

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 2608/DEL/2015 (A.Y 2011-12)

DCIT Circle-27(1), Room No. 193, C.R. Building New Delhi AACU7498R (APPELLANT)	Vs	United Info Planet Pvt. Ltd. Shop No. 26, Community Centre, Sukhdev Vihar New Delhi AAACU7498R (RESPONDENT)
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Appellant by	Sh. N. K. Bansal, Sr. DR
Respondent by	Sh. M. P. Rastogi, Adv & Sh. P. N. Shastry, AR

Date of Hearing	04.04.2019
Date of Pronouncement	30.05.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 27/02/2015 passed by CIT(A)-22, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in treating the income from fit-out hire charges as business income without appreciating the fact that fit-out hire charges in calculated @ Rs 25 per sqr. Ft of the property which substantiate that it is in the nature of rent and has no direct nexus with the so called fixture/fillings/equipments.

2. On the facts and in the circumstances of the case and in law the Ld.

CIT(A) has erred in treating the income from fit-out hire charges as business income ignoring the facts that on such income TDS has been deducted @ 10% which is applicable for the payment made on account of rent u/s 194 and not any contractual payment for services for which the prescribed rate for TDS is 2% u/s 194C.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in treating the income from fit-out hire charges as business income without appreciating the fact that the assessee failed to submit the details of fixtures as stated to be as Annexure-1, to the fit out hire agreement dated 18.01.2008.”

3. As per tax audit report in Form 3CD, the assessee's nature of business is "IT & ITES related services." In the computation of income, the assessee has shown income from house property, business, capital gains and other sources. Return of income was electronically filed on 29/09/2011 declaring total income of Rs. 8,21,26,950/- which was processed u/s 143(1). The case was selected for scrutiny and notice u/s 143(2) dated 26/09/2012 was issued and duly served upon the assessee. In response to notice u/s 143(2) and 142(1), CA appeared on behalf of the Assessee Company and attended assessment proceedings from time to time and filed submissions and necessary details which were taken on record by the Assessing Officer. The assessee's business activities on the total income was relating to accessibility of Fit-out Hire Charges and allowability of depreciation and expenses which was questioned by the Assessing Officer to the assessee and was disallowed at Rs. 6,15,64,500/- and further the Assessing Officer held that since the assessee is having only rental income. The interest on term loan of Rs. 2,35,62,256/- is held as deductible u/s 24B while computing income from house property and therefore, it was not allowed as expense u/s 57 of the Act while computing income from other sources by the Assessing Officer. Thus, the assessee's income was assessed at Rs. 9,36,57,960/-.

4. Being aggrieved by the assessment order, the filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT (A) erred in treating the income from Fit-out Hire Charges as business income without appreciating the fact that Fit-out Hire Charges in calculated at Rs.25 per square feet of the property which substantiated that it is in the nature of rent and there is no direct nexus with so called fixture/feelings/equipments. The Ld. DR further submitted that the CIT(A) erred in treating the income from fit out higher charges as business income ignoring the fact that on such income TDS has been deducted at 10% which is applicable for the payment made on account of rent u/s 194 and no any contractual payment for services for which the prescribed rate for TDS is 2% u/s 194C. The Ld. DR submitted that the assessee failed to submit the details of fixtures as stated to be as annexure 1 to the Fit Out Hire Agreement dated 18/1/2008. The Ld. DR relied upon the decision of the Hon'ble Calcutta High Court in case of CIT Vs. Shambhu Investment Pvt. Ltd. 249 ITR 47 as well as Kerala High Court decision 177 Taxman 478. The Ld. DR relied upon the Tribunal decision in case of Suguna Kapoor Vs. ACIT, ITA No. 4117/Del/2012 order dated 10/10/2012 wherein it is stated that entire amount received by the assessee on account of two separate agreement is to be treated as income from house property.

6. The Ld. AR relied upon the order of the CIT(A) and also relied upon the decision of the Tribunal in case of ACIT Vs. Poonam Hassija, Neha Hassija ITA No. 4320/Del/2011, ITA No. 5545/Del/2012 and 3429/Del/2014 order dated 4/5/2018. In the earlier Assessment Years i.e. for 2008-09, 2009-10 & 2010-11, this issue has been attained finality by not making any addition in this respect. The Ld. AR further submitted that supplementary agreement to the

main Hire Purchase Agreement has clearly set out the demarcation of the rental charges for fixtures and the main agreement and the fit out higher agreements are two separate documents will does not have any connection at all. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. K. L. Puri 233 ITR 43. The Ld. AR submitted that the rule of consistency has to be followed.

7. We have heard both the parties and perused the material available on record. From the perusal of the Rent Agreement dated 30/08/2007, it can be seen that it is with the sole purpose for rent in respect of the entire building to the Multi National company IBM. The Fit Out Agreement dated 18/01/2008 was entered between the parties for the sole purpose of smooth running of the business of the lessee and it is totally a separate legal document. Both these agreements does not have any motive as regards the evasion of the tax aspect. In-fact, when we see the Supplementary Agreement dated 23rd September, 2009, the parties have agreed that the assessee will provide the fixtures in the said premises lease by IBM at a much lower rate than to the estimated cost of Rs. 1,500/-. Thus, in-fact the assessee has disclosed all the materials before the Assessing Officer and it is not an evasion of tax. The case laws referred by the Ld. DR also not relevant as the same are distinguishable in facts. In case of Shambhu Investment there is no separate charges included in the agreement, but in the present case there are two separate agreements and each terms have been expressed in the agreement. Thus, the CIT(A) has rightly considered the income from Fit-Out Hire Charges as business income as held in A.Y. 2008-09. There is no need to interfere with the finding of the CIT(A). Thus, the Revenue's appeal is dismissed.

8. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 30th May, 2019.

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

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 30/05/2019

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	04.04.2019
Date on which the typed draft is placed before the dictating Member	04.04.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	