

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.7557/Del./2018
(ASSESSMENT YEAR : 2014-15)**

M/s. Nile Tech Ltd., Asset No.8, 3 rd Floor, World Mark – 2, Aerocity NB-8, New Delhi – 110 037.	vs.	ACIT, Circle 18 (2), New Delhi.
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(PAN : AACCN3608E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anil Bhalla, CA

REVENUE BY : Ms. Paramita M. Biswas, CIT DR

Date of Hearing : 13.05.2019

Date of Order : 28.05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Nile Tech Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 17.10.2018 passed by the Commissioner of Income-tax (Appeals)-6, New Delhi qua the assessment year 2014-15 on the grounds inter alia that :-

“1. The learned CIT(APPEALS) has erred both on facts and in law in upholding the action of the learned Assessing Officer in assessing lease rental income under the Head of Income 'Profits & gains of Business or profession' u/s 28 instead of assessing lease rental income under the Head 'Income from House

Property' u/s 22 of the Act as declared by the appellant company in its return of income and which basis has been consistently followed since inception i.e. Assessment Year 2010-11 and assessed u/s 143(3) of the Act and thereby making addition of Rs.10,79,56,954 to the declared Total Income. Thus ignoring the decision of Hon'ble Supreme Court in Radha Swami Satsang 193 ITR 321(SC).

1.1 The learned CIT(A) has erred in law in not following the decision of Hon'ble Supreme Court in:

- 1. Raj Dadankar & Associates in 394 ITR, 592(SC).*
- 2. East India Housing and Land Development Trust Ltd. - 42 ITR 49(SC).*
- 3. Sultan Brothers -51 ITR, 353(SC)*

2 The Learned CIT(APPEALS) has erred both on facts and in law in upholding the action of the Learned Assessing Officer in disallowing interest paid u/s 201(1A) on late deposits of TDS amounting to Rs.43179.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee has earned an income of Rs.57,49,98,489/- as revenue from operations. Assessing Officer noticed that the aforesaid income has been earned by the assessee from leasing and offered income to tax as income under the head 'house property' instead of income under the head 'business and profession'. Declining the contentions raised by the assessee, AO proceeded to conclude that the income earned by the assessee by way of leasing the property would be taxable as business income as the business of the company is to lease its property and earned rent and thereby made addition of Rs.10,79,56,954/- to the total declared income.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

7. Undisputedly, assessee has earned the total revenue from the operation of its company at Rs.57,49,98,489/- from the rental income. It is also not in dispute that the assessee company was primarily engaged in the business of real estate. It is also not in dispute that the assessee has been leasing the property in question and collecting rent since 2010-11 which has been assessed under the head 'income from house property'. It is also not in dispute that the assessee is owner of the property in question and has leased out the property on the basis of rental agreement. It is also not in dispute that in the subsequent year, the rental income of the assessee has been accepted as income from the house property.

8. In the backdrop of the aforesaid undisputed facts, the Id. AR for the assessee contended that when the assessee is admittedly

owner of the property in question and leased out the same on the basis of rental agreement, rental income is to be as taxed under the head 'income from house property' and further contended that in the preceding years since 2011-12 and in the succeeding years, the rental income from the property in question has been accepted as 'income from house property' by framing assessment under section 143 (3) of the Act and relied upon the decision rendered by Hon'ble Supreme Court in the case of *Raj Dadarkar & Associates – (2017) 394 ITR 592 (SC)*.

9. However, the ld. DR for the Revenue contended that the contentions raised by the ld. AR for the assessee are not tenable because when the assessee himself as claimed depreciation of the property, the rental income is to be taxed under the head 'income from business and profession'.

10. First of all, when the revenue has been accepting the rental income of the assessee qua the property in question for the last 15 years as 'income from house property' and in the subsequent years also, the same is treated as 'income from house property' and there is no reason with the Revenue to depart from the rule of consistency. Secondly, assessee is owner of the property in question who has leased out the property on the basis of rental agreement.

11. AO as well as Id. CIT (A) have relied upon the decision rendered by Hon'ble Supreme Court in the case of ***Rayala Corporation (P) Ltd. – 243 ITR 360 (SC)***. In the decision of ***Rayala Corporation (P) Ltd.*** (supra), reliance has been placed on the decision of ***Chennai Properties & Investments Ltd. – 373 ITR 673 (SC)*** wherein in the Memorandum of Association “business of letting” was included in its object clause.

12. However, Hon'ble Supreme Court in the case of ***Raj Dadarkar & Associates*** (supra) discussed the decisions of Hon'ble Supreme Court in ***Chennai Properties & Investments Ltd.*** and ***Rayala Corporation (P) Ltd.*** (supra) wherein it is held as under :-

“merely because there is an entry in the object clause of the business showing a particular object, would not be the determinative factor to arrive at the conclusion that the income is to be treated as income from business. So, the object class as contained in the partnership deed would not be conclusive factor.”

So, the Hon'ble Apex Court held that wherever there is an income from leasing out of premises and collecting rent, normally such an income is to be treated as income from house property, if the provision of section 22 are satisfied and merely on the basis of entry in the object clause of the business showing a particular object would not be a determinative factor to arrive at a conclusion that income is to be treated as income from business or profession.

13. Special Provisions contained under section 22 of the Act are categoric enough to cover the case of the assessee who is owner of the building in question which has been leased out by him and as such, rental income earned by him shall be chargeable to Income-tax under the head 'income from house property'.

14. So, when the Revenue has not brought on record any material to prove that leasing of the property is the complex commercial trading transaction, the rental income has to be assessed under the head 'housing property' because the visible intention of the assessee / owner is to exploit the property being owner to earn the rent. When the company is not doing any business except for leasing out the property owned by it to earn the rent, the rental income is to be chargeable to Income-tax under the head 'income from house property'.

15. Identical issue has also been decided by the coordinate Bench of the Tribunal in case cited as *Select Infrastructure Pvt. Ltd. vs. Addl. CIT & Ors. in ITA Nos.3751/Del/2013 & Ors. order dated 04.10.2017* in favour of the assessee by relying upon the decision rendered by the Hon'ble Supreme Court in the case cited as *Raj Dadarkar & Associates* (supra).

16. The contention of the Id. DR for the Revenue that when the assessee has claimed depreciation on the property its rental income

is to be charged to Income-tax under the head income from 'business & profession' is not tenable in the face of the fact that computation of income, available at page 44 of the paper book, shows that the assessee has never claimed depreciation on the property leased out. Rather AO granted the depreciation after rejecting the claim of the assessee that rental income is to be assessed under the heads 'income from house property'.

17. So AO, after assessing the income of the assessee under the head 'business & profession', added depreciation on the property of assessee. So, we are of the considered view that entire rental income earned by the assessee during the year is chargeable to Income-tax under the head 'income from house property' u/s 22 of the Act and the assessee shall not be entitled for any depreciation on the property.

18. In view of what has been discussed above, following the decision rendered by the coordinate Bench of the Tribunal and also by following the rule of consistency laid down by Hon'ble Supreme Court in the case of *Radhasoami Satsang vs. CIT 193 ITR 321 (SC)* and following the decision rendered by Hon'ble Apex Court in *Raj Dadarkar & Associates* (supra), we are of the considered view that rental income earned by the assessee from leasing out the property owned by it is chargeable to Income-tax

under the head 'income from house property' under section 22 of the Act. Consequently, Ground No.1 is determined in favour of the assessee.

GROUND NO.2

18. Ground No.2 is dismissed having not been pressed during the course of arguments.

19. Resultantly, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in open court on this 28th day of May, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 28th day of May, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-6, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**