

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3429/Del/2014
Assessment Year: 2010-11

ACIT,
Circle-27(1),
New Delhi.

Vs Poonam Hassija Neha Hassija,
45, Community Centre,
Naraina Phase I,
New Delhi.

PAN: AAJFP3787C

(Appellant)

(Respondent)

Assessee by	:	Shri M.P. Rastogi, Advocate
Revenue by	:	Shri Atiq Ahmed, Sr. DR
Date of Hearing	:	27.10.2021
Date of Pronouncement	:	25.01.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 14th March, 2014 of the CIT(A)-24, New Delhi, relating to assessment year 2010-11.

2. This appeal was earlier decided by the Tribunal vide consolidated order dated 4th May, 2018, vide ITA Nos.4320/Del/2011, 5545/Del/2012 and 3429/Del/2014 for AYs 2008-09 to 2010-11, respectively. Subsequently, the Tribunal, vide MA No.723 to 725/Del/2018, order dated 12th February, 2021 for

AYs 2008-09 to 2010-11, recalled its order for the limited purpose of adjudicating the ground relating to disallowance of salary and staff welfare expenses. Therefore, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is a firm and derives income from house property, interest income and income from business of trading in road safety equipments. It filed its return of income on 26th September, 2010 declaring the total income at Rs.10,28,660/-. The assessee firm, besides renting of building and hiring out of furniture, fixtures, equipments, etc., is also engaged in the trading of road safety products. During the course of assessment proceedings, the AO asked the assessee to explain as to why the hiring charges credited to P&L Account should not be assessed as income from house property u/s 22 of the IT Act in view of the decision of the Hon^{ble} Supreme Court in the case of CIT vs. M/s Shambhu Investment Pvt. Ltd., reported in 263 ITR 143. It was explained by the assessee that the decision in the case of M/s Shambhu Investment Pvt. Ltd. is not applicable to the facts of the present case and the issue has already been decided by the CIT(A) in the preceding assessment years, i.e., 2008-09 and 2009-10 in favour of the assessee. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that the object of the assessee was to let out the property by giving the tenant additional rights of using AC, power backup, fit outs and interiors for which rent was paid month by month in addition to securities covering the cost of immovable property. Further, separate agreement entered into by the assessee

with the tenant for giving the colour of rental income to the hiring charges which is nothing, but, a sham agreement. He, therefore, rejected the arguments advanced by the assessee and concluded that hiring charge of Rs.1,02,38,400/- be treated as income from house property and correspondingly, the AO did not allow the expenditure towards the staff salary of Rs.8,48,000/-, hiring charges, etc.

4. In appeal, the Id.CIT(A) held that the income from hiring of equipments, furniture, fit outs, etc., shall be treated as income from business and not as income from house property by observing as under:-

8.2 I have carefully gone through the submissions made by the appellant before AO and before me. It is noticed that this issue was first time raised in A.Y. 2008-09 and again in A.Y. 2009-10 and additions were made by treating the income earned from hire of equipment as income from house property instead of income from business. However, this issue has been considered in detail and decided in favour of the appellant in both the years by CIT(A) - XXIV vide orders dated 14.07.2011 and 29.08.2012 respectively. I have also carefully perused the lease agreements and different hiring agreements entered in to by the appellant with tenant. The ratio of case law Shambhu Investment Pvt. Ltd has also been considered by me which is not applicable to the present case of appellant. This has also been discussed in detail by my predecessor in the above mentioned appellate orders. The case law of CIT Vs K.L.Puri (HUF) (1998) 233 ITR 43,49-50 (Del) cited by the appellant squarely cover the case of the appellant. Keeping in view the above referred decision of earlier two years in favour of the appellant and keeping in view the fact that no new facts or circumstances have been brought on record by the AO and addition has been made on the basis of last year only, I hold that the income from hiring of equipments, furniture, fit-outs shall be treated as income from business and not income from house property.

5. Similarly, he also allowed the claim of various expenses such as staff salary, hiring charges of the generator, maintenance charges, etc., by observing as under:-

ø9. The sixth ground of appeal is the grievance of appellant in en-block disallowance of following expenses by the AO:

Salaries	8,48,000/-
Hire Charges of Generator	22,20,000/-
Maintenance Charges	27,416/-
Depreciation	46,26,485/-

by treating the hire charges-received by the appellant as income from house property. The above disallowances are the off shoot of fifth ground of appeal as the AO has disallowed the expenses since he has treated the hiring charges assessable under the head income from house property and therefore held that such expenses are not allowable u/s. 24 of the Act. In fact these disallowances were made in last two years also. However, these expense were allowed in the last two yearø appeal in the case of the appellant by my predecessor and the disallowances made by the then AO were struck down.

9.1 The appellant has made the following submissions before me:

The AO has failed to appreciate that the above expenses have been actually incurred by the assessee to earn income from hire charges of furniture etc and are therefore deductible from such income. He has not challenged the authenticity, genuineness and otherwise allowability of these expenses and has disallowed on the sole basis that the hire charges from such assets should be assessed under the head income from house property and therefore no deduction of these expenses can be given against such income. As submitted earlier, as per last yearø appellate order such income from hire charges is assessable under the head income from business or profession and not from house property and therefore all such expenses being genuine and incurred for earning hire charges, are allowable.

Regarding disallowance of hiring charges of generators, it is submitted that this disallowance has been made by the A.O primarily on account of treating the hiring of amenities as income from house property. However, while passing the assessment order, the AO has also mentioned about the excessiveness of generator hire charges by comparing the hire charges with cost of generators. Here we wish to submit that the life of the generators ranges from 3 to 5 years and the annual hiring charges are determined in view of the above life only. Even the market rate for hiring of such generators in the open market is the same which the appellant has paid for. The appellant has been paying the same hire charges for the last three years and the same were accepted by the respective AOs as ònot excessive.ö May we also add here that the above generators were discarded by the appellant

in the year 2013 as they ran out of their lives. In view of this, it is submitted that the generator hire charges paid by the appellant were normal and not excessive.

9.2 Since in the fifth ground of appeal, the hiring charges have been held as business income, in my considered opinion, all such expenses are allowable as they have been incurred to earn hiring income. Moreover, this disallowance is covered matter decided in favour of the appellant in earlier two years, I delete the addition and allow the above mentioned expenses as claimed by the appellant in its return.ö

6. Aggrieved with such order of the Id.CIT(A), the Revenue is in appeal before the Tribunal.

7. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the Id.CIT(A), in the instant case, has held that income from hiring of furniture and fixtures as well as hiring of generator is the business income which has been carried out by the assessee along with trading in road safety equipments. He further held that the salary expenses is also to be allowed because the AO had not rejected the books of account and the vouchers produced in relation thereto. We do not find any infirmity in the above finding given by the CIT(A). The salary paid to the employees in the instant case relate to the activities of the assessee for trading purposes and one of the mechanics is involved in relation to maintenance of generators, but, income wherefrom is also assessed under the head -business income.ø Further, the staff welfare expenses also relate to the employees and as far as the maintenance expenditure are concerned, the same, in our opinion, is very

negligible being Rs.27,416/-. We further find merit in the argument of the Id. Counsel that without employing any staff the assessee could not have carried out the trading activities. So far as the allegation of the Revenue that income from hiring of furniture and fixtures as well as generator is forming part of the rental income against which the statutory deduction only is admissible and no other expenses are allowable, the same in our opinion, is not applicable to the facts of the present case. The statutory deduction u/s 24 is admissible only against the rental income of the house property and not otherwise. Once the income from hiring of furniture and fixtures as well as hiring of generator is assessed as business income, then, the expenses relating to such business income, in our opinion, has to be allowed. We further find, the AO, while disallowing the expenses has failed to consider that the assessee also dealt in trading of road safety equipments having a turnover of Rs.4.8 crore. Therefore, it cannot be said that without the involvement of any staff the assessee could have achieved such huge turnover. Under these circumstances, we do not find any infirmity in the reasoned order passed by the CIT(A) allowing the salary and staff welfare expenses. Accordingly, the order of the CIT(A) is upheld and the ground raised by the Revenue is dismissed.

8. In the result, the ground raised by the Revenue on the issue of salary expenses is dismissed.

Order pronounced in the open court on 25.01.2022.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 25th January, 2022.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi