

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES: "B", BANGALORE**  
**BEFORE SHRI B.R.BASKARAN ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

Sl. No.	ITA/IT(TP)A No.	Assessment. Year	Appellant	Respondent
1	ITA 160/Bang/2019	2015-16	DCIT, Circle-1(1)(1), Bangalore	M/s. Assetz Property Management Services Pvt. Ltd., Bangalore
2	C.O. 21/Bang/2019 (In ITA No.160/Bang/2019)	2015-16	M/s. Assetz Property Management Services Pvt. Ltd., Bangalore <b>PAN NO : AACCB9758R</b>	DCIT, Circle-1(1)(1), Bangalore

**Revenue by : Smt. P. Renugadevi, JCIT  
Appellant by : Shri. Sudheendra, Advocate**

**Date of Hearing : 27-11-2019  
Date of Pronouncement : 20-12-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

Present appeal and cross objection has been filed by revenue as well as assessee against order dated 26/10/18 passed by Ld. CIT (A)-1, Bangalore for assessment year 2015-16 on following grounds of appeal:

**Grounds in revenue appeal :**

1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 1,63,12,453/- made by the AO by considering the said expenditure as revenue expenditure even though the assessee

3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal

**Grounds in CO No. 21/Bang/2019**

**1. General Ground**

1.1 The learned DCIT — 1(1)(1), Bangalore ('AO') has erred in passing the assessment order under section 143(3) of the Income Tax Act, 1961 ('the Act').in the manner passed by him and the learned Commissioner of Income Tax (Appeals) — 1, Bangalore (TIT (A)') has erred in conforming the said assessment order. The order so passed is bad in law and liable to be quashed.

**1. Ground relating to Limited Scrutiny**

2.1 The learned AO has erred in making an addition of Rs. 1,63,12,453 being lease rent paid by the respondent treating the same as capital expenditure.

2.2 The learned AO has erred in not appreciating the fact that a limited scrutiny was conducted during assessment proceedings and ergo, additions or disallowances in the assessment order can be made only on the issues which were identified for examination in the notice under section 143(2).

2.3 The impugned disallowance not forming part of limited scrutiny, the addition made in respect of lease rent should be deleted.

**2. Prayer**

*In view of the above and other grounds to be adduced at the time of hearing, the respondent prays that the addition of Rs.1,63,12,453 as lease rent be deleted being bad in law.*

**2. Brief facts of the case are as under:**

Assessee is a company and filed its return of income for year under consideration on 30/09/15 declaring loss of Rs.3,61,71,345/-. Subsequently case was selected for scrutiny and notice under section 143(2) was issued. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details as called for.

**2.1** Ld.AO observed that assessee is in business of service sector and is engaged in infrastructure development management services. Ld.AO observed that assessee has claimed lease rent amounting to Rs.1,63,12,453/- in profit and loss account. Ld.AO concluded that there is an enduring benefits to assessee and payment of lease rental were therefore, capital in nature. He thus added entire lease rent in the hands of assessee.

**3** Aggrieved by addition made, assessee preferred appeal before Ld.CIT (A). Ld.CIT (A) observed and held as under:

*“4.2.2 Further, the appellant has distinguished the Hon’ble Supreme Court judgment in the case of Enterprising Enterprise Vs DCIT(2007) 160 Taxman 188(relied on by the AO) wherein the question was whether the proportionate lease rent pad by the mining lessee to acquire the leaseholds right for extracting the mining lease from the mining rent would be a capital or revenue expenditure. In this context, the Apex Court has held that the distinction lies between a*

*case where royalty or rent being paid on the one hand and where the entire amount of lease is paid either at a time or in installments. It was held that in former case it would be a revenue expenditure and in the latter it would be a capital expenditure. On facts, as the payment was made for acquiring the leasehold right for extracting minerals from mineral bearing land, it was held that the payment so made is a capital expenditure.*

*4.2.3. As per the agreed facts, in the present case, the appellant did not incur any expenditure separately to acquire any tenancy right. On entering into lease agreements for use of premises for the purposes of business and no payment of refundable security deposits, the appellant acquired the tenancy right. But no deduction was claimed in respect of the refundable security deposits. The rent expenditure was for use of premises and the same was rightly claimed as revenue expenditure. The same was also paid or payable monthly. Thus, the decision of the Supreme Court relied on by the learned AO is factually distinguishable and not applicable to appellant's case. Further, as submitted by the appellant the classification of lease into cancellable, non-cancellable and the bifurcation of lease rent related to cancellable and non-cancellable lease was necessitated out of AS-19, leases. Accordingly to AS-19, a non-cancellable lease is a lease that is cancellable only: (a) upon the occurrence of some remote contingency; or (b) with the permission of the lessor; or (c) if the lessee enters into a new lease for the same or an*

*equivalent asset with the same lessor: or (d) upon payment by the lessee of an additional amount such that, at inception, continuation of the lease is reasonably certain.*

*4.2.4. Considering all the above, I am of the view that the lease rent is an allowable revenue expenditure and the same cannot be considered as capital expenditure.”*

Ld. CIT (A) thus deleted the addition made by Ld.AO.

**4** Aggrieved by order of Ld.CIT(A), revenue is in appeal before us now. Assessee has also filed cross objection in respect of technical issue relating to the limited scrutiny. Only issue raised by revenue is regarding addition having been deleted by Ld. CIT (A) in respect of lease rental claimed as expenses.

**4.1** Ld.AR has filed before us details of lease rent paid on monthly basis to various parties. It has been submitted that *Hon'ble Supreme Court* in case of *Enterprising Enterprises vs DCIT* reported in (2007) 160 Taxmann 180, relied by Ld.AO held that; distinction lies between a case where royalty or rent is being paid on one hand and where the entire amount of lease is paid either at a time or any instalment. *Hon'ble Supreme Court* held that in former case, it would be revenue expenditure, and in latter case, it would be capital expenditure. Ld.AR submitted that payments have been made on monthly basis and that, assessee has not acquired any tenancy right in respect of such premises. He submitted that these premises on which lease rentals are paid are he used for purposes of business and therefore is an allowable expenditure.

**5** On the other hand Ld. Sr. DR placed reliance upon order passed by Ld. AO.

**5.1** We have perused submissions advanced by both sides in light of records placed before us. Assessee in the paper book has placed rent agreement entered into by lessor with M/s. Bearing Property Services Pvt. Ltd., in respect of office space on Ground Floor, Second Floor with M/s. Topaz Investments Pvt. Ltd., in respect of Basement with M/s. Embassy Icon Building, in respect of Guest House at Vittal Malya Road with M/s. Oakwood (Prestige Leisure Resorts Pvt. Ltd.), in respect of another Guest House at HSR Layout with Land Lords being Sri. Anil Asrani and Smt. Veda Asrani and storage space with M/s. Writer Information Management Services and M/s. Iron Mountain India Pvt. Ltd.,. Ld. AR has filed certificate of incorporation certificate dt. 09/03/2015 pursuant to change of name from M/s. Bearing Point Property Services Pvt. Ltd.,. All agreements entered into by assessee are valid for a period of 3 years and 4 months and therefore cannot be considered to be in the nature of non cancellable. It is further noted that assessee has given interest free refundable security deposit to lessor and that there is no transfer of right, title or interest in the leased premises by lessor. *Hon'ble Supreme Court* in case of *M/s. Enterprising Enterprises vs. DCIT (supra)* has culled out distinction between cases where rent is paid in installments is categorised as revenue in nature and cases where rent is paid at a time is categorised as capital in nature.

**5.2.** No one test or principle has universal application to decide nature of expenditure of being capital or revenue and depends on facts and circumstances of each case. It is the cumulative effect of all facts and circumstances that would be the prime guiding factor. Details of monthly rent filed by assessee to various parties reveals that payment has been made towards use of guest house, office spaces from where assessee carries out its business activities. If object of making the payment is to acquire capital asset, then the payment would partake character of capital expenditure, even though it is made not in lump sum but by installments over a period of time. On the contrary, if the payment made is in the course of and for purpose of carrying on business activity, then the payment would partake character of revenue expenditure even though the payment is of a large amount and has not to be made periodically. It is the true nature of expenditure that is relevant and not name or description given to it by assessee in his books of account or other documents.

**5.3.** *Hon'ble Supreme Court* in case of *M/s. Empire Jute Co. Ltd.* reported in *124 ITR 1* held that the test of enduring benefit is not a certain of conclusive test and also cannot be applied blindly or mechanically without regard to the particular facts and circumstances of a case.

***Hon'ble Supreme Court observed as under:***

*“There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless,*

*be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test.....It is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future."*

**5.4.** In present facts of case the leased premises enables assessee in carrying out business activities and no advantage is received which could be capitalize. We therefore, do not find any infirmity in the view adopted by Ld. CIT (A). Respectfully we are following decision of *Hon'ble Supreme Court in M/s. Empire Jute Co. Ltd., (supra)*. We uphold the deletion of addition. **Accordingly grounds raised by revenue dismissed.**

**6** As we have dismissed appeal filed by revenue, cross objection filed by assessee stands infructuous.

**In the result, appeal filed by revenue and cross objection filed by assessee stands dismissed.**

Order pronounced in the open court on  
2019.

December,

Sd/-  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Dated: 20<sup>th</sup> December, 2019

**Copy of the Order forwarded to:**

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR
6. ITO (TDS)
7. Guard File

By Order

Assistant Registrar

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr. P. S. ....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so .....
8. Date on which the file goes to the Bench Clerk .....
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk .....
11. The date on which the file goes to the Assistant Registrar for signature on the order .....
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
13. Date of Despatch of Order. ....
14. Dictation note enclosed .....