

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री डॉ एम एल मीना, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI Dr. M.L. MEENA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3468/Chny/2018
निर्धारण वर्ष /Assessment Year: 2014-15

M/s. Srinivas Theatres Pvt. Ltd.,
No.6, Sivani, Saradambal Street,
T. Nagar, Chennai – 600 017.

The Dy. Commissioner of
Vs. Income Tax,
Corporate Circle-6(2),
Chennai.

[PAN: AAGCS 0021C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri T.R. Gopalakrishnan, F.C.A
: Shri AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 15.03.2022

घोषणा की तारीख /Date of Pronouncement

: 31.03.2022

आदेश / ORDER

Per Bench:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-15, Chennai, (hereinafter referred to as ("the CIT appeal") dated 26.10.2018 relevant to the Assessment Year 2014-15 wherein the assessee has challenged the impugned order confirming finding of the AO in treating the rental income, as business income of the assessee.

2. Briefly, the facts as per record are that the assessee company has the only source of income is letting out the property. The assessing officer (in short "the AO ") from the perusal of the three rental agreements entered into between the assessee and the tenants, notice that the maintenance charges form the part of the agreement. The AO further stated that in the present case, the assessee company has only one business and that is of leasing of its property and earning income therefrom. In view of the manner of the activities and nature of functioning, the AO is satisfied that the assessee has exploited the property commercially through providing maintenance services to the tenant and accordingly he has treated the rental income as income from business and the profession and the AO disallowed the standard deduction claimed by the assessee. The AO has disallowed the assessee's claim of carry forward of capital loss of ₹ 6,98,09,654/-in the belated return as per the schedule in column number XII.

3. Being aggrieved with the assessment order, the assessee went in appeal before the CIT appeal was confirmed the finding of the AO vide para 4.3 of the impugned order.

4. The learned counsel for the assessee he treated the submissions made before the authorities below and contended that the assessee has the only source of income is rental from leasing out the property and following the rule of consistency assessee's head of

income may not be disturbed and he prayed that the assessee should be allowed the benefit of standard deduction and carry forward of capital loss as claimed in the return of income.

5. Per contra, the learned DR stands by the impugned order. He contended that assessee has leased out a business asset that is a commercial complex with maintenance charges to the tenants which would certainly constitute income under that business and profession.. Hence, he is not entitled for the claim of standard deduction from the business income and no carry forward capital loss so claimed in the belated return of income can be adjusted. He submitted that the order of the CIT appeal may be sustained.

6. We have heard the rival contentions, perused the material on record and submissions of both the sides. The learned CIT appeal as discussed that the appellant assessee has intended to construct a theatre on the vacant land owned by the appellant, however he could not construct the same in the absence of approval and therefore he has constructed a multistoried office complex and declared rental income therefrom under the head house property. The CIT appeal has also stated that the appellant has reiterated the same submissions which was considered by the AO in the assessment order.

7. In the assessment proceedings, the AO has recruited all the contentions of the appellant vide 2.4 to 2.5 on page number 6 to 7 of

the assessment order. From the directors report, it is clear that the main intention of the assessee company is to manage the office complex as business asset. The CIT appeal as endorsed that the AO has concluded the office complex as business asset of the appellant assessee where the assessee providing services to its tenants including maintenance as per agreement entered into with them with the support of case laws.

8. The learned counsel contention that the rental income assessed under the head, income from house property in the earlier years is not acceptable as it is settled law that *res judicata* is not applicable in the income tax proceedings. The case laws relied upon by the learned counsel are distinguishable on the facts of the instant case. In view of the facts of the case in the assessment year under consideration, the AO and the learned CIT appeal have rightly held that the appellant has treated the office complex as business asset as the assessee extended various services to the tenants, the rental income derived there from is to be assessed under the head business income.

9. In the backdrop of the aforesaid discussion, we are inclined to concur with the finding of the learned CIT appeal in treating the assessee's rental income business income and denying the applicant assessee claim of standard deduction. Accordingly, the impugned order of the learned CIT appeal is sustained.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced on 31st day of March, 2022 in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(डॉ एम एल मीना)
(Dr. M.L. Meena)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 31st March, 2022.

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF