

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI

Before S/Shri Saktijit Dey, Judicial Member  
& N K Pradhan, Accountant Member

ITA No.5867/Mum/2016  
Assessment Year 2012-13

Deputy CIT 13(2)(2), Mumbai.	Vs.	M/s. Sharan Hospitality Pvt Ltd., Gr. Floor, GYS Infinity, Paranjpe B Scheme, Subhash Road, Vile Parle (E), Mumbai 400 057.
(Appellant)		PAN AAGCS8608F (Respondent)

Appellant By : Ms. Vidisha Kalra

Respondent By : Ms. Priyanka Jain & Shri Bhavik Desai.

Date of Hearing :05.08.2019

Date of Pronouncement : 11.10.2019

**ORDER**

**Per Saktijit Dey, Judicial Member:**

This is an appeal by the Revenue against order, dated 18.07.2016, of learned CIT(A)-123 Mumbai, for the assessment year 2012-13.

2. Vide ground no.1 Revenue has assailed the decision of CIT(A) in accepting assessee's claim that the maintenance income received by the assessee should be treated as income under the head "Business and Profession". Briefly, the facts are the assessee company, as stated by the Assessing Officer, is engaged in the business of running immovable property and providing amenities & maintenance services. For the assessment year under dispute, assessee filed its return of income on 30.05.2012 declaring

loss of Rs 123,38,13,051/-. Subsequently, assessee filed revised return of income on 25.03.2013. During the assessment proceedings the Assessing Officer noticed that, though, assessee had received income from letting out property, however, he has offered income received therefrom under two heads i.e. rental income and maintenance income. While the rental income was offered under the head "Income from house property", maintenance income was shown under the head "Business and Profession". He, therefore, called upon the assessee to explain why maintenance income should not be treated as "Income from house property". Further, he observed, in the preceding assessment years the Assessing Officer has treated the maintenance income as "Income from house property". Alleging that the assessee could not offer any satisfactory reply to the query raised by him; to maintain consistency he treated the maintenance income of Rs 9,10,53,272/- as "Income from house property". Being aggrieved with the aforesaid decision of the Assessing Officer, assessee preferred appeal before learned CIT(A).

3. After considering the submissions of the assessee in the context of facts and materials on record, learned CIT(A) found that the maintenance income received by the assessee is in respect of servicing and maintenance of lift, high end air conditioning maintenance, façade clearing system maintenance, water and fire pumps maintenance, services of housekeeping, maintenance of sanitary installations, walls, flooring, paint, electrical installations including fridge, cooking range, geysers, service of external security, external painting of licensed premises, external clearing of the licensed premises etc. Further, he found that similar treatment given by the assessee to maintenance income in A.Y. 2009-10 and 2010-11 was accepted by the Assessing Officer in scrutiny assessment. Considering the above, learned CIT(A) accepted assessee's claim of maintenance income as "Income from business and profession".

4. The learned DR strongly relying on the observations of the Assessing Officer submitted, the maintenance income having been derived from the letting out of the premises as a whole is part of rental income received. Hence, should be assessed as "Income from house property". Further, he submitted, in A.Y. 2013-14, though the Assessing Officer had made similar disallowance the assessee has not contested it. Therefore, he submitted the decision of the Assessing Officer on the issue should be upheld.

5. The learned AR submitted, the maintenance income received by the assessee is in no way connected to the rental income from letting out of the house property. She submitted, in terms of a separate agreement entered with the lessees, the assessee agreed to provide certain maintenance services which is not part of the letting out of the property. She submitted, since the rendering of maintenance services is a completely separate and distinct activity of the assessee, the income received therefrom cannot be treated as part of rental income. Further, she submitted, in the past as well as subsequent assessment years, except the impugned assessment year, the Assessing Officer had accepted assessee's claim of maintenance income as "Income from Business and Profession." She submitted, since in A.Y. 2013-14, there was no revenue implication on account of change of head of maintenance income, assessee did not contest it in the appeal preferred before CIT(A). She submitted, in A.Y. 2014-15, the Assessing Officer has accepted the maintenance income as "Income from Business and Profession". In support of her submissions, learned AR relied upon the following decisions:

- Karnani Properties Ltd vs. CIT 82 ITR 547 (SC)
- CIT vs. Associated Building Co. Ltd. 10 Taxman 14 (Bom)
- CIT vs. Runwal Developers Pvt. Ltd. 15 taxmann.com 196 (Bom)
- CIT vs. K L Puri (HUF) 233 ITR 43 (Del)
- Attukal Shopping Complex Pvt Ltd vs. CIT 125 Taxman 881 (Ker)
- CIT vs. Shankaranarayana Hotels Pvt. Ltd. 67 Taxman 520 (Kar)
- CIT vs. Sarabhai Pvt. Ltd. 129 Taxman 43 (Guj)

- Kavita Marketing Pvt. Ltd. vs. ITO 70 taxmann.com 391 (Mum. Tribunal)

6. We have considered rival submissions and perused the material available on record. The factual matrix of the issue reveals that the assessee had entered into two separate agreements viz., one for letting out the properties and one for rendering certain maintenance services. The maintenance services rendered by the assessee includes servicing and maintenance of lift, high end air conditioning maintenance, façade clearing system maintenance, water and fire pumps maintenance, services of housekeeping, maintenance of sanitary installations, walls, flooring, paint, electrical installations including fridge, cooking range, geysers, service of external security, external painting of licensed premises, external clearing of the licensed premises etc. As could be seen from the nature of maintenance services provided by the assessee, they cannot be part of standard income received from letting out a property. Generally, while letting out a property, the house owner is not required to provide these services. The assessee has provided the aforesaid services in addition to his activity of letting out the property. It could be a fact that the aforesaid services were provided to the lessor/tenants on their specific request as the assessee is not required to provide such services, and the tenants can independently get it done from others. That being the case, in our considered opinion, the income received from maintenance services cannot be treated as part of total income as the assessee has undertaken such services as an independent activity. Moreover, it is evident, in A.Ys. 2009-10 and 2010-11 as well as in A.Y. 2014-15, the Assessing Officer has accepted assessee's claim that maintenance income has to be assessed as "Income from Business and Profession". Further, the decisions relied upon by the learned AR also persuade us to conclude that maintenance income received by the assessee cannot be treated as part of rental income so as to assess it as "Income from House Property". Therefore, on overall consideration of facts, circumstances, materials on

record and keeping in view the ratio of decisions cited above, we uphold the decision of learned CIT(A) on the issue.

Ground no. 1 is dismissed.

7. Vide ground no.2, Revenue is challenging deletion of disallowance of expenditure made u/s. 14A read with Rule 8D amounting to Rs 46,10,830/- Briefly, the facts are, during the assessment proceedings the Assessing Officer noticing that the assessee has made investments in shares which has the potential of yielding tax free dividend income, whereas, the assessee has claimed expenses of Rs. 47,24,158/- called upon the assessee to explain why disallowance u/s. 14A read with Rule 8D should not be made. In response, it was submitted by the assessee, since, no exempt income was earned during the year and no borrowed fund was utilized for the purpose of investment in share, no disallowance u/s. 14A read with Rule 8D can be made. However, rejecting the explanation of the assessee, the Assessing Officer proceeded to compute disallowance under Rule 8D and quantified it at Rs 46,10,830/-. During the appeal proceedings, learned CIT(A) having taken note of the fact that during the year under consideration assessee had not received any exempt income, deleted the disallowance made u/s. 14A read with Rule 8D of the Act.

8. We have considered rival submissions and perused material available on record. Now it is fairly well settled by virtue of a number of judicial pronouncements including the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs. Ballarpur Industries Ltd. [ITA 51 of 2016] that in absence of any exempt income earned during a particular assessment year, no disallowance u/s. 14A read with Rule 8D can be made. Therefore, in view of the ratio laid down in the judicial pronouncement referred to above as well as relied upon by learned CIT(A), we uphold the decision of learned CIT(A) in deleting the disallowance made u/s. 14A.

Ground no.2 is dismissed.

9. Ground nos. 3 & 4 being general in nature do not require any adjudication.
10. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on this 11<sup>th</sup> day of October, 2019.

**Sd/-  
(N K Pradhan)  
ACCOUNTANT MEMBER**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

Mumbai; Dated : 11<sup>th</sup> October, 2019.  
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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. DR, 'G' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai