

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI FRIDAY BENCH 'B' : NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 2070 & 3072/Del/ 2017
Assessment Year :2010-11**

**Chander Nagar Chemicals And
Mineral Private Limited,
R-680, Rajinder Nagar,
New Delhi.
AA CC 1118L
(Appellant)**

**Vs. ITO,
Ward-3 (3),
New Delhi.**

(Respondent)

Appellant by : Sh.Vinay Chowla, Adv.
Respondent by : Sh. Jagdish Singh, Sr. DR.

Date of hearing :28.08.2020
Date of pronouncement : 07 .09..2020

ORDER

PER K.NARASIMHA CHARY, JM :

Aggrieved by the order dated 19/1/2017 in appeal No. 517/2014-15 of CIT (A)-2, passed by the learned Commissioner of Income Tax (Appeals)-2, New Delhi ("Ld. CIT(A)"), for the assessment year 2010-11, M/s Chander Nagar Chemicals And Minerals Private Limited ("the assessee") filed this appeal.

2. Briefly stated relevant facts are that the assessee company, during the year under consideration, leased out the assets along with

Plant and Machinery to Little People Education Society for leasing out the business asset along with the facilities/services/equipment and according to the agreement for leasing out the premises along with all the infrastructure, the assessee leased out the entire area of the building along with the facilities including diesel generator, electric panel, air conditioner, lifts, service to replace/repair the lighting equipment, firefighting equipment, and also the other services including housekeeping, horticulture and landscaping and water supply with water pumps and sump pumps.

3. The initial agreement was for three years from 1/12/2006 to 30/11/2009 with an option to extend it for 2 more terms on increase of 15% of the last paid rent. For the assessment years 2007-08 and 2008-09 the assessee was receiving the composite rent towards the rent of property and services provided and hiring the equipment and income was assessed as business income. However, after the expiry of the initial period of three years, the assessee claims to have entered into supplementary agreement from the assessment year 2010-11 for letting out the property separately from the provision of services and hiring the equipment.

4. For the assessment year 2010-11 the assessee filed the return of income on 30/9/2010 declaring an income of Rs. 1,25,90,862/-. The assessee had declared the gross receipts under the business and profession to the tune of Rs. 2,35,75,004/-and in the P&L Account there was a claim for various expenses. Learned Assessing Officer observed that the company had no Plant and Machinery other than the

DG set, electrical panel, electrical transformer, lifts and air conditioning plant installed on the building declared in the schedule of fixed assets, and apart from this the assessee had not carried any other business activity. Original assessment was completed under section 143(3) of the Income Tax Act, 1961 (for short “the Act”).

5. Subsequently, learned Assessing Officer recorded that the assessee company treated the income received from house property as income received from business and profession and tried to under-assess the income chargeable to tax and therefore, the income chargeable to tax had escaped assessment due to incorrect treatment of the income received from the house property. Assessment was therefore, reopened by issuing notice under section 148 of the Act. By order dated 30/5/2014 passed under section 143(3)/147 of the Act, learned Assessing Officer disallowed some part of business expenses and accepted the income from house property as declared, and concluded the assessment at Rs. 1,38,40,710/-. Simultaneously, the assessing officer initiated and concluded the penalty proceedings under section 271(1)(c) of the Act.

6. Aggrieved by such an action of the learned Assessing Officer, assessee preferred an appeal before the Ld. CIT(A). Ld. CIT(A) allowed a total business expenses, but disallowed the statutory repairs under section 24 (a) of the Act to the tune of Rs. 59,65,501/- and also the interest to the tune of Rs. 16,91,966/- against the income from house property. While doing so Ld. CIT(A) followed his earlier orders for the assessment year 2007-08 and 2008-09 in respect of which

years the assessee was receiving the composite rent. Ld. CIT(A) also initiated and concluded the penalty proceedings under section 271(1)(c) of the Act in respect of the enhancement made by her.

7. Assessee is, therefore, before us in this appeal contending that the action of the Ld. CIT(A) in enhancing the addition is arbitrary and contrary to the facts on record. Ld. AR argued before us that the assessment was reopened on the ground that no business expenses are allowable and, as a matter of fact, the learned Assessing Officer disallowed the business expenses alone; whereas the Ld. CIT(A) allowed the entire business expenses and thereby removed the very basis for reopening proceedings. Basing on the decisions reported in the case of Ranbaxy laboratories vs. CIT (2011) 336 ITR 136 (del) and CIT vs. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom), Ld. AR argued that the moment the reason for initiation of the reassessment proceedings ceases to exist, the disallowance on some other grounds is impermissible under law.

8. Further submission of the Ld. AR is that it is open for the assessee to go for composite receipts for letting out the demised premises and also the service provided coupled with hiring of the equipment, and in the alternative to go for separate agreements one for letting out the demised premises and the other for the hiring of equipment and providing certain services. Merely because on earlier occasion the assessee opted to go for the composite remuneration, it does not prevent the assessee forever not to let out the premises separately from hiring the equipment and providing services on a

separate remuneration. He submitted that the Revenue cannot dictate the way in which the assessee had to conduct its business, but the Revenue can only probe into the income and expenditure declared by the assessee.

9. Per contra, it is the submission of the Ld. DR that originally the assessee claimed the entire receipts towards the income from business whereas for the assessment year 2007-08 and 2008-09 the learned Assessing Officer treated the same as income from house property, and thereby disallowed the assessee's claim of various expenses against the business income, but on appeal, Ld. CIT(A) accepted the contentions of the assessee and treated the receipts as income from business and profession and allowed all the business expenses. Ld. DR further submitted that the Ld. CIT(A) observed that the letting out of the equipment installed in the building was an inseparable part of the letting out of the premises and vice versa. It is therefore, in the fitness of things for the current year also the Ld. CIT(A) followed the reasoning given for the assessment year 2007-08 and 2008-09 and while treating the receipts as income from business allowed all the business expenses, against which the assessee cannot have any grievance. Ld. DR, therefore, justified the impugned order and submitted that there are no grounds to interfere with the impugned order.

10. We have gone through the record in the light of the submissions made on either side. Record speaks that originally the assessee entered into an agreement on 4/9/2006 to lease out the plot of land

together with the entire building constructed and with the operateable equipment/services including diesel generators, electric panel with HT panel, PLC panel, HT transformer and panel, air conditioner with the chillers, lifts, lighting, firefighting equipment, housekeeping, horticulture and al landscaping, water supply etc. for an initial period of three years, which could be extended further two more terms on increase of 15% of the last paid rent. During such period, the amounts were received on a composite basis and it was treated as income from business. Subsequently, however, the assessee claims to have bifurcated the income into two heads, namely, some income has been shown under the head “income from business property” and secondly, under the head “income from business” (high charges) by way of a separate agreement. According to the Ld. CIT(A) this bifurcation is a deviation from the regular treatment by the assessee itself as well as in contradiction with the previous years’ appellate orders.

11. Insofar as the objection of the assessee that in view of the fact of Ld. CIT(A) allowing the entire business expenses, the very basis for reopening the proceedings by recording the reasons, has been removed and therefore, the addition on some other grounds is impermissible under law, is concerned, the observation of the Ld. CIT(A) is that in view of the incorrect representation and the escapement of income, learned Assessing Officer was justified in reopening the case. It is not in dispute that the learned Assessing Officer made the addition only on the basis of the grounds which formed the part of the reasons recorded. It is only on merits the Ld. CIT(A) held that the income of the assessee is chargeable to tax under

the head business income. It is, therefore, clear that at threshold the learned Assessing Officer is justified in reopening the assessment and subsequently on merits the Ld. CIT(A) reached a different conclusion that the income falls under the head “income from business”. Now it falls for our consideration as to whether the Ld. CIT(A) is justified in refusing to take cognizance of the bifurcations of the lease and services by way of a supplementary agreement. We therefore, hold that the reopening of the assessment under section 147 is beyond challenge.

12. Now the question is whether the assessee is free to arrange their business and to enter into an agreement separately one for letting out the demised premises and another for the services and hiring of the equipment. Equipment may be inseparable from the building, but the Revenue cannot force the assessee to provide any services or to hire the equipment along with letting out the property. It is always open for the assessee not to provide the services or not to hire the equipment, while letting out the demised premises. Whether or not such services could be provided or the equipment could be hired independently, is the prerogative of the assessee and the lessee. When it is possible for the assessee to provide or not the services and to hire or not the equipment, then it is equally the prerogative of the assessee to provide them at a separate cost. Revenue cannot force the assessee to enter into any agreement in any particular form, but at the best, the Revenue can probe into the genuineness of the transaction or the correctness of the quantum of expenditure. Revenue cannot prevent the assessee from entering into separate agreements. At best Revenue

can verify the quantum of expenditure claimed by the assessee in respect of the services provided or the expenditure related to the hired equipment.

13. When the assessee had chosen to bifurcate the transaction and to charge separately towards the rent of the demised premises and for the services provided and hire charges, in our considered opinion the Revenue cannot prevent the same on the ground that such process would result in loss to the Revenue. In the circumstances, we hold that the action of the authorities below not to permit the assessee to arrange their business in the way which is beneficial to them, within the permissible limits of law, is impermissible. Then it goes without saying that the assessee is entitled to claim the business expenses in respect of the income from the services provided and hiring of equipment, and statutory deductions under section 24 (a) of the Act insofar as the income from the house property is concerned. With this view of the matter, we direct the learned Assessing Officer to allow the statutory deduction under section 24 (a) of the Act also and the interest incurred in respect of the house property.

14. In view of our finding in the appeal relating to the quantum addition, the penalty does not survive and therefore, the penalty is also deleted.

In the result, appeals of the assessee are allowed.

Pronounced on this the 7th day of September, 2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER