

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, HON'BLE VICE PRESIDENT AND**

**SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER**

**ITA No. 7859/MUM/2019  
Assessment Year: 2008-09**

M/s A.T.E. Private Limited, 43, Dr. V. B Gandhi Marg, Fort, Mumbai - 400023 PAN: AAACA4481G	<b>Vs.</b>	Deputy Commissioner of Income Tax, Circle 2 (1)(1), Aayakar Bhavan, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Hitesh Jain (AR)

Revenue by : Shri Brajendra Kumar (DR)

Date of Hearing : 26/07/2021  
Date of Pronouncement: 11/08/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

This is an appeal by the assessee against order dated 09.10.2019 of learned Commissioner of Income Tax (Appeals)-4, Mumbai for the assessment year 2008-09.

2. In the solitary ground raised, the assessee has challenged disallowance of deduction claimed towards depreciation, repairs, maintenance and rates and tax aggregating to Rs. 6,71,808/-.

3. Briefly the facts are, the assessee is a resident company engaged in the business of investment and financing activity. For the assessment year under dispute, assessee filed its return of income on 22.09.2008 declaring total income of Rs. 2,59,56,700/- under the normal provisions and book profit of Rs. 2,28,18,734/- under section 115JB of the Income Tax Act, 1961. For the sake

of completeness, we may observe, assessment in case of the assessee was originally completed under section 143(3) of the Act vide order dated 20.12.2010 determining total income at Rs. 2,88,86,358/- under the normal provisions and book profit of Rs. 3,19,84,501/- under section 115JB of the Act. Against the assessment order so passed, the assessee went in appeal before learned Commissioner (Appeals) and thereafter before the Tribunal. Vide order 12.04.2017 in ITA No. 5959/Mum/2011, the Tribunal granted relief on some issues, whereas, some other issues were restored back to the AO for fresh adjudication. In pursuance to the directions of the Tribunal, the AO passed a fresh assessment order making certain additions/disallowances. Assailing the assessment order, assessee preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) granted partial relief to the assessee by deleting the addition of Rs. 1,51,075/-, being undisclosed royalty income. Whereas, he sustained the disallowance of Rs. 6,71,808/- representing expenses related to rental income.

4. Learned Authorised Representative of the assessee submitted, the depreciation claimed of Rs. 4,45,396/- is in relation to the property used for the purpose of business. He submitted, depreciation claimed on such property has been allowed in the earlier as well as subsequent assessment years. Thus, he submitted, there is no reason for disallowing the depreciation. As regards repairs and maintenance expenses of Rs. 1,51,125/-. learned counsel submitted, the assessee has actually incurred such expenditure for repair and maintenance of the premises used for business. He submitted, all evidences relating to such expenditure was also furnished. Therefore, the disallowance of expenses alleging non-furnishing of evidences is without any basis. As regards rates and taxes of Rs. 75,281/-, he submitted, the assessee has incurred such expenses towards rates and taxes on property used for business. He submitted, similar expenditure incurred by the assessee in subsequent assessment year has been allowed. Thus, he submitted, there is no reason to disallow the expenditure in the impugned assessment year.

5. Learned Departmental Representative submitted, the assessee has not furnished any evidence in support of the expenditure claimed either before the AO or even before the learned Commissioner (Appeals). Thus, he submitted, the disallowance made should be sustained.

6. We have considered rival submissions and perused the materials on record. As regards the claim of depreciation is concerned, the departmental authorities have disallowed assessee's claim on the ground that the assessee can only be allowed the deductions from rental income as provided under the statute. However, on perusal of materials on record, we find that the property on which the assessee has claimed depreciation is different from the properties on which the assessee has received rental income. It is observed, the properties from which the assessee had declared rental income are situated at Ahmedabad and Coimbatore. Whereas, depreciation has been claimed in respect of a property at 3<sup>rd</sup> and 4<sup>th</sup> Floor V.V. Gandhi Marg, Mumbai, which according to the assessee has exclusively been used for its business. It is further observed, the depreciation claimed by the assessee on the aforesaid property has been allowed in earlier as well as subsequent assessment years. That being the case, we allow assessee's claim of depreciation.

7. As far as expenditure of Rs. 1,51,125/- is concerned, it is observed, the said expenditure has been incurred in respect of the property at Dr. V.V. Gandhi Marg, Mumbai used for assessee's business. Thus, it is not in respect of the properties from which the assessee has offered rental income. Even, the rates and taxes of Rs. 75,281/- are in respect of property other than the property from which assessee has offered rental income. Thus, in our view, the departmental authorities have disallowed the assessee's claim of deduction under misconception of facts. Further, we are also of the view that the allegation of the departmental authorities that the assessee has not furnished details/evidences in support of its claim that such expenditure relate to property which have been rented out, is incorrect. In view of the aforesaid, we are inclined to delete the disallowance of Rs. 6,71,808/-. Ground is allowed.

8. In the result, appeal is allowed.

Order pronounced in the open court on 11<sup>th</sup> August, 2021.

Sd/-  
(PRAMOD KUMAR)  
VICE PRESIDENT

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 11/08/2021

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai