

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'C' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAVISH SOOD, JM

**ITA No.3489/Mum/2019
(Assessment Year :2014-15)**

&

**ITA No.3490/Mum/2019
(Assessment Year :2013-14)**

M/s. Prolific Consultancy Services (Mumbai) Pvt. Ltd., now Prolific Ventures Pvt. Ltd., 1, Wilson House, Nagardas Road, Andheri (E), Mumbai – 400 069	Vs.	Income Tax Officer – 10(3)-4, Mumbai Office of ITO-10(3)(4) Room No.554, 5 th Floor Aayakar Bhavan M.K.Road, Mumbai - 20
PAN/GIR No. AACCP5402E		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashok Bansal
Revenue by	Ms. Shreekala Pardeshi
Date of Hearing	10/12/2020
Date of Pronouncement	16/12/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

These appeals in ITA No.3489/Mum/2019 and 3490/Mum/2019 for A.Y.2013-14 & 2014-15 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-17, Mumbai in appeal No.CIT(A)-

17/IT-410/10350/16-17 & Appeal No.CIT(A)-17/IT-411(10686/16-17 dated 25/03/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 14/03/2016 & 29/07/2016 respectively by the Id. ITO, Ward 10(3)-4, Mumbai (hereinafter referred to as Id. AO).

2. As identical issues are involved in these appeals, they are taken together and disposed off by this common order for the sake of convenience. With the consent of both the parties, the appeal for the Asst Year 2013-14 is taken as the lead case and the decision rendered thereon would apply with equal force for Asst Year 2014-15 also except with variance in figures.

3. The only issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance of business loss and depreciation loss totalling to Rs 33,91,561/- and consequently denying the set off of the same with the house property income in the facts and circumstances of the case.

4. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee company is engaged in the business of acquiring property on lease and sub-leasing the property. We find that the assessee had taken a property named 'Wilson Hosue' on lease from Vimla Dwarkadas Sanghvi. The lease agreement in this case was signed on 25.2.2002 for lease rent of Rs 1,80,000/-. The Building consisted of ground floor and give upper floors measuring 18150 sq.ft. The assessee company entered into service agreement with HBL Global Pvt Ltd and sub-let part of the premises to HBL Global Pvt Ltd and was also using specific floor of the premises for

the purpose of its own business. Following the judgement in assessee's own case in earlier years, when income from sub-lease of property was to be taxed under income from house property, the assessee company had offered the same under the head 'income from house property' in this year also. We find that the said sub-leasing rental income was duly credited in the profit and loss account of the assessee. We find that the assessee had filed its computation of income as under:-

<u>INCOME FROM HOUSE PROPERTY</u>	5292906
<u>LET OUT</u>	
NAME OF TENANT : HDB FINANCE	
ADDRESS : HDB FINANCE, MUMBAI, MAHARASHTRA	
ANNUAL VALUE	1380000
LESS: STANDARD DEDUCTION U/S 24(a)	-414000
TAXABLE INCOME FROM HOUSE PROPERTY	966000
	<u>=====</u>
<u>LET OUT</u>	
NAME OF TENANT : HBL GLOBAL	
ADDRESS : A WING, KAMALA MILL COMPOUND TRADE	
WORLD, BEASEMENT, SENAPATI BAPAT MARG, LOWER	
PAREL, MUMBAI, MAHARASHTRA	
ANNUAL RENT	6848175
LESS: HOUSE TAX	-831659
ANNUAL VALUE	<u>6016516</u>
ANNUAL VALUE	6016516
LESS: STANDARD DEDUCTION U/S 24(a)	-1804955
TAXABLE INCOME FROM HOUSE PROPERTY	4211561
ADD: UNREALISED RENT RECOVERD	<u>115345</u>
	4326906
	=====
<u>PROFITS AND GAINS FROM BUSINESS AND PROFESSION</u>	
<u>INCOME FROM OTHER ACTIVITIES</u>	
PROFIT BEFORE TAX AS PER PROFIT AND LOSS	
ACCOUNT	1760911
ADD :	
DEPRECIATION DISALLOWED	961585
DISALLOWED U/S 37	2945410
DISALLOWED U/S 40A	<u>75000</u>
	3981995
	5742906
LESS:	
HOUSE PROPERTY INCOME	8228175
ALLOWED DEPRECIATION	<u>906292</u>
	-9134467
	-3391561

OUT OF LOSS OF RS. 3391561, UNABSORBED DEPRECIATION IS RS. 906292 & BUSINESS LOSS IS RS.2485269.

INTER-HEAD ADJUSTMENT OF LOSSES U/S.71

BUSINESS LOSS SET OFF FROM HOUSE PROPERTY INCOME RS. -2485269

UNABSORBED DEPRECIATION SET OFF FROM:

HOUSE PROPERTY INCOME	-906292
GROSS TOTAL INCOME	<u>1901345</u>
TOTAL INCOME	1901345
TOTAL INCOME ROUNDED OFF U/S.288A	1901350

5. From the above, it could be seen that the assessee had arrived at the loss under the head 'income from business' due to reduction of rental income of Rs 82,28,175/- from business income as the same had been offered separately to tax under the head 'income from house property'. Apart from this, the assessee had also incurred certain regular and statutory business expenses which are mandatorily to be incurred for maintaining its corporate identity and which are routine in nature. We find that the assessee had pleaded that its business was taking property on lease and sub-leasing the same and derive rental income thereon. There is absolutely no dispute about the nature of business stated in the return of income of the assessee. **Infact we find that the Id AO in the front page of the assessment order had categorically stated assessee's nature of business to be 'Acquiring property on lease and sub-leasing the property' (emphasis supplied by us).** The rental income derived out of sub-leasing activity may get taxed under the head 'income from house property' as per certain provisions of the Act and judicial precedents. But it cannot be denied that the assessee had indeed carried on its business of sub-leasing the property. Hence it has to mandatorily incur certain business expenditure to maintain its corporate identity, which would in any case, be allowable as deduction. Once these expenses are debited in profit and loss account, it would only

result in business loss which had to be mandatorily set off against the house property income. We find that the total loss of Rs 33,91,561/- comprised of depreciation loss of Rs 9,06,292/- and business loss of Rs 24,85,269/- . In the instant appeals before us, there is no dispute as to under which head the rental income is to be taxed. The short dispute is whether the routine and mandatory expenses incurred by the assessee for maintaining its corporate identity would be eligible as regular business loss and consequential set off of the same with house property income. We hold that the assessee had to incur certain mandatory expenses to maintain its corporate identity and the same had to be incurred irrespective of the fact whether it is having any business income or not. Hence the said expenses would be squarely allowable as deduction for a company. Consequently the assessee would be eligible for set off of the same with the house property income. Accordingly, the ground raised by the assessee is allowed.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced on 16/12/2020 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 16/12/2020
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai