

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Saktijit Dey (Judicial Member)]**

ITA Nos. 2424/Mum/2019
Assessment Years: 2013-14

**Assistant Commissioner of Income Tax
Circle-5(3)(2), Mumbai**

.....Appellant

Vs.

M/s. XTP Design Furniture Ltd.
44/C, Motiwala Building, 2nd Floor,
Proctor Road, Grant Road East,
Mumbai 400007[PAN: AAACX0160B]

.....Respondent

Appearances by

T. S. Khalsa for the appellant
None for the respondent

Date of concluding the hearing : January 18, 2021
Date of pronouncement : January 19, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 28th January 2019, passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14.

2. Grievances raised by the appellant are as follows:

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in law in treating the gross receipts on account of amenities services provided by the assessee to its tenants of Rs. 3,95,58,070/- as Income from House Property as against the stand of the assessing officer in assessing the same as Income from Other Sources”.

3. When this appeal came up for hearing learned Departmental Representative fairly accepted that, as evident from the observations made by the learned CIT(A) in the impugned order the issue in appeal is covered by a decision of the coordinate bench of this tribunal in assessee's own case for the assessment years 2009-10 and 2010-11, in favour of the assessee.

4. We find that the, learned Commissioner has *inter alia* observed as follows:-

“6.3.1 I have considered the submission of the appellant, carefully gone through the order of the AO, and perused the material placed on record.

6.3.2 This issue has been decided by Hon'ble ITAT Mumbai in its order for AY 2009-10 vide para 5 & 6 of order dt. 20.08.2014 which is reproduced hereunder:

5. The only other ground in Revenue's appeal relates to the treatment of Rs.4, 74,64,848/- as 'income from house property' as against 'income from other sources' treated by the A.O.

6. The undisputed fact is that the assessee is an owner of offices at unit No.201, 301 and 401 In Peninsula Chambers, Lower Pare I, Mumbai and the premises was leased out to Group Media Pvt, Ltd. and Hindustan Thompson Associates Pvt. Ltd. It is also a fact that the assessee has given the lessees additional common facilities like lift, security, fire fighting system, common area facilities, car parking, terrace use, water supply etc. We find that the AO has taxed license fees of Rs.4,38,13,370/- under the; head 'income from house property' and amenities fee of Rs.4, 74,64,484/ - under the head 'income from other sources'. We find that the nature services provided by the assessee to the tenants/ lessees were linked to the premises and were in the nature of auxiliary services which were directly linked to the leasing of the property. Since there a direct nexus between the amenities and leased premises, the Id. CIT(A) has rightly directed the AO to treat the income from amenities under the head, 'income from house property'. We do not find any infirmity or error in the findings of the Id. CIT(A). Ground No,1 of the Revenue's appeal is accordingly dismissed.”

6.3.3 The Hon'ble ITAT Mumbai in its order for AY 2010-11 vide para 8 order dt. 09.02.2016 has concurred with the above view "by holding that the income of Rs. 4,38,61,4867- received by the assessee company from amenities fee shall be chargeable to tax under the head 'Income from House Property',

6.3.4 The facts of the case during the year under consideration are identical and hence having regard to the totality of facts and circumstances of the case, and respectfully following the decisions of the Hon'ble ITAT, it is held that the income of Rs.3,95,58,070/ - from the amenities is taxable as 'Income from House Property'.”

5. As evident from the above and as the learned Departmental Representative fairly accepts, the issue in appeal is clearly covered by a decision of the coordinate bench in assessee's own case for the assessment years 2009-10 and 2010-11.

6. We see no reasons to take any other view of the matter then the view so taken by the coordinate bench. Clearly, therefore, there is no infirmity in the learned CIT(A), deciding the issue in favour of the assessee in consonance with the coordinate bench decision. We approve the action of the learned CIT(A) and decline to interfere in the matter.

7. In the result, the appeal is dismissed in the terms indicated above. Pronounced in the open court today on the 19 day of January 2021

Sd/-
Saktijit Dey
(Judicial Member)
Mumbai, dated the 19 day of January, 2021

Sd/-
Pramod Kumar
(Vice President)

Copies to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai

