

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'SMC' CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 852/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Y. D. Solutions, 2133, Sector 38-C, Chandigarh.	बनाम VS	The ITO, Ward - 4(5), Chandigarh.
स्थायी लेखा सं./PAN No: AABFY086N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None

राजस्व की ओर से/Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 17.03.2021

उद्घोषणा की तारीख/Date of Pronouncement : 08.04.2021

Hearing conducted via Webex

आदेश/ORDER

By the present appeal, the assessee assails the correctness of the order dated 07.03.2018 of CIT(A)-2 Chandigarh pertaining to 2014-15 assessment year on the following grounds :

- i) *That the Ld. CIT (A) has erred on law and facts in confirming the assessment of Rental income from Commercial Complex of the appellant under the head "Income from House Property" instead of the correct head "Income from Business". The conclusion drawn by the Ld.A.O is based on surmises. Whereas the business, of the appellant as per the Object Clause of the Partnership Deed, is to provide Space Solution by renting of the Complex. Hence it is prayed that such income of the appellant be assessed under the head "Income from Business".*
- ii) *That the Ld. CIT (A) has erred in law by confirming the additions of Rs. 87,53,486 being the difference between expenses claimed by the appellant as per Audited Profit & Loss account and expenses as allowed by the Ld. A.O u/s 24 (Rs.3,24,98,672 minus Rs.2,37,45,186 allowed u/s 24). Hence, it is prayed that the addition of Rs. 87,53,486 be deleted.*

- iii) *That the Ld. CIT (A) has erred on law and facts in treating the income from Electricity related services of Rs.3,45,410 included in the gross receipts of rental income as Income from Other Sources whereas this income is part of Income from Business. Hence, it is prayed that the income from Electricity Related Services pertaining to the Business of the appellant be treated as Business Income.*
- iv) *That the Appellant reserves the right to alter, add or delete any grounds of appeal at the time of hearing.*

2. Before addressing the above, it would be relevant to first address the background as a result of which the present appeal came to be fixed for hearing today.

3. The present appeal has come up for hearing as a result of the **order dated 21.01.2021** passed in **M.A.128/CHD/2019** wherein the order dated 21.06.2019 in the present appeal itself had been recalled on the application moved on behalf of the assessee pleading lack of effective opportunity of being heard on the date of hearing i.e. 29.05.2019.

3.1 On behalf of the assessee, it had been submitted in the Miscellaneous Application 128/CHD/2019 filed that on the date of hearing the appeal i.e. 29.05.2019, the hearing was not attended to by the counsel inadvertently because the appeal, it was understood was to be fixed before 'SMC' Bench instead of 'Division Bench' before whom the appeal had been fixed. The specific reason canvassed by the assessee which was considered for recall of the order dated 21.06.2019 in the order dated 21.01.2021 was as under :

"The ld. AR relying on the application duly supported by his own affidavit submitted that on the specific date of hearing i.e. 29.05.2019 the counsel who was handling the case had come from

*Delhi and reached ITAT Chandigarh in time, but inadvertently he attended the DB instead of SMC Bench. After realizing the mistake, did rush to the SMC Bench but by that time, the SMC Bench had concluded. **Relying upon the affidavit of Shri Davinder Singh, Partner of the company affirming the facts as well as of the counsel himself it was his submission that the non-appearance before the SMC Bench was not deliberate or intentional on the part of the ld. AR. In the circumstances, it was his prayer that since the non-appearance was not deliberate or intentional, the said ex-parte order may be recalled so as to provide the assessee an opportunity of being heard.***

(emphasis supplied)

3.2 Considering the explanation, the order dated 21.06.2019 in ITA 852/CHD/2018 had been recalled on 21.01.2021 holding as under :

“3. I have heard the submissions and perused the material available on record. In the light of the submissions of the parties before the Bench considering the peculiar facts and circumstances of the case, as set out hereinabove, I am of the view that in the facts of the present case, the non-appearance of the assessee was not intentional. Accepting the explanation offered by the assessee for remaining unrepresented on the date of hearing as bonafide and true, the impugned order is recalled exercising the powers as vested by proviso to Rule 24 of the ITAT Rules 1963. Support is drawn from the decision of the Hon'ble Delhi High Court in the case of CIT Vs Ansal Housing Construction Ltd. 274 ITR 131 (Del).

*3.1. Accordingly, the appeal is restored back to original position and the Registry is directed to fix the appeal for hearing on 17.03.2021 **for which date no notice of hearing shall be issued to the parties as the date was announced on the date of hearing itself in the presence of the parties via Webex.***

(emphasis supplied)

4. In the said background, accordingly, the appeal came up for hearing on the present date. Again despite clear notice, the assessee remained unrepresented.

4.1 The appeal was passed over. The position remained unchanged.

4.2 Right upto 1.00 P.M., the assessee remained unrepresented.

4.3 Accordingly, in the second round also at 1.00 P.M., considering the record, it was deemed appropriate to proceed with the present appeal ex-parte qua the assessee appellant on merits.

4.4 For the record, it need be mentioned that right till the passing of this order, no request or application for missing the hearing has been placed on record on behalf of the assessee.

5. The ld. Sr.DR had relied upon the order. Referring to the record, it was submitted that the position of law on same set of facts in assessee's case as available on record may be followed as no distinction on facts or law has been brought on record by the assessee.

6. A perusal of the record shows that the appeal of the assessee for 2013-14 assessment year on similar facts and circumstances was dismissed in ITA 435/CHD/2017 vide order dated 06.08.2018 holding as under :

“This appeal has been preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-2, Chandigarh dated 2.12.2016 relating to assessment year 2013-14.

2. The sole issue in the present appeal pertains to the determination of the head under which the rental income earned by the assessee during the year is assessable whether under the head ‘income from business’ as returned by the assessee thereby claiming deduction of all expenses against the same or under the head ‘income from house property’ as assessed by the Revenue Authorities allowing only claims admissible

under the said head of income as per law resulting in the income being assessed at Rs.30,25,045/-.

3. *Brief facts relating to the case are that the assessee is a partnership firm constituted vide partnership deed dated 11.4.2011. During the financial year 2011-12, relevant to assessment year 2012-13, assessee had purchased one industrial Plot No. C-82, Phase-7, Mohali measuring 5000 sq. yards with three storey building (basement, ground plus two floors) from M/s Spray Engineering Devices Limited through an 'Agreement to Sell' dated 26.7.2011 for a total consideration of Rs.28,00,00,000/-. This property was earlier owned and occupied by M/s Spray Engineering Devices Limited. A portion of said property was let out by M/s Spray Engineering Devices Limited to M/s Dishnet Wireless Limited for a monthly rent of Rs.17,50,000/-. After the purchase of the property, the assessee started receiving rent from M/s Dishnet Wireless Limited in continuation of the earlier lease agreement with the initial owner by virtue of a tripartite agreement in this regard. The balance portion of the property was let out to M/s Spray Engineering Devices Ltd, (the previous owner). The assessee had shown the rent received from the above parties as business Income claiming expenses incurred against the same. Before the AO the assessee justified its stand of treating the rental income earned as business income, contending that as per its partnership deed, the business of the assessee was mentioned as "nature of the business of the partnership shall be to provide, deal, offer, development, run, sell, Outsource Information, Technology, clients need based I.T. Solutions and its activities, space solutions or to do such business or businesses as may be decided mutually by the parties from time to time." The assessee contended that the meaning of 'space solution' mentioned in the partnership deed related to the business of providing space solutions to the parties and while doing so, the firm was providing furnished space to the parties as per their requirement with the furniture, I.T. equipments etc. and submitted that this being the business of the assessee the Income from space rentals had been shown as earned from business. However the Assessing Officer did not agree with the contention of the assessee and assessed the rentals under the head income from House property at Rs.30,25,045/- after allowing standard deduction @ 30% and interest on loan.*

4. *The matter was carried in appeal before the Ld.CIT(Appeals) who dismissed the assessee's appeal.*

5. *Aggrieved by the same the assessee has come up in appeal before us raising following grounds:*

"i) That the Ld. CIT (A) has erred on law and facts in confirming the assessing of Rental income from Commercial Complex of the appellant under the head "Income from House Property instead of income¹ under the head "Income from Business" The conclusion drawn is based on surmise. Hence it is prayed that such income of the appellant be assessed under the head "Income from Business".

ii) *That the Ld. CIT (A) has erred in law by confirming the additions of Rs.67,99,990/- being the difference between expenses claimed by the appellant as per Audited Profit & Loss account and expenses allowed by the Ld. AO u/s 24. (Rs.3,25,74,945 minus Rs.2,57,74,955 allowed u/s 24). Hence, it is prayed that the addition of Rs.67,99,990/- be deleted.*

iii) *That the Ld. CIT (A) has erred on law and facts in confirming Rs.2,88,00,000/- as the Annual value of the property where as the actual amount of rent accrued during this period as per the Audited P & L A/c was Rs.2,70,50,000/-. Hence it is prayed that addition made on this account be deleted.*

iv) *That the Appellant reserves the right to alter, add or delete any grounds of appeal at the time of hearing.”*

6. *During the course of hearing before us the sole contention of the Ld. counsel for the assessee was that its act of letting out property to M/s Dishnet Wireless Limited and M/s Spray Engineering Devices Limited, was in pursuance of its stated object for which the partnership firm was formed and, therefore, had been rightly returned under the head” Income from House Property”. Heavy reliance was placed on the decision of the Hon'ble Apex Court in this regard in the case of Chennai Properties & Investment td. Vs. CIT (SC) Civil Appeal No.4494 of 2004 dated 9.4.2015 and the decision of the Hon'ble Apex Court in the case of Rayala Corporation (P) Ltd. Vs. ACIT, Civil Appeal No.6437 to 6441 of 2016 dated 11.8.2016. To substantiate its contention the Ld. counsel for assessee drew our attention to the copy of the partnership deed dated 11.4.2011, placed at page Nos.16 and 17 of the Paper Book, by virtue of which the assessee entity came into existence and specifically to the objects mentioned therein for which it was formed mentioned at clause 3 thereof as under:*

“3. That the nature of the business of the partnership shall be to provide, deal, offer, develop, run, sell, outsource, Information, Technology, clients need based I.T. solutions and its related activities, space solutions or to do such business or businesses as may be decided mutually, by the parties from time to time.”

7. *Referring to the same, the Ld. counsel for assessee pointed out that the assessee firm was formed to provide Information Technology (IT) related services which included providing space solutions. The Ld. counsel for assessee pointed out that for the attainment of this object it had entered into an agreement to purchase a fully operational multi storied commercial complex No.C-82, Phase 7, Mohali from M/s Spray Engineering Devices Limited for a consideration of Rs.28 crores. It was pointed out by the Ld. counsel for assessee that the original owner i.e. M/s Spray Engineering Devices Limited had let out 1st and 2nd floors of complex on lease to M/s Dishnet Wireless Ltd., a company engaged in the business of providing wireless internet excess and cellular mobile telephony services which lease was assigned in favour of the assessee on purchase of the said asset. Further the ground floor of the complex had been rented out to M/s Spray Engineering Devices Limited at monthly rent of Rs.6.5 lacs from November, 2011 onwards after taking the possession of the*

complex on 31.10.2011. The Ld. counsel for assessee pointed out that since inception it had been engaged in providing space solutions to IT related parties and no other activity and that the words “space solutions” mentioned in the object clause did not particularly mean providing only web services/hosting or space on web to its clients. The Ld. counsel for assessee stated that if that was the object, the assessee would have invested in IT related equipments for the same but had not done so. Thus the object of providing space solutions, Ld.Counsel for the assessee contended, meant simply letting out the premises to other for I.T. related purposes only. Our attention was drawn to the following documents, placed in the Paper Book and referred to by the Ld. counsel for assessee in the course of its submissions:

- 1. Copy of the Partnership Deed dated 11/04/2011 (PB-16-17)*
- 2. Copy of Agreement to Sale dated 26/07/2011 between Y.D. Solutions and M/s. Spray Engineering Devices Ltd. (PB-18-23)*
- 3. Copy of receipt of full & final consideration Cum Possession of building certificate dated 31/10/2011 (PB-24)*
- 4. Copy of documents dated 19/01/2012 issued by Punjab Small Industries & Export Corporation Ltd. (PSIEC) in respect of transfer of property in the name of Y.D. Solution (PB-25-28)*
- 5. Copy of Lease deed dated 15/11/2011, lease commencing from 15/06/2011, between M/s Spray Engineering Devices Ltd. and Dishnet Wireless Ltd. (PB-29-43)*
- 6. Copy of Assignment of Lease agreement dated 27/02/2012 between Y.D. Solutions, M/s. Spray Engineering Devices Ltd. and Dishnet Wireless Ltd. (PB-44-49)*
- 7. Copy of Lease deed dated 18/04/2012 between Y.D. Solutions and M/s. Spray Engineering Devices Ltd. (PB-50-52)*
- 8. It was also pointed out that in the preceding assessment year when the rental income was first returned and assessment framed u/s 143(3) of the Act, the Assessing Officer had accepted and assessed the same under the head ‘business & profession’ only. Our attention was drawn to the assessment order for the preceding assessment year i.e. assessment year 2012-13, placed at Paper Book page Nos.78 to 80 in this regard.*
- 9. The Ld. DR, on the other hand, placed heavy reliance on the orders of the authorities below. Referring to the contention of the Ld. counsel for assessee that its stated object was to let out properties on rent for Information Technology related activities, the Ld. DR stated that the word “space solutions” mentioned in the object for which the assessee firm was formed, was to be read with the whole clause and not in isolation as done by the assessee and when read as a whole it implied that the assessee would provide web servicing/hosting or space on web to its clients. The Ld. DR pointed out that the assessee had acquired a commercial property in an I.T.*

Zone and had been transferred the said plot on 99 years leasehold basis for the manufacture of I.T. industries only. Our attention was drawn to the documents issued by the Punjab Small Industries & Corporation Ltd.(hereinafter referred to as PSIEC) placed at P.B.25, with regard to the transfer of the said plot to the assessee for M/s Spray Engineering Devices Ltd. mentioning the said facts as under:

“Subject: Transfer of Industrial Plot No. C-82 Phase VII, Incl. Focal Point at Mohali.

Reference application dated 27.12.11 from M/s Spray Engineering Devices Ltd., 25, Incl. Area, Phase-II, Chandigarh Allottee, seeking transfer of the said plot in your favour.

Transfer of plot No.C-82, Phawse VII, in industrial focal point, Mohali measuring 5000, Sq.yds. in your favour on 99 years Lease-hold basis for the manufacture of IT Industries.”

10. The Ld. DR pointed out that the assessee had canvassed its object as being I.T. related activities before the PSIEC for the purpose of acquiring the plot and, therefore, the reference to a space solution in the object has to be read in that context only. The Ld. DR stated that having so canvassed before the PSIEC and thus acquired the plot I.T. related activities, the assessee is now canvassing a totally different object before the revenue authorities for treating the said income as ‘income from business & profession’. The Ld. DR pointed out that if the meaning ascribed to “space solution” as renting out of property for I.T. related activities, stated by the Ld. counsel for assessee, was its actual object, the plot could not have been allotted to the assessee in the first place since the said plot was in an I.T. Zone and could have been acquired only for I.T. related purposes. The Ld. DR, therefore, stated that the assessee was taking different stands before the different government authorities for its own purposes & benefit, which could not be allowed. Thus, the Ld. DR contended that the letting out of the property was not in pursuance to its stated object and, therefore, could not be treated as income from business & profession. Alternatively, the Ld. DR contended that the assessee had not let out a commercial property which was evident from the agreement entered into with two lessees. The Ld. DR pointed out from the assessment order that the Assessing Officer had gone through the agreement entered into with the two lessees and had found nothing therein which indicated that the assessee had given facilities as per the requirement of the lessee for I.T related services. The Ld. DR pointed out that one of the lessees M/s Dishnet Wireless Ltd. was already in occupation in rented accommodation and had been provided facilities as per its requirement by the earlier landlord and the agreement with the assessee only brought out what would be the conditions for the tenant and the rent to be received. There was nothing in the agreement regarding the assessee being engaged in the business of rental income and providing facilities to their tenants as per their requirements. The same was the case with the agreement entered into with M/s Spray Engineering Devices Limited also, it was contended by the Ld. DR. Our attention was drawn to the relevant findings of the Assessing Officer at paras 5.2 to 5.2.2 of the order. The Ld. DR further stated that even the third party verification, done by the Assessing Officer in this regard, from the two lessees had revealed that the nature of payment made by

them was office rent and TDS has been deducted on the same by them. The Ld. DR further pointed out that during assessment proceedings the statement of Shri Gurwinder Singh Chadha, person responsible and working as Head (Accounts & Finance) in M/s Spray Engineering Devices Limited was recorded u/s 131 of the Act who had categorically stated that his company was paying rent to the assessee and no extra facility was provided by the assessee except the already existing building. Our attention was drawn to the findings of the Assessing Officer in this regard at para 5.3 of the order. The Ld. DR further drew our attention to the findings of the Assessing Officer at para 5.4 of the order pointing out there from that even the Financials of the assessee firm revealed no activity being carried on for providing any service to the tenants as contended by the assessee. The Ld. DR pointed out that in fact as per the P & L Account, the assessee was carrying on no activity except of earning rental income and the expenses incurred were the normal organizational expenses and not related to any activity in respect of providing any service to its tenants. The Ld. DR, therefore, contended that clearly the rental income earned by the assessee was not in pursuance to its stated objects and the property let out was not a commercial property but bare premises let out and, therefore, the rental income earned from the same had been rightly assessed under the head 'income from house property'. The Ld. DR contended that as a consequence the assessee had been rightly allowed deduction only of expenses allowable under the said head and the balance income of Rs. 30,25,045/-, therefore, had been rightly assessed to tax.

11. *We have heard the rival contentions, perused the orders of the authorities below and gone through the documents referred to before us.*

12. *As stated above the issue before us relates to determining the head under which rental income received by the assessee is to be assessed whether "business and profession" or under the head "income from house property". The contention of the Revenue that the property let out was not a commercial property and no extra facility was provided by the assessee except the premises, we find, the Ld.Counsel for the assessee has been unable to controvert. Ld.DR has pointed out that the lease agreements nowhere mentioned letting out of commercial property, third party confirmations from lessees also stated rentals received as office rent, and even one of the persons responsible and working for M/s Spray Engineering Devices Limited stated in his statement that his company was paying rent and no extra facility was provided by the assessee. None of the above contentions have been controverted by the Ld.Counsel for the assessee. Ld.Counsel for the assessee has been unable to point out any clause in the lease agreement showing that premises alongwith IT related facilities was let out .No other evidence was also brought to our notice to show letting out of commercial property. Therefore we hold that the property let out was not a commercial property.*

13. *Having said so, we now take up the alternate contention of the Ld.Counsel for the assessee that the rental income earned by it was in the nature of its business income since it had been earned in pursuance to its stated object of letting out its property. We have noted the proposition laid down by the Hon'ble Apex Court in the case of Chennai Properties & Investment Ltd. (supra) and Rayala Corporation (P) Ltd. (supra) that the rental income earned in the course of carrying out the business of letting out property is to be assessed under the head 'income from*

business & profession'. Undoubtedly, the assessee firm was formed for the object of carrying out I.T. related services which included providing space solutions also. While the assessee has stated that the meaning of the word 'space solution' has to be taken literally and in isolation with other objects of providing I.T. related service and is to be taken to mean as letting out property for I.T. related activities, the contention of the Revenue, on the other hand, is that the meaning has to be derived by writing the word 'space solution' in conjunction with the other objects of the assessee firm and can only mean providing space solution by way of web services/hosting or space on web to its clients i.e. space solution in I.T. terms and not literally. The issue therefore narrows down to the meaning to be ascribed to the words "providing space solutions" mentioned in the objects of the assessee firm.

14. *We are not in agreement with the meaning ascribed by the Ld.Counsel for the assessee to the said words . In our view the meaning of the words "providing space solutions" has to be derived from the meaning ascribed to it by PSIEC while granting approval to the transfer of the said property to the assessee for the purposes of carrying out manufacture of IT Industry. As pointed out to us by the Ld. DR the approval letter issued by PSIEC on transfer of plot to the assessee clearly mentions that the same was being transferred in favour of the assessee for the **manufacture of I.T. Industry** (emphasis supplied by us). It is obvious from the same that the assessee could have used the property only for IT Industry purposes. Ld.Counsel for the assessee has not demonstrated how letting out of property could be treated as IT industry related activity. We therefore find no force in the argument of the Ld.Counsel for the assessee letting out property was its object for which the assessee firm was formed and therefore the rental income earned by it was in the nature of business income.*

15. *As for the contention of the Ld.Counsel for the assessee that in the preceding year the rental income earned had been accepted by the Revenue as assessable under the head Business and profession in scrutiny assessment ,we find no merit in the same. We have gone through the order passed in the preceding year u/s 143(3) and find that the income returned by the assessee was accepted as such with no discussion on the issue of head under which the rental income was assessable. Even the Ld.Counsel for the assessee has been unable to point out with evidence that the issue was inquired into during assessment proceedings. Therefore we hold that no benefit can be derived by the assessee from the order passed u/s 143(3) in the preceding year to the effect that the rental income had been accepted as assessable under the head business and profession.*

In view of the above, ground Nos.(i) & (ii) raised by the assessee are dismissed

16. *Ground No. iii pertains to taking the receipts from rent as Rs.2,88,00,000/- as against the actual receipts shown in the Profit and Loss account of the assessee at Rs.2,70,50,000/-.*

17. *The Ld.CIT(Appeals) has discussed the issue as under:*

"6.1 As discussed above the assessing officer has assessed the income from the rentals of property under the head income from house property and the annual value was taken as per the agreements with the tenants. Appellant

submitted that the value of the rental properties have been taken arbitrarily at Rs.2,88,00,000/- and the gross amount of rent as per the books of accounts be taken as the basis of assessment.

6.2 Submission of the appellant have been considered. As the assessing officer has assessed the rental income under the head 'Income from House Property', the annual value of the properties has been taken as per section 23 of the Act on the basis of agreements with the tenants. The same is upheld and the ground of appeal No.3 is dismissed."

18. The Ld. counsel for assessee has not pointed out any infirmity in the above order of the Ld.CIT(Appeals). We, therefore, see no reason to interfere in the same. Ground of appeal No.iii raised by the assessee is also dismissed.

19. In effect, the appeal of the assessee is dismissed.

(emphasis supplied)

7. It is seen that following the said view on similar facts and circumstances, order dated 21.06.2019 stood passed in the case of the assessee in the immediately subsequent assessment year, that is in the year under consideration. For the record, it need be highlighted that the assessee had sought a recall of the order on the grounds of remaining un-represented which had been granted. Notwithstanding the above, no effort to point out any infirmity in the aforesaid order either on facts or law has been brought to the notice of the Bench. The position as had been considered sets out to address the issues in the following manner wherein despite pleading lack of opportunity for recall, no infirmity has been referred to:

"The present appeal has been filed by the assessee assailing the correctness of the order dated 07.03.2018 of CIT(A)-2, Chandigarh pertaining to 2014-15 assessment year on the following grounds :

ii) That the Ld. CIT (A) has erred on law and facts in confirming the assessment of Rental income from Commercial Complex of the appellant under the head "Income from House Property" instead of the correct head "Income from Business". The conclusion drawn by the Ld.A.O is based on surmises. Whereas the business, of the appellant as per the Object Clause of the Partnership Deed, is to provide Space Solution by renting of the Complex. Hence it is prayed that

such income of the appellant be assessed under the head "Income from Business".

ii) That the Ld. CIT (A) has erred in law by confirming the additions of Rs. 87,53,486 being the difference between expenses claimed by the appellant as per Audited Profit & Loss account and expenses as allowed by the Ld. A.O u/s 24 (Rs.3,24,98,672 minus Rs.2,37,45,186 allowed u/s 24). Hence, it is prayed that the addition of Rs. 87,53,486 be deleted.

iii) That the Ld. CIT (A) has erred on law and facts in treating the income from Electricity related services of Rs.3,45,410 included in the gross receipts of rental income as Income from Other Sources whereas this income is part of Income from Business. Hence, it is prayed that the income from Electricity Related Services pertaining to the Business of the appellant be treated as Business Income.

iv) That the Appellant reserves the right to alter, add or delete any grounds of appeal at the time of hearing.

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over. In the second round also, none was present on behalf of the assessee. The record shows that in the appeal filed on 05.06.2018, on the three occasions the appeal came up for hearing, the assessee has remained unrepresented.

3. A perusal of the record shows that the CIT(A) has passed the order relying upon the past history of the assessee. It is seen that in 2013-14 assessment year i.e. in the immediately preceding assessment year identical issue was dismissed by the ITAT vide its order dated 06.08.2018 in ITA 435/CHD/2017. It is further seen that in 2012-13 assessment year in ITA 1513/CHD/2018, the Co-ordinate Bench vide order dated 07.05.2019 dismissed the assessee's appeal taking note of the fact that despite issuance of notice, the assessee has remained unrepresented. A perusal of the order dated 06.08.2018 in 2013-14 assessment year shows that similar argument was advanced i.e. that in 2012-13 assessment year, rental income has been accepted by the revenue which argument has been noted in the following manner in para 15 with the following observations :

15. As for the contention of the Ld.Counsel for the assessee that in the preceding year the rental income earned had been accepted by the Revenue as assessable under the head Business and profession in scrutiny assessment ,we find no merit in the same. We have gone through the order passed in the preceding year u/s 143(3) and find that the income returned by the assessee was accepted as such with no discussion on the issue of head under which the rental income was assessable. Even the Ld.Counsel for the assessee has been unable to point out with evidence that the issue was inquired into during assessment proceedings. Therefore we hold that no benefit can be derived by the assessee from the order passed u/s 143(3) in the preceding year to the effect that the rental income had been accepted as assessable under the head business and profession.

In view of the above, ground Nos.(i) & (ii) raised by the assessee are dismissed.”

4. *The Sr.DR relies on the order.*
5. *Considering the facts on record in the absence of any material on record which would justify modifying the impugned order ground No. 1 and 2 of the appeal covered against the assessee are dismissed.*
6. *It is seen that the issue raised in ground No. 3 does not have past history and arises for the first time. It is seen that qua the same, the CIT(A) has given the following finding in para 7.3 :*
- 7.3 *I have considered the facts and circumstances of the case. It is not the business of the assessee to collect and pay electricity and water charges. The amount of Rs 3,45,450/- is the difference between the amount collected from the tenants and the amount paid to the Electricity and Water Department. This is clearly "income from other sources" and I find no infirmity in the order of the AO in this regard. Ground of appeal no. 2 is dismissed."*
7. *The ld. Sr.DR relies on the order.*
8. *In the absence of any argument or rebuttal on facts, there is no justification to vary the conclusion drawn. The view taken by the CIT(A) in the facts as they stand is upheld.*
9. *The record shows that even otherwise, the appeal deserves to be dismissed on the grounds of non-representation as the assessee in the factual background as addressed may not be serious in pursuing the appeal filed as the assessee despite issuance of notices has remained unrepresented. Support is from the order of the ITAT Delhi Benches in the case of CIT Vs Multiplan India Pvt. Ltd. (1991) 38 ITD 320 and the decision of Hon'ble Madhya Pradesh High Court in the case of Late Shri Tukoji Rao Holkar Vs Wealth Tax Commissioner 223 ITR 480 (MP) etc.*
10. *Before parting, it is appropriate to add that in the eventuality the assessee is able to show that there was a reasonable cause for non-appearance on the date of hearing, it would be at liberty to pray for a recall of this order by making an appropriate prayer.*
11. *In the result, the appeal of the assessee is dismissed."*

(emphasis supplied)

8. It is seen that accepting the plea of lack of opportunity, the order stood recalled. Opportunity has been provided. The assessee has chosen to remain unrepresented. The position in the year under consideration from the same source in the absence of any controverting facts has to be addressed following the principle of consistency and certainty which acts as an inviolable precedence in the present proceedings. The income in

the peculiar circumstances on a careful consideration of facts and circumstances, it is held to have been correctly assessed under the head 'Rental income'. All the remaining consequences follow. The appeal is dismissed. Accordingly, in the circumstances, considering the position of law as considered by the ITAT in assessee's own case in same set of facts, the appeal of the assessee is dismissed. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced on 8th April, 2021.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar