

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “डी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘D’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री ओ. पी.कांत, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &
SH.O.P.KANT, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.2515/Del/2016

निर्धारण वर्ष / Assessment Year: 2012-13

Bar Chem,
C-533, Defence Colony,
New Delhi.

PAN-AAGFB6071Q.

.....अपीलार्थी / Appellant

vs

The ACIT,
Circle-54(1), New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjog Kapoor, Sr.DR

सुनवाई की तारीख / Date of Hearing: 25.11.2019	घोषणा की तारीख / Date of Pronouncement: 29.11.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-18, New Delhi dated 08.03.2016 relating to assessment year 2012-13 passed under section 143(3) of the Income-tax Act, 1961 (in short “Act”).

2. Despite service of notice, none appeared on behalf of the assessee. We proceed to decide the present appeal *ex-parte* qua the assessee as the issue involved is small. The Ld.DR for the Revenue has put forward his contentions.

3. The issue raised in the present appeal is against the orders of the authorities below in holding that income earned by the assessee from rendering of various business auxiliary services and house keeping services are taxable as income from other sources instead of income from business & profession. Further, the assessee is also aggrieved by the order of the CIT(A) in sustaining the disallowance of 30% out of various expenses.

4. Briefly in the facts relating to the issue, the assessee firm had declared income from house property. The assessee in addition had received maintenance charges and had declared business loss of Rs.15,57,635/-. The Assessing Officer asked the assessee to explain why the income from maintenance charges should not be treated as income from other sources. Further, the assessee was also asked to justify the nature of expenses claimed in the Profit & Loss A/c against the maintenance charges received. The case of the assessee before the Assessing Officer was that the expenses have direct nexus with the business operations carried on by the assessee and merits to be allowed. The Assessing Officer observed that the Ld.AR himself has submitted that the income from business which is in respect of services rendered to

the occupants of the property if it is to be taken as income from other sources has no material effect on computing the net income. The Assessing Officer thus, treated the income from maintenance as income from other sources. In para 2.1 at page 3 of the assessment order, the Assessing Officer has tabulated the expenditure totaling to Rs.11,84,857/- claimed by the assessee as attributable to the said income owned by the assessee. The Assessing Officer was of the view that since the assessee is providing services to the occupants of his building only hence, the expenses claimed were not relatable to the income from services and consequently, expenses totaling to Rs.11,84,857/- were disallowed in the hands of the assessee. Further, the assessee had also claimed the expenses on account of certain items totaling to Rs.18,53,012/- and same were disallowed in the hands of the assessee as same could not be attributed to earning of income from other sources. Further, out of the balance expenses totaling to Rs.7,77,560/-, 50% of the expenses were disallowed as not directly related to earning income from other sources.

5. In appeal, the CIT(A) upheld the order of the Assessing Officer in assessing the income under the head income from other sources. Then, he referred to the provisions of section 57(1) of the Act and pointed out that the depreciation which was claimed by the assessee was on generators only and the same is to be allowed in the hands of the assessee. In respect of the balance expenditure totaling to

Rs.18,53,012/- and Rs.7,77,560/-, the CIT(A) restricted the disallowance to 30% of the expenditure being not attributable to the income from other sources. The assessee is in appeal against the above said finding of the CIT(A).

6. The first issue which needs to be adjudicated is head of income under which the receipts are to be assessed. We uphold the order of authorities below in assessing the same as income from other sources, especially because assessee has accepted alternate contention before authorities below.

7. On perusal of the record and after hearing the Ld.DR for the Revenue, we are of the view that as far as the disallowance referred to by the CIT(A) of Rs.7,77,560/- is concerned, the perusal of para 2.1.4 reflects that only 50% of the expenditure was disallowed in the hands of the assessee i.e. totaling to Rs.3,88,780/-. Hence, the directions of the CIT(A) in disallowing 30% out of Rs.7,77,560/- cannot stand.

8. Now, coming to the claim of the assessee of allowing expenditure totaling to Rs.18,53,012/- and Rs.3,88,780/- , we are of the view that ends of natural justice would be met by restricting the disallowance of 10% of the total expenditure. Accordingly, we direct the Assessing Officer to restrict the same to 10% of the expenditure of Rs.18,53,012/- and Rs.3,88,780/-.

9. Thus, Ground of appeal No.1 which is general in nature, does not require adjudication, hence the same is dismissed. Ground of appeal No.2 raised on the head under which the income to be assessed in the hands of the assessee is also dismissed and Ground of appeal No.3 on the allowance of expenses is partly allowed.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29th day of November, 2019.

Sd/-

(O.P.KANT)

लेखा सदस्य/ACCOUNTANT MEMBER

दिल्ली/दिनांक Dated : 29th November, 2019.

* Amit Kumar *

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi