

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5222/Del/2018
Assessment Year: 2014-15**

ACIT, Circle 21(2),
New Delhi.

vs. Ruchi Malls Pvt. Ltd.,
806, Meghdoot, 94, Nehru Place
New Delhi

PAN : AADCR1749P
(Appellant)

(Respondent)

Appellant by : Sh. T. Kipgen, CIT/DR
Respondent by: Sh. Sanjeev Sapra, FCA

Date of hearing: 17.11.2021

Date of order : 08.12.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 03.05.2018 passed by the learned Commissioner of Income Tax (Appeals)-XXV, New Delhi ("Ld. CIT(A)") for the assessment year 2014-15 in the case of Ruchi Malls Pvt. Ltd ("the assessee"), Revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of construction, leasing operating and maintaining a mixed used Mall by the name of Ahmedabad One in Gujrat, which they have leased out to various tenants and earning rental income as well as

income from other sources in the shape of infrastructure support serviced by providing certain services to them. For the assessment year 2014-15, they have filed their return of income on 30.09.2014 declaring a loss of Rs.5,57,64,309/-. By order dated 29.12.2016 u/s. 143(3) of the Income-tax Act, 1961 (for short "the Act"), Id. Assessing Officer held the income offered from infrastructure support services as income from house property instead of treating it as profits and gains from business or profession and assessed the total loss at Rs.2,78,73,214/-. When the assessee preferred appeal, Id. CIT(A), considered the submissions of the assessee and held it as profits and gains from business or profession. Revenue, aggrieved by such finding of the Id. CIT(A) which resulted in deletion of addition made by the Assessing Officer, preferred this appeal, stating that the assessee was only engaged in the leasing and renting of malls and income there from has to be assessed as income from house property and not as profits and gains from business or profession merely because there was artificial bifurcation of the receipts under two heads. Revenue also challenges the consequential deletion of the addition made on account of interest expenses, depreciation and other expenses.

3. By placing reliance on the assessment order, Id. DR submitted that the income from infrastructure support services cannot be treated as business income, inasmuch as no services were provided to the tenants and as a matter of fact, for the use of equipments, fixtures, escalators, Air Conditioners etc. the receipt amounts to rent because without these equipments, the lease will not be meaningful. According to the Id. DR, there is no reason for the assessee to book the revenue under license fee instead of lease and rent. According to the Id. AR, the assessee has not

provided any services to its tenants and the services, if any, are provided by third party to whom separate payments were made by the tenants. For these reasons, Id. DR submitted that the Id. CIT(A) erred in treating the revenue from infrastructure support services as profit and gains from business or profession and therefore, it need to be reversed.

4. Submissions of the Id. AR on this aspect are two-fold. In so far as the merit is concerned, he submits that the assessee is free to arrange their business to enter into different agreements for different purposes and as much as the assessee entered one agreement for letting out the demised premises and another for services for hiring of equipments, it is not open for the Assessing Officer to go beyond the agreements and to say that there will not be any meaningful letting out of the property without equipments and therefore, the entire revenue has to be taken under the head "income from house property. The second stream of arguments of the Id. AR is that for the assessment years 2011-12 and 2012-13, Id. Assessing Officer accepted the revenue from infrastructure support services as profit and gains from business or profession whereas for the assessment year 2015-16, Id. CIT(A) by order dated 13.09.2018 held that such an income from infrastructure support services has to be taxed under the head "profits and gains from business or profession", not as income from house property. He submitted that when the matter was carried before the Tribunal in appeal by the Revenue, the Tribunal dismissed the appeal by order dated 28.01.2019 on account of low tax effect. Apart from this, he places reliance on the decision of coordinate Bench of this Tribunal in the case of Chander Nagar Chemicals and Minerals Pvt. Ltd. vs. ITO (ITA No. 2070 & 3072/Del/2017) by order dated

07.09.2020 wherein, it was clearly held that that the assessee is free to arrange their business affairs and when once, the tenants took the demised premises subject to the lease agreement and also agreed to pay for the infrastructure support services separately, the Revenue shall not have any grievance against such an arrangement on the ground that without equipments, fixtures, escalators, Air conditioning so on and so forth, the lease is meaningless.

5. We have gone through the record in the light of the submissions made on either side. In so far as the existence of two agreements is concerned, absolutely, there is no dispute. It is also not in dispute that for the assessment year 2011-12, 2012-13 and 2015-16 also, the assessee offered the receipts under the two streams, namely, rental income earned from leasing out the space within the mall to the tenants and offering the same under the head 'income from house property' and the other is income from business activities of maintaining, operating and providing equipments essential for operation of mall, i.e., infrastructure support services under the head 'profit and gain from business or profession'. It is also not in dispute that for the assessment year 2011-12 and 2012-13, by order dated 16.12.2015 and 18.02.2015, the Assessing Officer accepted the same; whereas for the assessment year 2015-16, Id. CIT(A) in first appeal granted relief to the assessee by holding that the income from infrastructure support services is taxable under the head 'profits and gains from business or profession' and not under the head 'income from house property'.

6. Further, in ITA No. 2070 and 3072/Del/2017 for the assessment year 2010-11 in the case of Chander Nagar Chemicals and Minerals Pvt. Ltd. (supra), a coordinate Bench held as follows :

“12. Now the question is whether the assessee is free to arrange their business and to enter into an agreement separately one for letting out the demised premises and another for the services and hiring of the equipment. Equipment may be inseparable from the building, but the Revenue cannot force the assessee to provide any services or to hire the equipment along with letting out the property. It is always open for the assessee not to provide the services or not to hire the equipment, while letting out the demised premises. Whether or not such services could be provided or the equipment could be hired independently, is the prerogative of the assessee and the lessee. When it is possible for the assessee to provide or not the services and to hire or not the equipment, then it is equally the prerogative of the assessee to provide them at a separate cost. Revenue cannot force the assessee to enter into any agreement in any particular form, but at the best, the Revenue can probe into the genuineness of the transaction or the correctness of the quantum of expenditure. Revenue cannot prevent the assessee from entering into separate agreements. At best Revenue can verify the quantum of expenditure claimed by the assessee in respect of the services provided or the expenditure related to the hired equipment.

13. When the assessee had chosen to bifurcate the transaction and to charge separately towards the rent of the demised premises and for the services provided and hire charges, in our considered opinion the Revenue cannot prevent the same on the ground that such process would result in loss to the Revenue. In the circumstances, we hold that the action of the authorities below not to permit the assessee to arrange their business in the way which is beneficial to them, within the permissible limits of law, is impermissible. Then it goes without saying that the assessee is entitled to claim the business expenses in respect of the income from the services provided and hiring of equipment, and statutory deductions under section 24 (a) of the Act insofar as the income from the house property is concerned. With this view of the matter, we direct the learned Assessing Officer to allow the statutory deduction under section 24 (a) of the Act also and the interest incurred in respect of the house property.”

7. In view of this factual and legal position, we are of the considered opinion that the order of the Id. CIT(A) does not suffer from any illegality or irregularity and needs to be upheld. Consequently, ground No. 1 of Revenue's appeal is dismissed.

8. Ground No. 2 of Revenue's appeal is consequence to the findings on ground No. 1 and it relates to the treatment of interest expense, depreciation and other expenses as business expenses instead of treating them under the head 'income from house property'. Inasmuch as we held in ground No.1 that the receipt from infrastructure support services has to be taxed under the head 'profits and gains from business or profession' but not as income from house property, this ground becomes academic and held in favour of the assessee. Consequently, this ground too is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 8th day of December, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 08/12/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER