

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.4358/Del/2018
Assessment Year : 2013-14**

National Housing Bank, Core-5 A, India Habitat Centre, Lodhi Road, New Delhi-110003. PAN-AABCN2600H	vs	ACIT, Circle-26(2), New Delhi
APPELLANT		RESPONDENT
Appellant by	Sh. Kamal Bansal, Adv.	
Respondent by	Sh. Gourav Pundir, Sr.DR	
Date of Hearing	07.10.2021	
Date of Pronouncement	21.10.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2013-14 is directed against the order of Ld. CIT(A)-22, New Delhi dated 13.03.2018. The assessee has raised following ground of appeal:-

1. *“That the Ld. CIT(Appeal), New Delhi has erred both on law as well as on facts, while affirming disallowance of depreciation of Rs.33,98,755/- made by Assessing Officer being part of depreciation claimed by the assessee on account of office premises at India Habitat Centre. The notes to accounts brought out the fact that the title deeds in respect of the office premises have yet to be executed. The bank has claimed depreciation at the applicable rates as per Income Tax Rules on the amount paid as cost of premises.*

That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.”

2. The solitary grounds of the assessee is against the confirming of disallowance of depreciation of Rs.33,98,755/-.

3. Facts giving rise to the present appeal are that the assessee had filed return declaring total income of Rs.6,44,17,60,620/- on 30.09.2013 through electronic mode. The case of the assessee was selected for scrutiny under CASS. Thereafter, the Assessing Officer proceeded to make assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act"). Thereby, the Assessing Officer by invoking the provision of section 14A of the Act, made disallowance of Rs.1,90,72,214/- and further made addition of Rs.33,98,755/- on account of disallowance of depreciation.

4. Aggrieved against this, the assessee preferred appeal before Ld. CIT(A) who after considering the submissions, partly allowed the appeal. Thereby, Ld.CIT(A) deleted the disallowance made by invoking the provision of section 14A of the Act. However, the addition in respect of disallowance of depreciation was sustained.

5. Aggrieved against this, the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the earlier decision of the Tribunal in ITA Nos. 536 & 6888/Del/2014 vide order dated 28.03.2019.

7. Ld. Sr. DR fairly conceded the fact that the issue is squarely covered in favour of the assessee by the decision of the Tribunal.

8. We have heard the rival contentions and perused the material available on record. We find that the Assessing Officer in para 4.3 of the assessment

order has followed earlier years decision of their respective predecessors by observing as under:-

4.3. *“The reply of the assessee has been duly considered but it is found not to be acceptable. The assessee company has not given the bifurcation of depreciation of land and building and claimed the depreciation on entire value of premises, thus, the disallowance of depreciation is made accordingly as per last year's assessment order for A.Y 2012-13 made by the AO and on the similar lines, the disallowance of depreciation of Rs.33,98,755/- is made and added to assessee's total income.”*

(Addition of Rs.33,98,755/-)

9. We also find that the Ld.CIT(A) in paras 6.3 & 6.4 of the impugned order has followed earlier years decision of their respective predecessors by observing as under:-

6.3. *“The issue came up for A.Y. 2012-13 as well and the Ld. CIT(A) uphold the addition made by the AO. The decision of CIT(A) for A.Y. 12-13 is based on a decision of his predecessor CIT(A) for A.Y. 11-12 in which a detailed discussion has been made. The Ld. CIT(A) while deciding the appeal for A.Y. 11-12 vide order dated 12.09.2014 held as under:-*

“The issue in respect of segregation of the purchase consideration of the property into two, land and building vis-a-vis consequential working of deprecation. The appellant also admitted that the seller/HC has not segregated the cost amongst building and land. It is hereby held that the appellant's case is squarely covered by the decision in the case of Alps Theatre (Supra). In view of the ratio laid down in this decision, alps theater, I am of the considered view that the word ‘Building’ does not include land beneath it. Therefore, the AO, in principle, is held justified in segregating the purchase consideration of the above mentioned property into two: land and building vis-a-vis consequential working of the deprecation on the WDV of the block of asset, Building (50% of the

cost of the premises is treated to belong to land.] resulting consequential disallowance of depreciation of Rs.40,44,605/ -. Accordingly, the disallowance of depreciation Rs. 40,44,605/- is sustained. "

6.4 After going through the order of the AO submission of the appellant and order of my predecessor. I uphold the addition made by the AO. However, the AO is directed to compute the figure of disallowance as per the decision of Ld. CIT(A) for A.Y. 2012-13. Hence, the ground of appeal is dismissed."

10. We find that the decision of Ld.CIT(A) was over-turned by the Tribunal by holding as under:-

26. "Ld.AR for the assessee contended that in the absence of any segregation of value of land, deprecation has been claimed on the basis of total cost paid to India Habitat Centre because land is also leasehold being subject to amortization and effectively the total cost paid for the premises will be considered for amount of depreciation. Ld.AR relied upon the decision rendered by the Coordinate Bench of the Tribunal in CIT vs Rajesh Exports Ltd. (2006) 9 SOT 28 (Bang.) which has further than relied upon by the Co-ordinate Bench of the Tribunal in case of ITO vs Millennium Spire India management (P)Ltd. ITA No.3297/Del/2013.

27. Operative part of the aforesaid decisions rendered by the Coordinate bench of the Tribunal in CIT vs Rajesh Exports Ltd. (supra) is extracted for ready perusal as under:-

"Under section 32(1) of the Act, the word "building" is to be interpreted as the superstructure and not land. Where the assessee purchases building and the purchase price (as per sale deed) is a composite one (sale deed does not indicate the prices of land and building separately), then no distinction at least in the consideration paid to the vendor can be made. However, if there is a clear-cut identity in respect of price paid to the land and building (i.e., sale deed indicates price of land and building separately),

then Assessing Officer is right in allowing depreciation only on the building.”

28. *In this case also, when the assessee bank does not have any segregation value of land and building of the said premises and it has paid composite price, the entire depreciation claim is allowable under section 32 of the Act. So, following the aforesaid decision rendered by the Co-ordinate Bench of the Tribunal in CIT vs Rajesh Exports Ltd. (supra), and when it is categoric case of the assessee that the purchase price of land and building is composite one and it has no segregation of value of land and building separately, disallowance made by the Assessing Officer/CIT(A) is not sustainable in the eyes of law. SO, Ground No.5 to 8 of ITA no.6888/Del/2014 (Assessment Year 2011-12) of assessee’s appeal is determined in favour of the assessee.”*

11. The Revenue has not brought to our notice any other contrary binding precedents to our notice. Therefore, respectfully following the decision of the Co-ordinate Bench in ITA No.6888/Del/2014 (supra), we hereby direct the Assessing Officer to delete the addition.

12. In the result, appeal of the assessee is allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 21st October, 2021.

Sd/-

(O.P.KANT)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI