

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 3688/Mum/2018

(निर्धारण वर्ष / Assessment Year 2011-12)

The Dy. Commissioner of Income Tax, Room No. 607, Aayakar Bhavan, Mumbai-400 020	Vs.	Banzai Estates Pvt. Ltd. 49, Bajaj Bhavan, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACB6915C		

अपीलार्थी की ओर से / Appellant by	:	Shri Chaudhary Arun Kumar Singh, CIT DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rohit Golecha, AR

सुनवाई की तारीख / Date of hearing:	13.08.2019
घोषणा की तारीख / Date of pronouncement :	21.08.2019

आदेश / ORDER

**महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:**

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No. CIT(A)-8/IT-628/14-15 dated 19.03.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-3(1), Mumbai (in short DCIT/ AO) for the A.Y. 2011-12 vide dated 24.03.2014, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of Revenue is against the order of CIT(A) treating the income declared by assessee as rental income assessed under the income from house property instead assessed by the AO as income from business. For this Revenue has raised the following three grounds: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in treating the rental income derived from the premises owned by the assessee in MBC Tower, Chennai as income assessable under the head "Income from House Property", without appreciating the fact that income earned from the said premises has been derived from exploitation of properties for commercial business activities which is in the nature of business income assessable under the "Income from Business" as per the ratio laid down by the Hon'ble Apex Court in the case of Shambhu Investments vs. CIT in 263 ITR 143 (SC)?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in treating the rental income derived from letting out properties taken on lease from others as income assessable under the head "Income from House Property", without appreciating the fact that the assessee is following the business module of taking



properties on rent and sub-letting the same after furnishing & providing entire gamut of facilities associated with such properties to various parties which is nothing but a business venture and is assessable under the head "Income from Business"?

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in treating the rental income derived from letting out properties (owned and taken on lease from others) as income assessable under the head "Income from House Property", without appreciating the fact that the rental income from the said properties was further advanced for purchase of another property instead of repaying the existing loan on said property which indicates the prudent business approach of the assessee?"

3. At the outset, it is noticed that the CIT(A) on this very issue has followed the Tribunal's decision in assessee's own case for AYs 2008-09 to 2010-11 in ITA No. 4452 & 4454/Mum/2013, 4034/Mum/2014 vide order dated 31.05.2017 by holding in Para 3.1 as under: -

"3.1.3 These grounds are against AO's action of treating the income from self-owned property situated at MBC tower TTK road Chennai under the head "business income" as against "income from house property" offered by the appellant in its return



of income and consequently not allowing the deduction of ₹ 40,00,000/- being administrative expenses while computing the “Business income”. The assessing officer has discussed this issue at Para 4 of his order. This issue had also come up Hon’ble ITAT, Mumbai in the combined appeal of appellant for AY 2008-09, 2009-10 & 2010-11. The Hon’ble ITAT Mumbai vide combined order ITA No. 4452/Mum/2013 for AY 2008-09, ITA No. 4454/Mum/2013 for AY 2009-10 and ITA No. 4034/Mum/2014 for AY 2010-11 dated 31.05.2017 decided this issue in favour of appellant. The relevant extract of the order is reproduced here for ready reference: -

3. *Briefly stated facts are that the assessee is engaged in the business of hiring and leasing of properties. The assessee declared the income from self-owned property situated at MBC Tower TTK road, Chennai as rental income at Rs 5,27,76,383/-. Apart from the above the assessee also declared rental income of Rs 4,24,83,179/- in respect of sub-letting of properties at (a) Chettiar Hall, TTK Road, Chennai (b) Ambature Anna Nagar, Chennai & (c) Creative Enclave, L.C. Road, Chennai, (d) Perungudi, Chennai at Rs. 5,27,76,383/- as profit and gains from business or profession and assessed under the same head. Whereas assessee declared the income from self-owned property situated at MBC Tower TTK road, Chennai as rental income under the head income from house property*



as against the same the AO assessed this rental income under the head profits or gains from business or profession. The assessee preferred the appeal before CIT(A).

4. *The CIT(A) after considering the facts of the case, confirmed the action of the AO in assessing the same as business receipts by observing in Para 3.2 to 3.4 as under. -*

“The facts of the case have been considered

The appellant has shown rental income of Rs. 5,27,76,383/- in r/o the various premises (at MBC Towers, Chennai) given to various parties as per the Annexure 'A' enclosed. It has also shown the amenities charges from these various parties amounting to Rs. 1,69,86,453/- as per details in the Annexure 'A'

During the course of appellate proceedings, the appellant was asked to produce the fixed assets register in r/o furniture and fixtures, Air Conditioners, electrical installations provided to the various parties as mentioned in Annexure 'A' enclosed. However, the appellant has failed to produce the fixed assets register. The appellant has also failed to produce the list of furniture and fixture, ACs, electrical installations provided to the respective various parties against which the amenities charges have been received the



basis of calculating the amenities charges separately

Without prejudice, in fact, the premises given to various parties in the aforesaid building are being run basically as call centres for which composite services by way of furniture and fixtures, AC, electrical installations are required over and above the premises given. It is apparent that composite receipt has been divided under Sham Agreements as Rental charges and Amenities charges. By dividing the composite charges as Rental charges and Amenities charges; under the Sham Agreements -the appellant is able to claim Statutory allowance u/s 24 under the Head 'Income from House property' over and above the routine business expenses debited to P&L A/c.”

3.3 Under these facts and circumstances, it is apparent that the appellant has bifurcated the composite amount partly as rental and partly as amenity charges. The law permits tax planning and not tax avoidance. If within the four corners of law the person arranges its affairs in such a way that its overall tax liability is reduced, there cannot be any embargo on such planning. If however, dubious means are adopted to reduce the incidence of tax by artificially inflating expenses or reducing income, it cannot be



described as anything other than tax avoidance. When we consider the reality of the situation in the present place, it becomes abundantly manifest that the business receipts have been bifurcated as rental income (to be shown as income from House property and claiming statutory allowance) and amenity charges to avoid the rightful tax due to the exchequer.

3.4 Accordingly, the AO has rightly held that the total receipts from self-owned property situated at MBC Towers, TTK Road, Chennai is business receipts.

Aggrieved, now assessee is in second appeal before tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. Admittedly, the assessee is the owner of the property situated at MBC Tower TTK road, Chennai. The assessee has declared rental income from this house property under the head "Income from House Property". The Assessee consistently offering the income from this property as rental income under the head income from house property and in earlier years the Revenue was accepting the same as income from house property. The assessee before us filed copies of assessment order in assessee's own case framed under section 143(3) of the Act for AY 2005-06, 2006-07 and 2007-08 wherein, the return declared under the head income from the



house property has been accepted as it is. The assessee before the AO explained that it is showing rental income in respect to self-owned property situated at MBC Tower TTK road, Chennai under the head income from house property and in respect to the properties taken on sub-lease or sub-letting other, in those cases the above properties from which the assessee is offering income from business being property on lease. The AO was not convinced and he assessed the income under the head property and gains from business or profession instead of income from housing property. We find that consistently Revenue is accepted the income from this property i.e. MBC Tower TTK road, Chennai as income from house property. But suddenly, in these three assessment years, now before us the Revenue has changed the head of income from income from house property to income from profits or gains from business or profession without any valid reason. We find that now, Hon'ble Supreme Court in the case of Raj Dadarkar & Associates vs. ACIT [2017] 81 taxmann.com 193 (SC) has clearly held that in case the provisions of Section 22 are applicable the property is to be assessed as income from house property.

6. Hon'ble Supreme Court has also validated the decision of Shambu Investment Pvt. Ltd. vs. CIT (2003) 263 ITR 143 (SC) and CIT vs. Kanak Investment Pvt. Ltd. [1974] 95 ITR 419 (Calcutta) and also Karani Properties Limited vs. CIT (1971) 82 ITR 547 (SC). Further, Hon'ble Supreme Court



has also affirmed the decision of Sultan Bros. (P) Ltd. v. CIT, (1964) 5 SCR 807. They have further distinguished the case law of Chennai Properties & Investments Ltd 373 ITR 673 (SC) and Rayala Corporation (P) Ltd. For this Hon'ble Supreme Court relied on the Karanpura Development Co. Ltd. v. CIT, (1962) 44 ITR 362 and the judgment of Hon'ble Supreme Court in the case of East India Housing and Land Development Trust Ltd. v. CIT, (1961) 42 ITR 49 was distinguished.

7. *In the given facts and circumstances and the decision of Hon'ble Supreme Court in the case of Raj Dadarkar & Associates (supra), respectfully following the same, we allow the claim of the assessee and direct the AO to assessee the rental income situated at MBC Tower TTK road, Chennai as income from house property, and consequential deductions in respect to interest on borrowed capital, building insurance, Municipal Tax and repair maintenance charges is to be allowed. The AO is directed accordingly.*

Since the facts and circumstance are the same for this year, except for the amount involved, following the decision of Hon'ble ITAT Mumbai for AY 2008-09, 2009-10 & 2010-11, the AO is directed to assess the rental income from self-owned property situated at MBC tower TTK road Chennai under the head "Income from house property" and consequentially allow the deduction of Proportionate



ITA No.3688/Mum/2018

Admn. Expenses related to property income. These grounds of appeal are therefore allowed.”

4. As the issue is squarely covered by the Tribunals decision in assessee's own case in earlier years, issue and facts are identical in this year also, hence, we dismiss the appeal of Revenue.

5. **In the Result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 21.08.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21.08.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai