

आयकर अपीलीय अधिकरण “एफ ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJEET SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

1. आयकरअपील सं./ I.T.A. No.6315/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)
- &
2. आयकरअपील सं./ I.T.A. No.4944/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Trent Hypermarket Private Ltd. (Successor to M/s Virtuous Shopping Centre Ltd.) 26 th Floor, Lodha Excelus New Cuffe Parade Wadala, Mumbai -400037	बनाम/ Vs.	ITO 1(3)(4), Aayakar Bhavan M. K. Road Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AACCT-9803-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

3. आयकरअपील सं./ I.T.A. No.5283/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

ITO 1(3)(4), Aayakar Bhavan M. K. Road, Mumbai-400 020	बनाम/ Vs.	Trent Hypermarket Private Ltd. (Successor to M/s Virtuous Shopping Centre Ltd.) 26 th Floor, Lodha Excelus New Cuffe Parade Wadala, Mumbai -400037
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AACCT-9803-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Nitesh Joshi– Ld. AR
Revenue by	:	Ms. Usha Gaikwad– Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	19/07/2021
घोषणा की तारीख / Date of Pronouncement	:	08/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 The assessee is in further appeal for Assessment Years 2012-13 & 2013-14 whereas revenue is in appeal for AY 2013-14. The issues, in both the years, are identical and it is admitted position that adjudication in any one year shall apply to the other year also.

1.2 The erstwhile assessee namely M/s Virtuous Shopping Centre Ltd. is stated to have merged with M/s Trent Hypermarket Private Limited and accordingly, the assessee has filed revised Form No.36 reflecting aforesaid changes. Finding the same in order, we proceed with adjudication of the appeals.

1.3 The assessee's appeal for AY 2012-13 arises out of the order of learned Commissioner of Income-Tax (Appeals)-3, Mumbai [CIT(A)] dated 16/08/2016 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) of the Act on 30/03/2015. The grounds raised by the assessee read as under: -

1) Assessing business receipt under income from other sources as against Profits & gains from business or profession.

The Ld. CIT (A) erred in confirming Assessing Officer [A.O.] order in assessing business receipt of Rs.145 Lacs under Income from other sources as against the profits & gains from business or profession.

2) Assessing interest income & related interest expenses under income from other sources as against profits & gains from business or profession

The Ld. CIT(A) erred in confirming AO's order, in treating the interest income amounting to Rs.217.87 Lacs and related interest expenses amounting to Rs.220.02 Lacs under Income from other sources as against profits & gains from business or profession.

3) Disallowance of salary, depreciation & other expenses.

The Ld. CIT(A) erred in confirming AO's order in disallowing salary, depreciation & other expenses amounting to Rs.144 Lacs.

As evident, the assessee is aggrieved by the fact that business receipts & interest income were assessed under the head Income from other sources and consequently, business expenses were disallowed.

1.4 The Ld. AR, drawing attention to various documents as placed in the paper-book, advanced arguments to assail the stand of lower authorities. The synopsis of submissions has also been filed which has duly been considered by us. The Ld. DR, on the other hand, supported the orders of lower authorities and submitted that impugned order would not require any interference on our part.

1.5 We have carefully heard the rival submissions and perused relevant material on record. We have also deliberated upon various judicial pronouncements as cited during the course of hearing. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

Assessment Proceedings

2.1 The material facts are that the erstwhile assessee M/s Virtuous Shopping Centre Ltd., as noted by Ld. AO, was stated to be engaged in retail business of lifestyle products, grocery, fruits & vegetables, apparels, books, music, household appliances & other merchandises. The assessee had 100% subsidiary namely M/s Commonwealth Developers Private Ltd. (CDPL). During the year, the assessee received development management fees from CDPL and offered the same as business income. It also earned interest on loans granted to M/s CDPL which were also offered as Business Receipts. Though the assessee submitted relevant agreement with M/s CDPL, however, it was noted that the agreement was signed by the assessee only on first page and the same was without date & without proper identification etc. The same

prompted Ld. AO to issue notice u/s 133(6) to M/s CDPL requiring it to confirm the transactions along with documentary evidences. The agreement as supplied by M/s CDPL was found to be similarly deficient. Accordingly, the assessee was show-caused as to why the management fees be not treated as unexplained income taxable under the head Income from other sources as against business receipts shown by the assessee. In the absence of any business activity, the assessee was also directed to justify allowability of various expenses debited in Profit & Loss Account. The Ld. AO also demanded the details of personnel etc. employed by the assessee to carry out business activities.

2.2 In defense, the assessee submitted that the agreement has been signed and accepted by both the entities and pursuant to same, the invoices were also raised by the assessee against M/s CDPL. The payment was received through banking channels after compliance with Tax Deduction at Source (TDS) provisions. If both parties acted in agreement and subsequent events corroborate it, then this would not invalidate the agreement. The attention was drawn to reply of M/s CDPL regarding selection criteria adopted for engaging the assessee company. The employee details, note on selection criteria of Mr. Peter Young who was stated to have carried out the services on behalf of the assessee, his work experience and prior working details, copy of appointment letter and job agreement with salary details etc. was also furnished as demanded by Ld. AO. Mr. Peter Young was stated to be key person who undertook / executed the job on behalf of the assessee.

2.3 The attention was drawn to assessee's main object as mentioned in the Memorandum of Association. The main object would, inter-alia, include to carry on the business of developing real estate for the purpose

of commercial, industrial or residential use and other immovable properties and act as realtors, builders, contractors, designers, architects, consultants, developers, construction managers of all types of real estate development. Pursuant to main objects, the assessee acquired M/s CDPL who was the owner of a mall in the name of Pride Mall. The assessee also filed documents in support of the fact that various expenditures were incurred for business purposes only and therefore, the same were allowable deduction. The perusal of financial statements would show that the assessee had earned fees of Rs.145 Lacs along with interest income of Rs.217.87 Lacs as received from M/s CDPL @10% on loans granted by the assessee. As against the same, the assessee incurred employee cost of Rs.130.36 Lacs, finance cost of Rs.220.02 Lacs & other expenses for Rs.14.07 Lacs.

2.4 The assessee further explained that in the year 2011-12, pride mall project was in initial phase. In initial phase, Mr. Peter Young rendered services such as preparing business plans, carry out financial feasibility of project, appointment & selection of vendors for various services and appraise board from time to time on various development of the project. In support, the invoices raised by various vendors were also furnished.

2.5 However, Ld. AO observed that the agreement was deficient. Upon perusal of documents, it was observed that certain amount being paid to Mr. Peter Young was being paid by some other entity. The break-up of salary paid to Mr. Peter Young would show that the variable component i.e. Key Result Area does not provide any specifics services provided or the objects achieved. The reply of the assessee as well as M/s CDPL did not provide any specific details of the services rendered. The perusal of financial statements of M/s CDPL revealed that there was hardly any

addition to the project except payment of development management fees and interest on loan as payable to the assessee. Various deficiencies were also noted in the invoices issued by the vendor. Therefore, it was concluded that the fees did not have the characteristics of business transactions and could not be considered as business receipts. Since the assessee could not show correlation of expenses for earning of such income, the same would not be allowable deduction against the same except ROC fees and Audit fees which were required for continuity of the assessee.

2.6 Regarding interest income, it was observed that the assessee was neither a banking company nor NBFC and therefore it could not undertake interest earning as business activity. Therefore, the difference of interest receipts of Rs.217.87 lacs and finance cost of Rs.220.02 Lacs which amount to net (-) Rs.3.85 Lacs was to be taxed under the head income from other sources.

Appellate Proceedings

3. During appellate proceedings, the assessee did not appear before Ld. CIT(A) but merely relied upon written submissions which were considered while passing the impugned order. The Ld. CIT(A), after going through the same, observed that no new evidences could be furnished by the assessee with respect to various claims and therefore, the action of Ld. AO was confirmed. Aggrieved, the assessee is in further appeal before us.

Our findings & Adjudication

4.1 Upon perusal of orders of lower authorities as well as documents on record, it could be gathered that the main object of the assessee (as per Memorandum of Association; Page nos. 103 to 154 of Paper Book)

was, inert-alia, to develop real estate for the purpose of commercial, industrial or residential use and other immovable properties and act as realtors, builders, contractors, designers, architects, consultants, developers, construction managers of all types of real estate development. Pursuant to the main objects, the assessee acquired M/s CDPL who became 100% subsidiary of the assessee. M/s CDPL was engaged in developing a mall i.e. Pride Mall at Pune. For the same, the assessee was appointed for providing development management services w.e.f. 01/09/2011 in respect of the said project and an agreement was entered into with CDPL (page nos. 99 to 102 of Paper Book). To render the services, the assessee had employed Mr. Peter Young who was stated to have expertise in managing development of malls and commercial complexes. The same is evident from the agreement between the assessee and Mr. Peter Young which enumerates the period of agreement, scope of work, working conditions and compensation package etc. (Page nos. 91 to 98 of the Paper Book). The selection criteria of Mr. Peter Young and key results area were already furnished to Ld. AO during the course of assessment proceedings. Pursuant to development management agreement, the assessee raised invoices on CDPL from time to time and received the payment after deduction of tax at source. M/s CDPL confirmed the transactions in response to notice u/s 133(6). All these facts as well as documentary evidences bolster the claim of the assessee that it has provided management services to M/s CDPL. Merely because there were deficiency in the agreement would not invalidate the agreement since both the parties have acted on the terms of the agreement for which sufficient documentary evidences have been filed by the assessee

before lower authorities. Therefore, the lower authorities, in our considered opinion, were not justified in doubting the business receipts of the assessee and assess the same as Income from other sources as unexplained income. We order so. Ground No.1 of the appeal stand allowed.

4.2 So far as the assessment of interest income is concerned, we find that the funds have been advanced by the assessee to its wholly owned subsidiary for the purpose of business. The project being carried out by M/s CDPL was in line with the main object of the assessee. It could also be seen that the loans have been funded out of the proceeds of the debentures issued by the assessee during the year. Therefore, interest income was rightly offered as Business Income by the assessee. Consequently, interest expenditure would be allowable business expenditure. Ground No.2 of the appeal stand allowed.

4.3 In ground no.3, the assessee is aggrieved by disallowance of various business expenditure as claimed in the Profit & Loss Account. Since, we have held the management fees and interest income as Business income and negated the stand of lower authorities that there was no business activity, these expenditure would be allowable as business expenses. The Ld. AO is directed to verify the same and allow deduction thereof. Ground No.3 stand allowed for statistical purposes.

4.4 The appeal stand allowed in terms of our above order.

Cross-Appeals for AY 2013-14

5. Facts as well as issues are substantially the same in this year. While framing assessment u/s 143(3) on 11/03/2016, Ld. AO assessed the business receipts as well as interest income as Income from other sources and disallowed various business expenses claimed by the

assessee. The Ld. CIT(A) confirmed the stand of Ld. AO except to the extent that Ld. AO was directed to allow all expenditure which was necessary to earn the income from other sources. Aggrieved, the assessee as well as the revenue is in further appeal before us.

6. Facts being pari-materia the same as in AY 2012-13, our adjudication as contained therein shall *mutatis mutandis* apply to this year also. In other words, business receipts as well as interest income would be assessable as Business Income. The deduction of business expenditure shall be allowed to the assessee subject to verification by Ld. AO. The assessee's appeal stand allowed. The revenue's appeal stand dismissed.

Conclusion

7. Both the appeals of the assessee stand allowed whereas the appeal of revenue stand dismissed.

Order pronounced on 8th October, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08/10/2021
Sr.PS, Dhananjay

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

M/s Trent Hypermarket Private Ltd.
Assessment Years: 2012-13 & 2013-14
आदेशानुसार/ BY ORDER,

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