

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No.1055/Mum/2020

(निर्धारण वर्ष / Assessment Year:2016-17)

M/s. Sea Scan Marine Services Pvt. Ltd. Plot No. L-47 A, B, C, Phase II E, Verna IDC, Goa-403722.	बनाम/ Vs.	ACIT, Central Circle-2(3) 803, Pratihtha Bhavan, Old CGO Building, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AADCS4236J		
(अपीलार्थी /Appellant)	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Neha Sharma (AR)
Revenue by:	Ms. Amrita Singh (DR)

सुनवाई की तारीख / Date of Hearing: 30/08/2021

घोषणा की तारीख /Date of Pronouncement: 18/11/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 13.12.2019 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2016-17.

2. The assessee has raised the following grounds: -

“1. In the facts and circumstances of the case and in law, the lower authorities erred in treating the rental income of the appellant as ‘business income’ and consequently, in disallowing the deduction of Rs.43,20,030/- claim under section 24(a) of the Act.



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2. *In the facts and circumstances of the case and in law, the lower authorities erred in not complying with the CBDT Instruction No.5/2016 dated 14.07.2016, which lays down the procedure for the conversion of 'limited scrutiny' cases to a complete scrutiny.*

The appellant craves leave to add, alter, amplify, modify or delete all or any of the aforesaid grounds at or before the hearing."

3. The brief facts of the case are that the assessee filed its return of income on 14.10.2016 declaring total income to the tune of Rs.51,98,160/- for the A.Y.2016-17. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny under CASS. The case was selected for scrutiny on following grounds: -

"(i). Mismatch between income/receipt credited to profit and loss account considered under other heads of income and income from heads of income other than business/profession.

(ii) Large business loss set off against other heads of income."

Thereafter, the notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is a private limited company engaged in the business of boat pleasure cruising, commission income and renting of premises during the year under consideration. The assessee company has shown the income under the heads of income from house property. The assessee has shown the income from the house property at Rs.1,44,00,100/- and also claimed the deduction u/s 24(a) of the Income Tax Act 1961 @ 30% at Rs.43,20,030/-. The assessee offered the income from house



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property to the tune of Rs.1,00,80,070/-. The assessee was claiming the income from house property during the year under consideration 2010-11. It was also noticed that the claim of assessee was disallowed in the previous year. The assessee filed the claim before the CIT(A) for the A.Y.2013-14 & 2014-15 which was declined by CIT(A). Thereafter, the notice was given as to why the said income should not be treated as business income instead of as income from house property. After the reply of the assessee, the said income was treated as business income. The assessee filed appeal before the CIT(A) and the CIT(A) vide order dated 13.12.2019 affirmed the finding of the AO, therefore, the assessee has filed the present appeal before us.

6. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The only issue is in connection with the treatment of income from house property or income from business on account of leasing property of the assessee. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of Hon'ble ITAT in the assessee's own case for the A.Y.2009-10 & 2014-15 bearing ITA. No.6368 & 6369/Mum/2017 dated 10.02.2020. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT bearing ITA. No.6368 & 6369/Mum/2017 dated 10.02.2020 on record which is hereby reproduced as under: -

"11. Considered the rival submissions and material placed on record. We notice that due to change in government policy on running of maritime training facility, the assessee was forced to let go its business to its sister concern, a non-profit section 25 company. It is fact that assessee will never



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in the near future can run the training facility. We notice that as far as this fact is concerned, there is no dispute. The objection and observation expressed by Ld. CIT(A) is towards the details which the assessee failed to submit on the depreciation, which the assessee claimed over the years before transferring the facility to its sister concern. What is relevant is the nature of transaction and claim under Income Tax Act. In the given case, the assessee had a facility and which assessee cannot utilize the same for its business purposes. It is forced on the assessee to transfer the same to a non-profit organization. In this situation, assessee can only sell the same or let the facility be given on rent. It has selected the second option. As per the nature of transaction, it falls under the head income from house property.

12. The tax authorities have apprehension that assessee may claim additional benefit by claiming regular depreciation for the same assets under block of assets and also deduction u/s 24(a) of the Act. We do agree with the tax authorities considering the fact that assessee could not bring on record the details of assets, which are given on rent. It comes down to find the same. We, in our opinion, assessee should be given one more opportunity to substantiate and submit the details of assets, which was given on rent and a declaration that it is not claiming any additional depreciation. Therefore, we are remitting this issue back to the file of AO to ascertain the details from the assessee. If the assessee fails to substantiate the details, then AO may disallow the depreciation of the relevant block of assets, which was let out. It may include other assets also, it is the responsibility of the assessee to come clear and we direct AO to allow the claim u/s 24(a) of the Act. It is needless to say that assessee may be given proper opportunity of being heard. Accordingly, ground raised by the assessee is allowed for statistical purposes.

13. The other appeal of assessee in ITA number 6369/Mumbai/2017, the facts in this appeal are similar to the facts in ITA number



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6368/Mumbai/2017, therefore, the grounds raised in this appeal are also allowed for statistical purposes.”

7. By honoring the decision of Hon’ble ITAT Mumbai Bench in the assessee’s own case bearing ITA. No.6368 & 6369/Mum/2017 dated 10.02.2020, we set aside the finding of the CIT(A) on this issue and restore the issue before the AO to decide the matter of controversy afresh on similar lines as held in the assessee’s own case bearing ITA. No.6368 & 6369/Mum/2017 dated 10.02.2020 and accordingly we decide the issue in favour of the assessee against the revenue. So far as the additional evidence is concerned, we are of the view that same is also liable to be looked into in accordance with law. Needless to say that an opportunity of being heard is liable to be given to the assessee in accordance with law.

8. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 18/11/2021

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 18/11/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की 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//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai