

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
(THROUGH VIDEO CONFERENCING)**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 6564/Del/2017
Asstt. Year : 2014-15

ACIT, Circle – 3 (1). New Delhi.	Vs.	Arham IT Infrastructure Pvt. Ltd. H-334, Ground Floor, New Rajendra Nagar, New Delhi – 110 060 PAN AAACA7413Q
(Appellant)		(Respondent)

Department by:	Shri Satpal Gulati, CIT(DR)
Assessee by :	Shri Sahil Agarwal, CA
Date of Hearing	20/09/2021
Date of pronouncement	23/09/2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the department against order dated 9.8.2017 passed by the Ld. Commissioner of Income Tax (Appeals)- I, New Delhi and pertains to assessment year 2014-15.

2.0 The brief facts of the case are that the assessee owns a building at EFGH Sector -126, Noida, Uttar Pradesh and it had

received rent and common area maintenance charges during the year under consideration. The return of income was filed declaring a total income of Rs. 7,53,89,757/-and the assessment was completed at an income of Rs. 9,61,78,829 after making an addition of Rs. 2,09,41,942/- on account of common area maintenance charges and further addition of Rs. 6,47,130/- on account of lease rental paid to NOIDA authority.

3.0 Aggrieved, the assessee approached the Ld. First Appellate Authority who deleted both the additions and decided the appeal in favour of assessee. Aggrieved, the department has now approached this Tribunal and has challenged the deletion by the Ld. CIT(A) by raising the following grounds of appeal :-

- 1. "The Ld. CIT (A) erred in directing the AO to treat Rs. 2,01,41,942/- being common area maintenance charges as business income instead of Income from House Property as held by the AO.*
- 2. The Ld. CIT (A) erred in law and on facts in directing the AO to allow lease rental of Rs. 6,47,130/- paid to Noida Authority in respect of property as revenue expenditure.*
- 3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

4.0 At the outset, the Ld. AR submitted that the captioned appeal filed by the revenue was fully covered against the revenue and in favour of the assessee by order of this Tribunal in assessee's own case for assessment year 2013-14 vide order dated 27.7.2021 in ITA No. 5300/Del/2006. A copy of the said

order was placed before us and it was submitted that during the year under consideration, the Assessing Officer (AO) had made the additions treating income from business and profession with regard to common area maintenance as income from house property by following the reasoning laid down in the assessment order for the preceding assessment year i.e. assessment year 2013-14. It was further submitted that this assessment order for assessment year 2013-14 was the subject matter of appeal before the Ld. CIT(A) who allowed the assessee's appeal and, subsequently, the department's appeal in assessment year 2013-14 was dismissed by this Tribunal upholding common area maintenance charges to be assessable under the head "income from business". The Ld. AR further submitted that the assessee's appeal before the Ld. CIT(A) for the captioned assessment year was allowed by following the first appellate order for assessment year 2013-14. It was submitted that since the issue is covered in favour of the assessee and against the department the appeal of the department should be dismissed.

5.0 Per contra, the Ld. Sr. DR placed reliance on the order of assessment.

6.0 We have heard the rival submissions and have also perused the material on record. We agree with the contention of the Ld. AR that the issues raised by the department in the present appeal stand decided against the revenue are in favour of the assessee by the order of this Tribunal in the immediately preceding assessment year i.e. assessment year 2013-14 vide

order dated 27.7.2021 in ITA No. 5300/Del/2016. The relevant observations and conclusion arrived at by the Coordinate Bench of this Tribunal in assessment year 2013-14 are being reproduced here-in-under for a ready reference :-

“13. We have given thoughtful consideration to the orders of the authorities below and have also considered the judicial decisions relied upon by both the parties. It is not in dispute that the appellant had agreement with the tenants and in such agreement, there was specific clause in respect of common area maintenance charges and in the agreement it has been specifically mentioned that maintenance charges shall be payable from rent commencement date.

14. In all the cases relied upon by the Assessing Officer/Id. DR, none of the cases had such agreement for maintenance of common area and providing other facilities. In none of the cases relied upon by the Id. DR, no separate expenses were incurred by any of the landlord and none of the cases had mixed income like income from house property and business and profession.

15. The Hon'ble High Court of Delhi in the case of Abhishek Govil ITA No. 19/2016 and ITA 21/2016 has held that contractual receipt received by the assessee, being owner of house property, after deducting TDS pursuant to maintenance agreement cannot be treated as rental income in the hands of the assessee.

16. In this case also, the assessee claimed that receipts on account of rent as well as maintenance charges were liable to be

taxed under the head 'Income from house property'. The Assessing Officer rejected the claim of the assessee to treat the receipts on account of maintenance agreement as rental income and taxed the same under the head 'Income from other sources'. In the case in hand the assessee is showing receipt as 'Business income'.

17. The Hon'ble High Court of Bombay in the case of Runwal Developers Pvt Ltd 115 Taxmann.com 196 has held that maintenance charges received were towards maintenance and promotion of common area and the amounts received towards maintenance charges were business receipts liable to be assessed under the head 'Income from business'.

18. The Hon'ble Supreme Court in the case of Karnani Properties 82 ITR 547 has held that services rendered by the assessee to its tenants were result of its activities carried on continuously in an organized manner with a set purpose and with a view to earn profit and hence those activities were business activities and income arising therefrom was assessable as 'business income'.

19. Considering the totality of the facts in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the findings of the Id. CIT(A). Both the grounds taken by the Revenue are accordingly dismissed."

7.0 Accordingly, in view of the above and respectfully following the order of the Coordinate Bench in assessee's own case for the

immediately preceding assessment year, on identical set of facts, we dismiss the grounds raised by the department.

8.0 In the final result the appeal of the department stands dismissed.

Order pronounced on 23rd September, 2021.

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 23 / 09 /2021

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi