

आयकर अपीलीय अधिकरण न्यायपीठ रायपुरमें।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

(Through Virtual Court)

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA Nos. 64, 65 & 66/RPR/2017

निर्धारण वर्ष / Assessment Years : 2005-06, 2006-07 & 2007-08

Shri Prahalad Rai Agrawal
Nehru Park Ketka Road,
Post Office Surajpur,
Dist. Surajpur (C.G.)

PAN : ACIPA0858L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle- Korba (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by
Revenue by

: Shri S.R Rao, AR
: Shri Gitesh Kumar, DR

सुनवाई की तारीख / Date of Hearing : 08.03.2022
घोषणा की तारीख / Date of Pronouncement : 30.03.2022

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(Appeals), Bilaspur, dated 18.03.2016, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s. 250 r.w.s.143(3) of the Income-tax Act, 1961 (for short 'the Act') dated 04.03.2013 for assessment years 2005-06, 2006-07 & 2007-08. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first take up the appeal of the assessee for the assessment year 2005-06 in ITA No.64/RPR/2017, wherein the assessee has assailed the impugned order on the following grounds of appeal before us :

“1. In the facts and circumstances of the case, order is bad in law as well as on facts.

2. That the rent received from godown constructed with an object to earn the profit by utilizing the godown for commercial purposes, credited to profit and loss a/c offered as income from business has been treated as income from house property and disallowed the

depreciation and expenses, thereby, making the addition of Rs.9,06,525/- is arbitrary and unjustified.

3. The appellant craves leave to add, alter, amend and or withdraw any ground or grounds of appeal either before or at the time of hearing of the appeal.”

2. Succinctly stated, the assessee had filed his return of income for the assessment year 2005-06 on 27.03.2006, declaring an income of Rs.5,03,653/-. Original assessment was framed by the Assessing Officer vide his order passed u/s.143(3) of the Act, dated 22.06.2007 determining the income of the assessee at Rs.9,07,720/-. On appeal, the income of the assessee was scaled down to an amount of Rs.5,43,650/-.

3. Observing that the assessee had wrongly raised a claim for depreciation on the cost of godown from which it was in receipt of rental income, the Assessing Officer re-opened his case u/s 147 of the Act. Assessment was, thereafter, framed by the Assessing Officer vide his order passed u/s.147 r.w.s.250 r.w.s 143(3) of the Act, dated 04.03.2013. Holding a conviction that the assessee had wrongly shown rental receipts from godown as his “business income”, the Assessing Officer brought the same to tax under the head ‘house property’, and

as consequence thereof declined his claim for depreciation on the cost of godown that was raised by him in his return of income. Accordingly, the Assessing Officer assessed the income of the assessee at Rs.14,50,175/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success. Being aggrieved with the order of the CIT(Appeals) the assessee has carried the matter in appeal before us.

5. At the very outset of the hearing of the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee submitted, that the issue involved in the present appeal, i.e, as to whether or not the rental income received by the assessee from letting out of godown was rightly offered by him as his income from business, or, was liable to be brought to tax under the head 'house property' as determined by the Assessing Officer, was squarely covered by the order of the Tribunal in the assessee's own case for succeeding years, i.e, assessment years 2008-09 & 2009-10 in ITA Nos. 87 & 88/BIL/2013,

dated 19.02.2016. It was submitted by the Ld. AR that in the aforesaid order, the Tribunal had concluded that the rental income from godown was rightly claimed by the assessee as his "business income". Backed by the aforesaid facts, it was submitted by the Ld. AR that as the issue in hand was squarely covered by the order of the Tribunal in the assessee's own case (supra), therefore, the order passed by the CIT(Appeals) could not be sustained and was liable to be set-aside.

6. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. However, the Ld. DR failed to rebut the claim of the assessee's counsel that the issue in question was squarely covered by the order of the Tribunal passed in the assessee's own case (supra) in the succeeding years.

7. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the order passed by the Tribunal in assessee's own case in the succeeding years. Controversy involved in the present appeal hinges around the solitary aspect, i.e, as

to whether or not the assessee was rightly in law and on facts of the case in offering the rental receipts from godown under the head "business income"?. As stated by the Ld. AR, and rightly so, we find the issue is squarely covered by the order of the Tribunal in the assessee's own case for the succeeding years, i.e, AYs 2008-09 & 2009-10 in ITA Nos. 87 & 88/BIL/2013, dated 19.02.2016. After deliberating at length on the issue in question, the Tribunal had in its aforesaid consolidated order, concluded, that the rental income from godown was liable to be assessed in the hands of the assessee as his "business income". For the sake of clarity the relevant observations of the Tribunal regarding the issue in hand are culled out as under :

“ 4. The admitted factual position as emerged from the corresponding assessment orders passed by the Assessing Officer u/s.143(3) of the I.T.Act, 1961 dated 31.3.2010 and 27.12.2011, respectively were that the assessee in his individual capacity has shown rental income from godown under the head "business income", however, the AO has assessed the same under the head "income from house property". This legal issue was challenged before the Id CIT(A). The action of the AO was confirmed after narrating few case laws on the ground that the godowns were stock in trade, hence, there was no commercial exploitation of the godowns and, therefore, the rental income was rightly taxed under the head "income from house property".

5. On this legal issue, we have heard Id D.R. We shall discuss the facts from the assessment year 2008-09 and the decision will apply identically to A.Y. 2009-2010. In our considered opinion, there are few case laws, according to which, the godown rent is nothing but exploitation of property for business purposes, hence, is to be taxed

under the head “business income”. The facts of the case have revealed that as per the audited report, the assessee had disclosed in the block of assets as “Rural godown account” and claimed depreciation @ 10%. Against the godown rent of Rs.10,38,292/- for A.Y. 2008-09, the assessee had claimed depreciation @ 10% of Rs.7,47,513/-, the opening W.D.V was Rs.74,75,133/- and the closing W.D.V. was shown at Rs.67,27,620/-. Hence, it was vehemently pleaded that the assessee has, since inception, disclosed godown as business asset and claimed depreciation year after year, which was arbitrarily disturbed during the year under consideration. There is one more admitted factual position that the godown rent was received from Chhattishgarh State Ware House, Raipur, which proved that the asset in question was commercially exploited.

6. On similar issue, we find that in CIT vs. Shambhu Investment Pvt. Ltd., (249 ITR 7), which was approved by Hon’ble Supreme Court in judgment reported at 263 ITR 143 (SC), Lordships had an occasion to elaborately deal with judicial precedents on whether rental income could be taxed under the head business profits, and Their Lordships concluded as follows:

Taking a sum total of aforesaid discussions, it clearly appears that merely because income is attached to any immovable property cannot be the sole factor for assessment of such income as income from property; what has to be seen is what was the primary object of the assessee while exploiting the property. If it is found, applying such test, that main intention is for letting out the property, or any part thereof, the same must be considered as rental income or income from property. In case, it is found that the main intention is to exploit the immovable property by way of complex commercial activities, in that event, it must be held as business income.

6.1 It is thus clear that when a property is exploited by way of “complex commercial activities”, income so earned by exploiting the property is to be taxed as business income. In view of above, and respectfully following the decision in the case of Sambhu Investment Pvt Ltd. (supra), we hereby reverse the findings of the authorities below and hold the rental income from godown is “business income”. For both the years now under appeal, the ground raised by the assessee is allowed.”

8. As the facts involved in the present appeal remain the same as were there before the Tribunal in the assessee's own case for the succeeding years, i.e, A.Y. 2008-09 and A.Y 2009-10 in ITA Nos. 87 & 88/BIL/2013 dated 19.02.2016, therefore, respectfully following the same, we herein set- aside the order of the CIT(Appeals) and direct the Assessing Officer to assess the rental receipt from godown under the head 'business income' as was offered by the assessee in his return of income for the year under consideration. Thus, the **Ground of appeal No.2** raised by the assessee is allowed in terms of our aforesaid observations.

9. **Grounds of appeal No.(s) 1 and 3** being general in nature are dismissed as not pressed.

10. In the result, appeal of the assessee in ITA No.64/RPR/2017 for the assessment year 2005-06 is allowed in terms of our aforesaid observations.

ITA Nos. 65 & 66/RPR/2017
A.Ys. 2006-07 & 2007-08

11. As the facts and the issues involved in the captioned appeals remains the same as were there before us in the assessee's appeal for assessment year 2005-06 in ITA No.64/RPR/2017, therefore, our order therein passed while disposing off the appeal of the assessee for assessment year 2005-06 shall apply mutatis-mutandis for disposing off the captioned appeals in ITA Nos.65 & 66/RPR/2017 for the assessment years 2006-07 & 2007-08.

12. In the result, appeals of the assessee in ITA Nos.65 & 66/RPR/2017 for the assessment years 2006-07 & 2007-08 are allowed in terms of our aforesaid observations.

13. In the combined result, all the appeals of the assessee are allowed in terms of our aforesaid observations.

Order pronounced in Open Court on 30th day of March 2022.

Sd/-

JAMLAPPA D BATTULL
(ACCOUNTANT MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 30th March, 2022

SB

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G)
4. The CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	08.03.2022	Sr.PS/PS
2	Draft placed before author	09.03.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		