

**आयकर अपीलीय अधिकरण " ए " न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.5671/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकर अपील सं./ I.T.A. No.5672/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

ACIT-1(1)(1) 579, 5 th Floor Aaykar Bhawan, M.K.Road Mumbai 400 020	बनाम/ Vs.	M/s Amazia Developers Private Ltd. Unit No.116, 1 st Floor Rehab Building No.4, Akruti Annexe Road No.7, Marol MIDC Andheri(E), Mumbai – 400 093
PAN No. : AAHCA-6934-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Ira Bahl – Ld. AR
Revenue by	:	Shri Brajendra Kumar – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	06/05/2021
घोषणा की तारीख / Date of Pronouncement	:	06/05/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years [AY in short] 2009-10 & 2011-12 contest separate orders of learned first appellate authority. However, the facts as well as issues are identical in both the appeals. Therefore, the appeals were heard together and are now being

disposed-off by way of this common order for the sake of convenience & brevity. First, we take up appeal for AY 2009-10 wherein following ground has been raised by the revenue: -

Whether on the facts and the circumstances of the case and law, the Id. CIT(A) was right in treating assessee's leased rental income as Business Income instead of Income from House Property ?

As evident, the revenue is aggrieved by the fact that leased rental income earned by the assessee has been accepted in the impugned order as 'Business Income' which was assessed by Ld. AO under the head 'Income from House Property'.

2. The Ld. AR advanced argument in support of impugned order by drawing attention to the orders of Tribunal in earlier years whereas Ld. DR justified the action of Ld. AO. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 An assessment was framed against the assessee u/s 143(3) r.w.s. 147 on 23/12/2016. The assessee is a resident corporate assessee and stated to be engaged as a property developer. The original assessment for the year was already completed u/s 143(3) on 29/12/2011 accepting revised returned loss of Rs.704.56 Lacs.

3.2 However, the case was reopened due to assessment order for AY 2010-11 passed u/s 143(3) r.w.s. 263 wherein a view was taken that the leased rental income was to be assessed as 'Income from House Property'. To adopt the same view in this year, the case was reopened for this year as per due process of law.

3.3 It transpired that the assessee was owner of property which was given on rent and received regular monthly income. It transpired that M/s Hubtown constructed an industrial park namely 'Akruti Trade Center' at Andheri. Another entity namely M/s Brainpoint Infotech Private Ltd. was a mutual benefit company which was providing various amenities / infrastructural facilities for the said industrial park building. M/s Brainpoint sold units of industrial park to the assessee and also transferred operation and maintenance of the industrial park building to the assessee. The assessee arising there-from was offered by the assessee as 'Business Income'. The assessee defended the stand of offering the rental income as 'Business Income' by submitting that the assessee was incorporated for running or selling the infrastructural facilities and it was the only business of the company.

3.4 However not convinced with a assessee's explanation, the rental receipts of Rs.126.10 Lacs was taxed as 'Income from House Property' against which statutory deduction u/s 24(a) would be available to the assessee. Consequently, the assessee would not be eligible to claim any business expenditure except interest expenditure.

4.1 During appellate proceedings, the assessee submitted that reopening for this year was based on assessment completed u/s 143(3) r.w.s. 263 for AY 2012-13. The assessee challenged the validity of revision order u/s 263 which was quashed by the Tribunal vide ITA No.2499/Mum/2017 order dated 08/05/2019. Another plea raised by the assessee was that the matter already stood examined during assessment proceedings u/s 143(3) and therefore, the reopening was bad in law.

4.2 The Ld. CIT(A) noted the similar issue arose in AY 2012-13 wherein the rental income was assessed by Ld. AO as 'Income from Other Sources'. However, first appellate order reversed the stand of Ld. AO by noting that similar income earned by the assessee was accepted as business income for AYs 2010-11 & 2011-12. It was further noted that the stand taken by Ld. AO in order passed u/s 143(3) r.w.s. 263 for AY 2010-11 was also reversed by Ld. CIT(A). Since the facts remain the same for AYs 2009-10, 2010-11 & 2012-13, the income was to be assessed as 'Business Income'. Consequently, the legal issue assailing the validity of assessment proceedings was not adjudicated. Aggrieved, the revenue is in further appeal before us.

5. We find that the whole basis of reopening the case for the year is the fact that an assessment was framed for AY 2010-11 u/s 143(3) r.w.s. 263 of the Act wherein a view was taken that the leased rental income was to be assessed as 'Income from House Property'. To adopt the same view, the case was reopened.

We find that the appeals for AY 2010-11 was subject matter of adjudication before this Tribunal vide ITA Nos.2498 & 5348/Mum/2017 common order dated 04/09/2019, the copy of which is on record. As it could be seen from the said order, the returned loss filed by the assessee was accepted u/s 143(3). However, consequent to revisional order passed u/s 263, the Ld. AO assessed the rental income as 'Income from House Property' in an order passed u/s 143(3) r.w.s. 263. However, upon further appeal, Ld. CIT(A), following his own order for AY 2012-13, held that income should be treated as 'Business Income'. The revenue preferred further appeal against the same before this Tribunal wherein the bench, vide para-9 of the order, dismissed revenue's appeal for the

reasons stated therein. One of the reasons was application of rule of consistency. Consequently, the assessee's appeal assailing the invocation of jurisdiction u/s 263 was not adjudicated.

Proceeding further, we find that in AY 2012-13 also, while framing assessment u/s 143(3), the rental income was assessed as 'Income from other sources'. However, learned first appellate authority, vide order dated 20/04/2016, reversed the stand of Ld. AO and held that income was to be assessed as business income. No further appeal was preferred by the department against the said order. Subsequently, a revision order was passed u/s 263 on 27/03/2017 which was subject matter of challenge by the assessee before this Tribunal vide ITA No.2499/Mum/2017 order dated 08/05/2019. The bench noted that since the order of Ld. AO already stood merged with appellate order, subsequent order passed u/s 263 would not be valid and accordingly, quashed the revision.

6. On the basis of above orders, it could be seen that the issue on merits in AY 2010-11 stood covered in assessee's favor wherein the rental income has finally been accepted as 'Business Income'. The issue in AY 2012-13 has also attained finality since no appeal was preferred by the department against appellate order for that year. The revisional order passed u/s 263 has already been quashed by the Tribunal. For the stated reasons, no infirmity could be found in the impugned order. Therefore, revenue's appeal stand dismissed.

7. Facts are pari-materia the same in AY 2011-12. The assessee was reassessed u/s 143(3) r.w.s. 147 on 14/11/2017 on similar lines as in AY 2009-10. The Ld. CIT(A) allowed assessee's appeal on similar lines and

directed Ld. AO to assess the rental income as 'Business Income'. Aggrieved, the revenue is in further appeal before us.

Since the fact as well as issue is pari-materia the same as in AY 2009-10, our findings as well as adjudication as contained in therein shall *mutatis-mutandis* apply to this year also. Resultantly, the appeal stand dismissed.

8. Both the appeals stands dismissed.

Order pronounced on 06th May, 2021.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 06/05/2021

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.