

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before
Shri Vijay Pal Rao, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA No.1748/Hyd/2019		
Assessment Year: 2014-15		
The Asst. Commissioner of Income Tax, Circle – 11(1), Hyderabad.	Vs.	M/s. Vijay Tiles & Cement Products, Plot No.6-11, Kukatpally, Hyderabad – 500072. PAN : AAGFV3841A
(Appellant)		(Respondent)
Assessee by: Shri A.V. Raghuram		
Revenue by: Shri Sunil Goutham		
Date of hearing: 10/11/2021		
Date of pronouncement: 06/01/2022		

ORDER

Per A. Mohan Alankamony, A.M.

This appeal is filed by the Revenue against the order of learned Commissioner of Income Tax(Appeals) – 9, Hyderabad dt.29.08.2019 in ITA No10085/CIT(A)-9/Hyd/2018-19 passed u/s 143(3) r.w.s. 250(6) of the Income Tax Act, 1961 (hereinafter referred as “the Act”).

2. The Revenue has raised five grounds in this appeal, and they are extracted hereinbelow :

“1. The Learned CIT(A) erred in allowing the appeal of the assessee both on the facts and law contrary to the provisions of the Income Tax Act.

2. The Learned CIT(A) erred in taking reliance on the decision of the Hon'ble Supreme Court in the case J.K. Chartable Trust (308 ITR 161) and Radhasoami Satsang (193 ITR 321) when the facts and circumstances are different from the instant case.

3. The Learned CIT(A) erred in not appreciating the fact that the Assessing Officer has correctly assessed the income of the assessee under the appropriate head of income.

4. The Learned CIT(A) erred in not considering the facts and circumstances of the case Failure on the part of the Assessing Officer to notice certain anomalies in the return of income filed by the assessee for some years does not come under the purview of law of consistency. Had it been so, it would make the assessee eligible to claim all his mistakes, intentional or unintentional, to carry forward as his entitlement under the law of consistency.

5. Any other ground(s) that may be urged at the time of hearing.

3. The brief facts of the case are that the assessee is a firm engaged in business filed its return of income for the A.Y. 2014-15 on 08.11.2014 admitting loss of Rs.23,17,698/-. The case of the assessee was taken up for scrutiny under CASS and thereafter assessment order was passed u/s 143(3) of the Act on 31.12.2016 wherein the learned Assessing Officer assessed the income of the assessee under the head 'income from house property' for an amount of Rs.1,42,82,068/- and further assessed the business income of the assessee at Rs.24,89,648/- and income from other sources at Rs.10,32,873/-.

4. During the course of assessment proceedings, the learned Assessing Officer observed that the assessee had disclosed its entire income under the head 'income from business' whereas the source of income has accrued to the assessee under the head 'income from house property', 'income from business' and 'income from other sources'. It was observed by the learned Assessing Officer that the assessee had disclosed its business receipts amounting to Rs.1,51,13,991/- however the entire amount pertained to rental income received by the assessee from the building owned by the assessee. On verification of the rental agreements, it was further observed that the rental agreements were inclusive of all the amenities provided in the building. The basic amenities provided in the building were power of 1 KVA per 100 sq.ft, diesel generator, high side AC – end-to-end ductable AC, fully furnished fit outs ready for plug and use, 14 reserved car parks, fully functionable fire fighting system as per regulations, access to three passenger lifts and one service lift, workstations, cabins, meeting rooms, conference rooms, network / LAN cabling, electrical and telephone connections and cabling at all the work stations. The name of the building is Vijaya Sai Towers located at Kukatpaly, Hyderabad. Portions of the building were rented out to M/s. Tata Business Support Services Limited, M/s. DMV Business and Market Research Pvt Ltd., M/s. M Model Global Services Pvt Limited, M/s. Mahindra Retail Pvt. Ltd., M/s. House Full International Ltd. and M/s. V Soft Technologies Pvt. Ltd. The aggregate rent receipts from all the above parties during the relevant previous years were at Rs.2,39,91,691/-.

5. The learned Assessing Officer further observed from the rental agreements that the assessee had let out the furnished premises at a monthly rent payable by the occupants. The fittings and fit-outs provided in the building were inseparable. The rent agreements were also composite and there was no separate agreement for fit outs. The learned Assessing Officer further opined that all the amenities provided in the building were part and parcel of the building. Therefore, the learned Assessing Officer came to a conclusion that the income derived by the assessee by virtue of the rental agreements has to be taxed under the head 'income from house property' Accordingly, he computed the taxable income of the assessee under the head 'income from house property' at Rs.1,42,82,068/- after granting deductions towards property tax paid and standard deductions @ 30%.

6. On appeal, the learned CIT(A) obtained a remand report from the learned Assessing Officer. In the remand report, the learned Assessing Officer once again opined that the income received by the assessee is taxable under the head 'income from house property'. However, the learned CIT(A) relying on the assessment orders in the case of the assessee for the A.Y. 2011-12, 2012-13 and 2013-14 in the assessee's own case, following the principles of consistency, as held in the case of CIT Vs. M/s. J.K. Charitable Trust reported in (2009) 308 ITR 161 (SC) and certain other decisions of higher judiciaries accepted the claim of the assessee to tax the income under the head 'income from business'.

7. Before us, the learned Departmental Representative vehemently argued in support of the orders of the learned Assessing Officer and prayed for sustaining the same.

8. Learned Authorized Representative on the other hand relied on the order of the learned CIT(A).

9. We have heard the rival submissions and perused the Paper Book from Pages 1 to 191. It is crystal clear that the entire agreements between the assessee and the tenants were lease agreements and the amount payable to the assessee was towards rent on square feet basis. Further, from the agreements entered between the assessee and its tenants, it is evident that the entire amenities as observed by the learned Assessing Officer in his order are the integral part of the building. Moreover, the lease agreements also do not bifurcate the amount paid towards rent and amount paid for the amenities. Therefore, it is obvious that the entire amount received by the assessee from its tenants are rental income in nature. Hence, the learned Assessing Officer is factually right in assessing the rental income of the assessee under the head 'income from house property'. Though the learned CIT(A) has obtained remand report and examined the issue in detail, he was carried away by the earlier orders of the Assessing Officer, who had not appreciated the facts of the case in the right perspective. Therefore, we hereby set aside the order of CIT(A) on this issue and upheld the order of the Assessing Officer.

10. In the result, the appeal of the Revenue is allowed.

Order pronounced in the Open Court on 06th January, 2022.

Sd/- (VIJAY PAL RAO) JUDICIAL MEMBER	Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER
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Hyderabad, dated 06th January, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. Vijay Tiles & Cement Products, Plot No.6-11, Kukatpally, Hyderabad – 500072.
2	The Asst. Commissioner of Income Tax, Circle 11(1), Hyderabad.
3	CIT (A) – 9, Hyderabad.
4	Pr. CIT – 5, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File