be made, unless the nature of expenses debited is directly attributable to the earning of lease rental income and not the business income. Secondly, once a particular receipts is assessed under a particular head, then the computation of income has to be made strictly made in accordance with the provisions dealing with the assessability of the income under that head. In other words, if income is being assessed under the head "income from house property" then computation has to be made accordingly the provisions laid down therein. Thus, on these counts, the reasoning given by the AO as well as by the CIT(A) for making the disallowance for Administrative expenses in the aforesaid manner cannot be sustained.

10. Moreover, it has been brought on record that, assessee had entered into an agreement for renting, managing and maintenance of R. Mall with M/s Veear Property Pvt Ltd. vide agreement dated 20.03.2009, the recital itself clearly envisages that, the assessee is not in a position to manage the mall, since they do not have any expertise and equipments for running and managing the Mall, therefore, they have requested the said company to run and manage the Mall. Further the same very company has been managing the Mall since 27th April, 2004. Till date the said

company has an expert team, experience, equipments' and other necessary infrastructure required for running and managing the Malls. In the said agreement, it has been clearly mentioned that the parties have entered into the agreement on principal to principal basis. Clause 2 clearly provides that, there will not be any charge or fees payable by the company. The relevant clauses 2 to 5 reads as under:-

"2. It is herewith clarified that there will not be any charges or fees payable by the company, other than common area maintenance charges being collected directly by the Company from the mall tenants, owners and occupiers of the said complex.

3. It is further agreed between that the Company shall bear and pay all the running, maintenance cost as applicable during the tenure of this Agreement for all the common areas. In addition to the above the Company shall also bear and pay the water, electricity, Airconditioning charges of the common areas for running and managing the Mall.

4. The Owner undertakes to take out adequate insurance for the common area in the said Mall and also undertakes to keep the equipment, machinery, furniture and fixtures in the said place sufficiently insured against loss, demand, claim or damage by fire with an insurance company of repute and to make all payments necessary for the above purpose. The Owner also undertakes to take public liability insurance or the common area in the said Mall.

5. The parties hereby expressly agrees and undertakes that the Company shall have full right to assign or permit and third party to conduct or manage the Mall subject to the Company agreeing to reimburse or bear all the cost etc. on that behalf and also indemnify the Owner against the loss, costs, penalties, damages caused on account of the Company permitting any third party to manage the Mall".

The entire responsibility is on the said company and Annexure-A of the Agreement deals with the scope of work of the company which is as under:
Supervision / Maintenance of the following:

- a. General Security of Mall
- b. Housekeeping
- c. Common lights in passages and compound lights
- d. Repair and maintenance of electrical fitting and fixture
- e. Maintenance of electrical meters f Maintenance of elevators, escalators
- g. Air Conditioning of common passages
- h. AMCfor air-conditioning
- i. Managing parking facilities
- j. Music in common area
- k. Looking after the maintenance of building, normal wear and tear
- l. Firefighting equipment maintenance m. Overall maintenance of Common area.

From the clear cut covenants and terms of the agreement, it is abundantly clear that the assessee does not have to incur any administrative expenditure for running and maintenance of the Mall and, therefore, in the light of these facts and background, it cannot be held that any administrative expenditure should be allocated for running of the Mall.

11. However, on a perusal of expenditure debited under Schedule E, as incorporated above, it is seen that the assessee has debited sum of Rs.28,66,1361- under the head "Advertisement" and sum of Rs. 49,14,3991- under the head "Business Promotion Expenses". Further, from a perusal of break-up of these expenses as given in page 26 of the paper book which was filed before the CIT(A), we find that certain amounts have been debited for "Mall Upkeep & Promotional receipt". If these expenditures are related for earning of income from Mall then, definitely it cannot be allowed as an expenditure under section 37(l) i.e. while computing the business income of the assessee, because admittedly, receipts from the Mall is in the form of lease rental which has been assessed under the head "Income from House Property" like in the earlier and subsequent years. This fact needs proper verification and examination by the AO which has not been done in the proper prospective. Accordingly, we are of the opinion that, this matter should be restored back only for the limited purpose of examining the nature of advertisement expenses and business promotion expenses debited under the head "Administrative and Selling Expenses" as enumerated in Schedule E of the Profit & Loss Account. If these expenditures directly attributable to earning of lease rental income then, appropriate disallowance can be made, if at all required. With this direction this issue is treated as partly allowed for statistical purposes."

Respectfully following the afore-stated decision of the co-ordinate bench of this Tribunal in assessee's own case in the immediately preceding assessment year in ITA no 4777/Mum/2013 for assessment year 2010-11 vide orders dated 12-04-2016 , as facts are identical in the instant appeal, we are also inclined to set aside the matter to the file of the A.O. for verification of the various expenses like business promotion expenses , advertisement expenses and any other expenses debited to Profit and Loss which are directly attributable to earning of lease rental income having regards to the account of the assessee , will be disallowed by the A.O.. It is also noted that in the preceding assessment year , the assessee suo motu voluntarily disallowed electricity expenses incurred in relation to R-Mall but the same are not disallowed in the instant assessment year under appeal which aspect shall also be looked into by the AO. This disposes of Ground No. 1, 2 & 3 raised by the assessee in the memo of appeal filed with the Tribunal as set out above. We order accordingly."

10. In this view of the matter, and consistent with view taken by the Co-ordinate Bench of the Tribunal, we restore this appeal to the file of the Ld. AO and direct the AO to decide the issue in accordance with findings of the Tribunal for Assessment Year 2010-11 in ITA No.4777/Mum/2013.

11. In the result, appeal filed by the Revenue is allowed for statistical purpose.

ITA No.7050/Mum/2017

12. The facts and issues involved in this appeal is identical to the facts and issues which we have already considered in ITA No.7048/Mum/2017 for Assessment Year 2012-13. The reasons given by us in preceding paragraph in ITA No.7048/Mum/2017 shall *mutatis mutandis* apply to this appeal also. Therefore, for detailed reasons given in preceding paragraph, we restore this appeal also to the file of the Ld. AO and direct him to decide issue in accordance with findings of the Tribunal in ITA No.4777/Mum/2013 for Assessment Year 2010-11.

13. As a result, both appeals filed by the Revenue are allowed for statistical purposes only.

Order pronounced in the open Court on 10/04/2019.

Sd/-

(Ravish Shood)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 10/04/2019

Shekhar, P.S./नि.स.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**