

THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 4151/Mum/2019 (Assessment Year 2015-16)

ACIT-9(3)(2) Room No. 259A 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. E-city Projects Construction Pvt. Ltd. 844/4, Fund Republic Shah Industrial Estate Off New Link Road Andheri-W, Mumbai 400 053. PAN : AABCE5486E
(Appellant)		(Respondent)

Assessee by	Shri Jay Bhansali
Department by	Shri Sushil Kumar Mishra
Date of Hearing	24.12.2020
Date of Pronouncement	03.02.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 29.3.2019 and pertains to assessment year 2015-16.

2. The grounds of appeal read as under :-

"i) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred on facts and in law in not upholding the action taken by the AO in treating the rental income from Operating Family Entertainment Center cum Mall and Maintenance Charges amounting to Rs 11,96,62,440/- and Rs 4,32,51,472/- respectively as "Income from House Property " against the assessee's claim of "Profit and Gains from Business or Profession"

ii) Whether on the facts and in the circumstances of the case and in law, The Ld.CIT(A) has erred on facts and in law in completely ignoring the decision of the Hon'ble Supreme Court in the case of Shambhu Investment (P) Ltd vs CIT(2003) 184CTR (SC) 91: (2003) 263 ITR 143(SC) wherein it is held that income derived by an assessee by letting out furnished premises on

monthly rent basis to various parties alongwith various services, is assessable as income from property and not business income"

iii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the interest expenditure of Rs 1,26,85,361/- u/s 24(b) of the Act by treating the income from House property as business income ignoring the fact that the revenue has not accepted the claim of the assessee in the present A.Y. and earlier years and the revenue has filed SLP for A.Y. 2007-08, 2009-10 and 2010-11"

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the ACIT-9(2)(2) be restored."

3. Brief facts of the case are the assessee company is engaged in the business of Acquisition of immovable properties and constructing, developing and building "Family Entertainment Centre cum Malls" across India and leasing (short term & long term), licensing, renting and managing, operating and running the same for commercial use and setting up necessary infrastructure.

4. During the course of assessment assessing officer noted that The assessee has shown income under the head 'operating income' of Rs. 11,96,62,440/-, maintenance charges recovered of Rs.4,32,51,472/-. The Assessing Officer was of the opinion that it is indirectly rent received by the lessor in respect of some facilities provided by it to the lessees as per the agreement and other income of Rs.43,59,861/- totaling to income of Rs. 166,72,73,773/-. The assessing officer was of the opinion that the above income was to be treated as income from house property and not from income from business despite noting that the issue has been decided in favour of assessee by the honourable jurisdictional High Court. He also disallowed a sum of Rs. 5,97,63,427/- under section 24(b) of the Act.

5. The assessing officer has concluded as under :-

5.7 Further, as regards the contention of the assessee that the Hon'ble Bombay high Court has treated the rental receipts as business income, it is stated that the decision of the Hon'ble Bombay High Court has not been accepted and the Department has filed SLP before the Hon'ble Supreme

Court which is pending. Hence, to maintain a consistent stand taken by the Department on this issue, the rental receipts are taxed under the head "income from house property" and not under the head "income from business".

5.8 In view of the elaborate discussions and judicial pronouncements and relying in the assessment orders for A.Ys. 2007-08 to 2014-15, the income earned by the assessee from letting out of property taxed under the head "income from house property" and not under the head "income from business". Accordingly, the rental receipts are taxed under the head "income from house property" and not under the head "income from business" which is wrongly claimed by the assessee with the sole intention to avoid, legitimate and due tax liability. This income of the assessee is taxed under the head income from house property and income from other sources.

5.9 Further in the assessment order passed u/s 143(3) for A.Y. 2013-14, it was held that the loan availed from HDFC in respect to property located in Chandigarh is for the lease/rental receivable and it cannot be allowed u/s. 24(b) of the IT. Act. Accordingly the assessee was asked to explain as to why the same should not be disallowed as in earlier year. In response, the Ld. AR of the assessee has stated that the assessee company is treating the rental income as the business income and not as the income from house property, the adjustment u/s. 24(b) is not admitted.

5.10 The contention of the assessee is found to be not acceptable. As has been held in earlier years, the loan is availed from HDFC is in respect of property located in Chandigarh is for the lease/rental receivable, hence the adjustment on account of this loan is not allowed u/s. 24(b) of the Act. For the current year the interest paid in respect of Chandigarh property is Rs.1,26,85,361/-, thus the same is disallowed as has been done in earlier years. Thus the assessee is eligible for deduction under section 24(b) of the Act at Rs.5,97,63,427/-(7,24,48,788-1,26,85,361).

6. Against the order assessee appeal before the learned CIT(A) .

7. Learned CIT(A) decided the issue in favour of assessee by referring to honourable jurisdictional High Court decision in assessee's own case as under:-

"In Assessee's own case for AY 2007-08, 2009-10 and 2010-11, the same issue was brought up before the Hon'ble High Court, Mumbai. Hon'ble high Court vide its order dated 18.07.2017 has held that :-

"The rental income and the services thus received by the assessee company as business income during the course of business carried out by them of operating and running a mall as a commercial activity. The facts of the case are much similar to the case of Chennai Properties and Investments Limited, Chennai (referred to Supra). 16. We find that the

appreciation of evidence by the Commissioner (Appeals) and Tribunal is not perverse and the finding arrived by them is plausible one. 17. In the light of above, no substantial question if Law arises. The appeal stand dismissed, however, with no order as to costs.'

Assessing Officer has stated that since decision of Bombay High Court has not been accepted and department has filed SLP before the Hon'ble Supreme Court which is pending and to maintain consistent stand taken by Department on this issue the income is taxed as Income from house property. This stand of the assessing officer is not acceptable. When the case is covered by assessee's own case and the facts of the case being the same, the order of the jurisdictional High Court is to be followed.

In this year, the facts are same as in earlier, years which has been decided by the higher authorities. Hence, respectfully following the decision of higher authorities the income received by the appellant from the operating income and maintenance charges recovered is held to be business income. Business expenses claimed are also to be allowed against the same.

8. Similarly he decided the other issue in favour of assessee as under :-

“Ground No. 3 is regarding disallowance of interest expenses of Rs. 1,26,85,361/-. Assessing Officer on the basis of earlier years held that the interest expense is not allowable u/s. 24(b). Since, I have already held above that the rental income of the assessee is a business income, the interest expenses is therefore allowable as business expense. Thus, Ground No. 3 is allowed.”

9. Against the order assessee is in appeal before us.

10. We have heard both the parties and perused the records. Learned counsel of the assessee reiterated that the issue that rental income should be assessed as business income is covered in favour of the assessee by the following decisions.

- Hon'ble Bombay High Court's Order dated 18.07.2017 in assessee's own case for AY 2007-08, 2009-10 & 2010-11 [ITA 149/2015, 323/2015, 1082/2016]
- Hon'ble Bombay High Court's Order dated 05.11.2019 in assessee's own case for AY 2008-09 [ITA No. 1130/2017]
- Hon'ble Mumbai Tribunal's Order dated 28.03.2018 in assessee's own case for AY 2011-12 [ITA No. 3352/M/2016]
- Hon'ble Mumbai Tribunal's Order dated 30.10.2017 in assessee's own case for AY 2012-13 [ITA No. 5097/M/2016]

- Hon'ble Mumbai Tribunal's Order dated 04.02.2019 in assessee's own case for AY 2013-14 and 2014-15 [ITA No. 4988 & 4989/M/2017]

11. Respectfully following the aforesaid precedence we hold order of learned CIT(A).

12. As regards the issue of interest the same is consequential. Moreover once it is decided that the assessee's income is from business its interest expenditure has to be allowed as business expenditure. The learned CIT(A)'s order is hence upheld.

13. In the result this appeal filed by the revenue stands dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 3.2.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/02/2021

Copy of the Order forwarded to :

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

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai