

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 7181 /MUM/2019 (A.Y: 2014-15)**

M/s. Regency Property Investment Pvt. Ltd., 77, 7 <sup>th</sup> Floor, Nariman Bhavan 227, Nariman Point, Mumbai - 4000021  <b>PAN: AACCR7727A</b>	v.	DCIT – 3(3)(1) Room No. 609, 6th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NO. 7972/MUM/2019 (A.Y: 2013-14)**

M/s. Regency Property Investment Pvt. Ltd., 77, 7 <sup>th</sup> Floor, Nariman Bhavan 227, Nariman Point, Mumbai - 4000021  <b>PAN: AACCR7727A</b>	v.	Income Tax Officer – 3(3)(4) Room No. 672, 6th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Satish Mody</b>
<b>Department by</b>	<b>:</b>	<b>Shri Ganesh Bare</b>
<b>Date of Hearing</b>	<b>:</b>	<b>04.04.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>28.04.2022</b>

**ORDER****PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)–8, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.11.2019 and 12.09.2019 for the A.Y. 2013-14 and A.Y. 2014-15 respectively.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 7972/MUM/2019 for Assessment Year 2013-14 as a lead appeal.

3. Assessee has raised following grounds in its appeal: -

*"1. On the facts of the case and in law the learned CIT Appeal erred in Confirming the treatment of the rental income as Income from house Property instead of Income from business as claimed by the appellant.*

*a. Consequence to this the set off of Business Loss disallowed by learned assessing officer against Business Income has been confirm by the CIT Appeal.*

*2. Without prejudice to above the CIT Appeal did not considered allowing the Unabsorbed Depreciation of earlier years against Income from House Property. Same as he allowed for setting off unabsorbed depreciation against Income from Other Sources.*

*3. The appellant craves leave to add, amend and / or alter any of the above grounds of appeal on or before disposal of the appeal."*

**4.** Further, assessee has raised following additional grounds in its appeal: -

*"1) On the facts and in the circumstances of the case and in law the lower authorities were not justified in disallowing the appellant's claim of forex loss of Rs.1,76,51,459/- as business expenditure without appreciating the facts of the case. Without prejudice to the above and other grounds of appeal.*

*a) On the facts and circumstances of the case and in law the lower authorities erred in disallowing expenses in the nature of expenses incurred by the appellant for up keeping and running the company without appreciating the fact that such expenses are allowable under the head "Income from Business/Profession even if NIL income is earned by the appellant under the said head.*

*b) On the facts and circumstances of the case and in law the loss incurred on foreign exchange ought to be allowable on business loss even if the rent income is earned under the head Income from House Property.*

**5.** Assessee filed additional ground of appeal and since the additional grounds raised by the assessee are legal and factual issues all the relevant information is already available on record. Ld.DR objected to the admission of the above additional ground. After considering the submissions of both the parties the additional grounds are admitted for adjudication.

**6.** Brief facts of the case are, the assessee is a Private Limited Company. The assessee company was engaged in the business of manufacturing readymade garments and had set up the EOU at Chennai.

However due to various reasons the appellant company suffered losses in earlier years and had to close down the business & manufacturing of readymade garments. The assessee Company however retained the immovable property at Chennai and gave the same on lease w.e.f. 01/09/2009. The assessee company decided to change the business activity and accordingly changed the object clause of Memorandum of Association. The main business activity of the company as per the main object clause of the Company is leasing of immovable property.

**7.** At the time of hearing, Ld. AR submitted as under: -

*"In line with the change in the Object Clause, the appellant during the year offered the lease income received by it under the head 'Business Income'. The appellant company does not have any other source of income except the lease rentals and some interest on fixed deposits kept with bank.*

*During the course of hearing before the assessing officer the appellant brought the above facts to the notice of the assessing officer. The appellant also relied upon the judgement of Hon'ble Supreme court in the case of M/s Chennai Properties and Investments Ltd (373 ITR 673) to substantiate its claim.*

*The assessing officer while finalising the assessment was of the opinion that the income from leasing of the property was to be assessed under the head 'Income from House Property' instead of 'Business Income' as offered by the appellant. While finalising the assessment the assessing officer also did not give the benefit of set off of unabsorbed depreciation against the House Property Income and also disallowed the forex loss and other expenses being administrative expenses for maintaining the Company.*

*Being aggrieved by the Order of the assessing officer the appellant filed an appeal before the CIT (A). During the course of hearing*

*relying on the decision of Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd (Supra) and Rayala Corporation P. Ltd 72 Taxmann.com 146 (SC) (2016) [Copy enclosed at Page No. 55 of the paper book filed before the Hon'ble ITAT], the appellant submitted that the income from leasing ought to be assessed under the head 'Business Income'. The appellant also brought to the notice of the CIT (A) that the forex loss on account of outstanding loans taken for the purchase of assets and Working Capital is an allowable loss and that the unabsorbed depreciation should be set off against income under the head 'House property' and 'Income from other Sources'.*

*The CIT (A) while passing the order simply relied upon the decision of the Hon'ble Karnataka High Court in the case of Mahesh Investment VS ACIT which in turn had relied upon the decision of Hon'ble Madras High Court in the case of Keyaram Hotels P Ltd Vs. Dy CIT, which in turn relied upon the decision of Hon'ble Supreme Court in the Case of East India Housing and Karanpura Development Co. Ltd and Sultan Brothers and Hon'ble Madras High court in the case of Chennai Properties and Investments Ltd. The CIT (A) did not give any findings on the subsequent decisions of the Hon'ble Supreme Court cited by the appellant during the course of hearing. As regarding Set off of Unabsorbed depreciation the CIT (A) held the same could be set off against 'Income from Other Sources'. The CIT (A) did not give any finding regarding the forex loss.*

*Being aggrieved by the Order of the CIT (A) the appellant has filed an appeal before the Hon'ble Tribunal. The appellant has also raised additional ground regarding the allowability of the forex loss and Other administrative expenses for maintaining the Company.*

*(a) Regarding Income to be assessed Under the head 'Business Income'.*

*The appellant submits that leasing of the property is the only business carried out by the appellant. The appellant has in fact modified its object Clause to include the said business as the main business of the appellant. The appellant submits that in subsequent years i.e. A.Y. 2015-2016 onwards the income from leasing is assessed under the head 'Business Income'. The appellant relies upon the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investment Ltd and Rayala Corporation Pvt. Ltd for the proposition that since the appellant has only one business and that is of leasing of property and earning rent therefrom, the*

*rental income has to be the income taxable under the head 'Business Income'. The appellant states that the Hon'ble Supreme Court while passing the above orders have considered all the decisions relied upon by the assessing officer while assessing the said income under the head House Property Income'. The appellant submits that the facts of the case of Rayala Corporation Pvt. Ltd are quiet similar to the case of the appellant. In the said case also the assessee Company had stopped its other business activities and was having only an activity with regard to the leasing its properties and earning rent there from. Thus except leasing the properties belonging to the assessee company, the company was not having any other business. The appellant states the in the case of the appellant also it has stopped its other business activities and leasing its property in Chennai and earning rent there from was the only business of the appellant Company. The appellant further relies on the various decisions and the Hon'ble ITAT Mumbai copy of which have been enclosed in the paper book.*

*Regarding the query raised by the Hon'ble Tribunal during the course of hearing the appellant submits that the appellant had shut its vehicle rental business hence there is not income from vehicle rental during the year. As regarding increase in Trade receivable from Subsidiary Company of Rs. 38,56,533/- during the year the appellant submits that the said entry was wrongly passed under the head Trade receivable infact it is the amount payable by the appellant due to loss on account of foreign exchange fluctuation on account of loans taken by the appellant from the subsidiary. In view of the above the appellant humbly submit that it has rightly offered the income from leasing out the property under the head 'Business Income'.*

*(b) Regarding setoff of unabsorbed depreciation against income from House Property.*

*Regarding the said issue the appellant submits that similar issue came up for hearing in the appellant's own case for the earlier year i.e. A.Y.2011- 2012 and the Hon'ble ITAT has taken a view that the said unabsorbed depreciation can be set off against income under the head income from House Property. The said order of the Hon'ble ITAT is enclosed in the paper book from pages 26 to 37.*

*(c) Regarding Forex Loss*

*The appellant submits that it had taken loans from foreign companies in earlier years which was utilised for working capital and for*

*purchase of machinery. The loss on foreign exchange fluctuation is amounting to Rs. 1,76,51,459/-. The details of foreign exchange fluctuation loss/profit from A.Y. 2009-2010 till A.Y.2013-2014 is enclosed in paper book page 37. It can be seen from the said details that in some years the appellant had profit on account of foreign exchange fluctuation and in some years there was a loss. The appellant's income from foreign exchange fluctuation gain has been assessed accordingly. The appellant submits that it follows the mercantile system of accounting and foreign currency transaction are accounted at exchange rate prevailing on the date of transactions. Receivable and payable in foreign currency are restated at year end rates with consequential difference adjusted to Profit and Loss Account as forex Gain/ Losses respectively. The Company is following the said accounting policy as per the AS 11. The appellant submits that the said issue is no longer res integra as the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd 179 Taxman 326 and reiterated in CIT V Maruti Udyog Ltd 186 Taxman 49 held that loss suffered by assessee on account of foreign exchange difference on date of balance sheet is an item of expenditure u/s 37(1). It was also held in ONGC vs CIT 189 Taxman 292 that 'Loss' suffered by assessee maintaining accounts regularly on mercantile system and following accounting standard prescribed by ICAI, on account of fluctuation in rate of foreign exchange is an item of expenditure U/s 37 (1), notwithstanding that liability has not been discharged in year in which fluctuation in rate of exchange occurred. The appellant submits that in view of the above the loss on foreign exchange fluctuation is an allowable expenditure.*

*(d) Allowance of administrative expenses*

*As regarding the allowance of administrative expenses the appellant submits that it is a running organisation/ company and to maintain the status of the company certain day to day expenses are incurred by the appellant. The appellant submits that such expenses are allowable even if the leasing income is assessed as under the head Income from House Property."*

**8.** On the other hand, Ld.DR relied on the findings of the lower authorities and submitted that the case law relied by the assessee are distinguishable to the facts of this case. He submitted that assessee is

earning only income under the head "income from house property" with the specific object of earning income by leasing. Therefore, he submitted that the finding of the tax authorities are proper. With regard to the additional ground raised by the assessee on Forex and claim of administrative expenses, he agreed that this issue may be remitted back to file of the Assessing Officer.

**9.** Considered the rival submissions and material placed on record, we observed that assessee company closed down the manufacturing activity of readymade garments and the immovable property with the assessee are leased out. Since the leasing out of the property is closely connected with the business activity which was closed down, no doubt assessee has given it for lease and earning only income from this by leasing of property. We also observed that assessee has modified the object clause of Memorandum of Association to incorporate the above, the main object of earning income by leasing of the property. It clearly shows that assessee's only source of income is leasing of the immovable property at Chennai Factory.

**10.** As submitted by the Ld. AR the facts are exactly similar to the Hon'ble Supreme Court in the case of Rayala Corporation (P.) Ltd., v. ACIT

[2016] 72 taxmann.com 149. The ratio of the decision is as under: -

*"9. Upon hearing the learned counsel and going through the judgments cited by the learned counsel, we are of the view that the law laid down by this Court in the case of Chennai Properties (supra) shows the correct position of law and looking at the facts of the case in question, the case on hand is squarely covered by the said judgment.*

*10. Submissions made by the learned counsel appearing for the Revenue is to the effect that the rent should be the main source of income or the purpose for which the company is incorporated should be to earn income from rent, so as to make the rental income to be the income taxable under the head "Profits and Gains of Business or Profession". It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning rent therefrom. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue.*

*11. The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income.*

*12. In view of the law laid down by this Court in the case of Chennai Properties (supra) and looking at the facts of these appeals, in our opinion, the High court was not correct while deciding that the income of the assessee should be treated as Income from House Property.*

*13. We, therefore, set aside the impugned judgments and allow these appeals with no order as to costs. We direct that the income of the assessee shall be subject to tax under the head "Profits and gains of business or profession".*

**11.** Since the facts in the case of the assessee are exactly similar to the facts of the above decision, respectfully following the above said decision, we allow the ground raised by the assessee.

**12.** With regard to Ground No. 2 denial of brought forward losses and unabsorbed depreciation to be adjusted against the "house property income" and "income from other sources". It brought to our notice that in assessee's own case the Coordinate Bench of the Tribunal in ITA.No. 243/Mum/2018 dated 07.08.2019 has decided the issue in favour of the assessee. The relevant decision is given below: -

*"9. We shall now advert to the claim of the revenue that the CIT(A) had erred in allowing the "set off" of the brought forward "unabsorbed depreciation" of earlier years against the current years "Income from house property" of Rs. 2,15,72,559/-and "Income from other sources" of Rs. 5,66,579/-. The controversy involved in context of the present issues lies in a narrow compass i.e as to whether the brought forward "unabsorbed depreciation" could be "set off" against income other than that shown under the head "business income", or not. It is the claim of the assessee that "unabsorbed depreciation" under Sec. 32(2) can be carried forward indefinitely and "set off" against any head of income. On the contrary, the revenue is of the view that in the absence of any business activity carried on by the assessee during the year, the unabsorbed loss and also the unabsorbed depreciation of the earlier years cannot be "set off" against the income shown by the assessee under the other heads. We have given a thoughtful consideration to the aforesaid issue and are unable to persuade ourselves to subscribe to the view taken by the A.O. As per Sec.32(2) of the Act (as was applicable to the year under consideration), where in the assessment of the assessee, full effect cannot be given to any allowance under subsection (i) in any previous year, owing to their*

*being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of Sec. 72 and sub-section (3) of Sec.73, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on in for the succeeding previous years. A perusal of the aforesaid statutory provision reveals that in a case where the claim of depreciation as worked out under sub-section (1) of Sec.32 cannot be fully adjusted against the profits or gains chargeable for that year, then such "unabsorbed depreciation" shall be carried forward to the succeeding years and shall be added to the amount of the claim for depreciation of the assessee for the said succeeding year and deemed to be part of such claim of depreciation for the said year. Further, in case if there is no claim of depreciation in the said succeeding year, then the brought forward claim of "unabsorbed depreciation" shall be deemed to be claim of depreciation of the assessee for the said year, and so on. In sum and substance, as per the mandate of law the brought forward "unabsorbed depreciation" would take the colour and character as that of the claim of depreciation of the assessee for the succeeding year, and so on. Accordingly, the brought forward claim of "unabsorbed depreciation" of the assessee which is deemed to be the claim of the assessee for the current year shall be eligible for being "set off" against his income, if any, assessable for that assessment year under any other head (other than income assessable under the head "Salaries").*

*10. We have perused the observations of the A.O and are unable to persuade ourselves to subscribe to the same. Admittedly, as per the provisions of Sec. 32(2) of the Act prior to their amendment by the Finance Act, 2000 w.e.f 01.04.2001 the "set off" of the "unabsorbed depreciation" was restricted to the profits and gains from business or profession. However, post-amendment of Sec. 32(2) the "set off" of unabsorbed depreciation is no more restricted to the profits and gains of business or profession. In fact, pursuant to the amendment made available on the statute vide the Finance Act, 2001, w.e.f 01.04.2002 the liberal regime prior to A.Y 1997-98 had been restored from A.Y 2002-03 onwards. In our considered view, the observations*

*of the A.O as regards the limited scope of "set off" of "unabsorbed depreciation" appears to be guided by the pre-amended provisions of Sec. 32(2) of the Act i.e as had remained available on the statute during the period A.Y 1997-98 to A.Y 2000-01. Our aforesaid view that existence of any business in the year in which the "unabsorbed depreciation" is sought to be "set off" by the assessee is not required is fortified by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Virmani Industries Pvt. Ltd. (1995) 216 ITR 607 (SC). The Hon'ble Apex Court in its aforesaid judgment had observed as under:*

*"Yet another question which has to be answered before we can answer the question concerned in this appeal is whether it is necessary that in the following year the assessee must carry on business, i.e., some or other business, to avail of the benefit of the said sub-section? Two views are possible in this behalf, viz., (1) since the sub-section speaks of unabsorbed depreciation being carried forward to the next year and "added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance" the sub-section necessarily contemplates existence of a business in the following year, and (2) inasmuch as the sub-section not only speaks of adding the unabsorbed depreciation to the depreciation allowance allowed in the following year but also says that in the absence of such allowance, the carried forward depreciation allowance shall be the allowance for that year, it means that in the following year the assessee need not carry on any business or profession for availing the benefit of sub-s. (2) of s. 32. We are inclined to adopt the second of the above two views having regard to the decisions of this Court in Jaipuria China Clay Mines (P) Ltd. (supra) and Rajapalayam Mills Ltd. (supra)."*

*At this stage, we may herein observe that as the aforesaid judgment was rendered by the Hon'ble Apex Court in context of a case pertaining to A.Y 1965-66, therefore, we feel it necessary to cull out Sec. 32(2) as was then available on the statute, which we find as was then available on the statute, read as under:*

*"32(2) where, in the assessment of the assessee or, if the assessee is a registered firm (or an unregistered firm assessed as a registered firm, in the assessment of its partners) full*

*effect cannot be given to any allowance under cl. (i) or cl. (ii) or cl. (iv) or cl. (v) of sub-s. (1) in any previous year owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance then, subject to the provisions of sub-s. (2) of s. 72 and sub-s. (3) of s. 73, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years."*

*As is discernible from a perusal of the aforesaid statutory provision i.e Sec. 32(2), it can safely be concluded that as the same in substance had remained the same as in context to that applicable to the case of the assessee before us, therefore, the aforesaid view arrived at by the Hon'ble Apex Court seizes the issue under consideration. Accordingly, we are of the considered view that as the "set off" of the "unabsorbed depreciation" cannot be bridled with a condition that the business should be continued by the assessee in the said year, therefore, the claim of "set off" of the brought forward "unabsorbed depreciation" by the assessee against its current year "Income from house property" of Rs.2,15,72,559/- and "Income from other sources" of Rs.5,60,579/- is found to be in conformity with the mandate of law. We thus not finding any infirmity in the order of the CIT(A), who had rightly vacated the incorrect view taken by the A.O, therefore, uphold his order."*

**13.** Accordingly following the above decision, this ground raised by the assessee is also allowed.

**14.** Coming to the additional ground raised by the assessee we observe that assessee has claimed Forex loss and administrative expenses incurred by the assessee for day to day running of the company.

**15.** Considering the submissions of both the parties, we are in agreement with the submissions made by the assessee that these expenses are closely related to the business activity carried on by the assessee. With regard to Forex Loss Ld. AR as submitted that assessee has taken loan from Foreign Company in earlier years which was utilized for working capital and purchase of machineries. The loss incurred by the assessee and foreign fluctuation is clearly related to the business activities/outstanding loan in the Balance Sheet. Therefore, in order to verify the claim of the assessee this issue is remitted back to the file of the Assessing Officer to verify the contention of the assessee and allow as per law. Similarly, the claim of administrative expenses also, it is fact on record that the assessee has to incur certain expenditure to run the company which relates to general administration expenses like audit fees, filing of various returns before various departments etc., therefore, this issue also remitted back to the file of the Assessing Officer to verify the contention of the assessee and allow the same as per law.

**16.** In the result, appeal filed by the assessee is partly allowed.

**17.** Coming to the appeal relating to A.Y. 2014-15, since facts in this appeal are mutatis mutandis, therefore the decision taken in A.Y.2013-14

is applicable to this assessment year also. Accordingly, this appeal is also partly allowed.

**18.** In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 28.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 28.04.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**