IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1743/Mum/2021
(**Assessment Year : 2018-19**)

The Jt. Commissioner of Income Tax (OSD) Central Circle-6(4) Mumbai Room No.1925, 19th Floor Air India Building Nariman Point Mumbai – 400 021	Vs.	M/s. D'décor Properties LLP 1071/1072, Solitaire Corporate Park Building No.9, 167 Guru Hargovind Ji Marg Chakala, Andheri (E) Mumbai – 400 093
PAN/GIR No.AAJFD7013M		
(Appellant)	..	**(Respondent)**

Revenue by	Shri Ajay Chandra
Assessee by	Shri Jitendra Jain
Date of Hearing	**10/05/2022**
Date of Pronouncement	**31/05/2022**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.1743/Mum/2021 for A.Y.2018-19 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No.CIT(A)-54/Mum/10263/2019-20 dated 25/03/2021 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s.153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated31/12/2019 by the ld. Dy. Commissioner of Income Tax, Central Circle 6(4), Mumbai(hereinafter referred to as ld. AO).

2. At the outset the appeal filed by the Revenue is barred by limitation by 40 days. We find that the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020 dated 23/09/2021 had ordered that the period of limitation for any suit, appeal, application or proceeding which falls due during the period 15/03/2020 till 02/10/2021 shall stand excluded and in cases where limitation period expires during the above period, all persons shall have limitation period of 90 days from 03/10/2021. Thus, as per the above directions of the Hon'ble Supreme Court, the limitation date for filing the appeal would be 31/12/2021. In the instant case, the appeal is filed much before this extended date, accordingly, we hold that there is no delay in filing of appeal by the Revenue.

3. The Revenue has raised the following grounds:-

> ***1.*** ***On the*** *facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing depreciation of Rs.10,63,89,191/- without appreciating that the assessee's office premises at BKC was yet to be put to use which is evident from the Leave & License Agreement dated 24.03.2018 as per which the licensee viz., D'Decor Home Fabrics Private Limited, was not required to pay license fees for the first 6 months for the purpose of fit-outs.*
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> ***2.*** *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing the finance cost of Rs.3,39,24,035/- without appreciating that the assessee has not offered any income from business & profession implying that there is no business activity.*
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> *3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in misplacing his reliance upon the judgement of the Hon'ble Apex Court in the cases of Chennai Properties and Investment Ltd vs. CIT [373 ITR 673 SC] and Rayala Corporation Private Ltd vs. ACIT [386 ITR 500 SC] without appreciating that the facts of those cases are distinct from those of the instant case in so far as no income is offered in the instant case either under the head "Income from Business or Profession[5]' or under the head "Income from House Property".*

The appellant prays that the order of the Commissioner of Income Tax (Appeals) on the above ground be set aside and the order of the Deputy Commissioner of Income-tax be restored.

The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary.

Last date for filing second appeal is extended until further orders, as per the Hon'ble Supreme Court's order dated 08.03.2021 in Miscellaneous Application No.665/2021 to Suo Moto Writ Petition (Civil) No. 3 of 2020.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee LLP had filed its original return of income on 29/10/2018 declaring net loss of Rs.14,03,97,464/-. The revised return was filed on 25/01/2019 declaring net loss of Rs. 14,03,56,325/-. The assessee LLP again filed its revised return on 01/03/2019 declaring net loss of Rs.14,55,50,934/-. A search and seizure action u/s.132(1) of the Act was carried out by the Income Tax department in assessee's group on 06/03/2019. Consequent to the search, the assessee's case was centralised and notice u/s.143(2) of the At was issued on 22/09/2019 for the A.Y.2018-19 which was duly served on the assessee.

3.2. The ld. AO observed that assessee LLP had not carried out any business activity during the year under consideration. The ld. AO observed that assessee owns a building in BKC, Mumbai which has been given on leave and license basis. The ld. AO observed that the assessee had acquired a property known as "Unit No, 1201, 12th floor, Godrej, BKC Building, Plot No.C-68. Bandra Kurla Complex, Bandra (East), Mumbai 400 051 measuring 68,500 sq. ft. of built up area, from a developer, Godrej Buildcon Private Limited. The assessee had entered into an Agreement and executed on 24/03/2018 Leave And License Agreement with D'Decor Home Fabrics Private Limited, with effect from 29/12/2017. As per the terms of leave and license, the Licensee has paid security deposit of

Rs.21.13 crore (equivalent to 12 months licensee fees). Further, as per the Agreement, the Licensee would be entitled to use the property without license fees for a period of first 6 months for the purpose of fit-outs, from 29/12/2017. The Agreement is executed for a period of 3 years, i.e. from 29/12/2017 to 28/12/2020. The monthly rent for the first 12 months commencing from 28/06/2018 is Rs. 1,76,08,333/- and the same would stand increased by 5% every year from the license fee reserved and paid for the preceding 12 months' period.

3.3. The ld. AO observed that assessee during the year had earned interest income of Rs.41,088/- on fixed deposits and interest of Rs.51/- on income tax refund which was duly credited to the profit and loss account, against which the assessee had claimed the following expenses as deduction:-

Bank charges	**19519**
Interest on term loan	**33904516**
Professional fees	**20000**
Insurance	**85740**
Property Tax	**3330583**
Security charges	**56162**
Security maintenance charges	**1766362**
Prior period expenses	**442153**
Audit fees	**20000**
Depreciation	**106389191**
TOTAL	**146034226**

3.4. Out of the aforesaid expenses, the assessee has voluntarily disallowed prior period expenses of Rs.4,42,153/- in the return of income. The other expenses were claimed as deduction under the head "income from business" by the assessee. The interest income of Rs.41,139/- earned by the assessee was offered to tax under the head 'income from other sources' in the return of income. The ld.AO observed that since assessee has not carried out any business during the year, the depreciation on fixed assets claimed by the assessee at Rs.10,63,89,191/- and finance cost of Rs.3,39,24,035/- would not be eligible for deduction on the premise that the fixed assets were not put to use by the assessee for the business. All other expenses claimed by the assessee were allowed as deduction under the head 'income from business' by the ld. AO. In respect of property tax of Rs.33,30,583/-, the ld. AO observed that the same is not eligible for deduction under the head 'income from business', however, the same would be allowed as deduction under the head 'income from house property'. With these observations, the assessment was completed by the ld. AO disallowing depreciation on fixed assets and interest cost. The ld. CIT(A) deleted the entire disallowance made by the ld. AO and granted relief to the assessee by placing reliance on the objects enumerated in the LLP agreement and also placing reliance on various decisions of the Hon'ble Supreme Court.

3.5. The primary facts stated hereinabove remain undisputed and hence, the same are not reiterated for the sake of brevity. We find that assessee company was incorporated on 12/08/2013 with an object "*To carry on the business to acquire, buy, sell, purchase, lease, develop, renovate, improve, maintain, exchange or otherwise own property, estate, lands, buildings, office premises, retail shops, show rooms, departmental*

stores, food courts, Restaurants and Corporate Kitchen Services". From the perusal of the LLP agreement dated 12/08/2013, being the charter document of creation of assessee LLP, we find that the object reproduced hereinabove is the only activity for which assessee LLP was created / constituted. We find that pursuant to the aforesaid main object, the assessee has bought under construction immovable property in BKC, Bandra (E), Mumbai on 27/11/2014 from Godrej Buildcon Pvt. Ltd., for Rs.167.95 Crores. The value of said asset together with all incidental instances incurred in connection with the asset were capitalised by the assessee in its books under the head fixed assets. Pursuant to the advertisements given in newspapers by the assessee looking for suitable licencee of the said property, the assessee entered into a letter of intent on 29/04/2017 with D'décor Home Fabrics Pvt. Ltd., (DHFPL) wherein it was agreed that assessee would let out its premises on receipt of security deposit of Rs.21.13 Crores which is equivalent to 12 months license fees on or before 31/12/2017. It was specifically agreed that on payment of full security deposit, the licence in respect of licenced premises would commence. The letter of intent dated 29/04/2017 stated supra is enclosed in pages 74 to 77 of the paper book. In the said letter of intent, it was specifically agreed that for a term of six months from the commencement of the licence, DHFPL will be entitled to provide fit outs (i.e. interior and renovation works and such other works as required by the licensee) in the licensed premises free of licence fees. We find that DHFPL had paid the security deposit commencing from 29/04/2017 to 29/12/2017 totaling to Rs.21,13,00,000/-. Since, this security deposit was fully paid by DHFPL, the license period started from 29/12/2017 for a period of three years i.e. from 29/12/2017 to 28/12/2020. We further find in the said letter of intent dated 29/04/2017 referred to supra, it was specifically agreed that there would be no licence fees for a period of six

months from 29/12/2017 to 28/06/2018 as fit out works were to be carried out by the licencee as per its requirements. From the aforesaid facts, it could be concluded that the asset namely the licenced premises, was put to use by the assessee by entering into an agreement with DHFPL. The said asset became capable of deriving rental income. As per the objects of the LLP agreement, we find that the rental income to be derived by the assessee would become taxable under the head 'income from business'. Since the property owned by the assessee became capable of deriving business income in the form of rentals, which in our considered opinion, would tantamount to "put to use of the asset", the assessee had claimed depreciation on the said asset and interest cost as deduction in respect of borrowings utilized for the purpose of business. We hold that once the asset is put to use, it becomes eligible for depreciation. There is no requirement of income getting generated out of such asset. Reliance in this regard had been rightly placed by the ld. AR on the House of Lords Judgement in the case of Hughes (Inspector of Taxes) vs. Bank of Newzealand reported in 6 ITR 636 (HL) dated 04/03/1938 wherein it was held in para 10 as under:-

> *(10……."3. In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of (a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment or vocation." In order to ascertain the authorized deductions, it is right to turn this into positive form. In this view, it seems to me to be incontrovertible that, in the present case, the investments in question were part of the business of the trade. Expenditure in course of the trade which is un remunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not required the presence of a receipt on the credit side to justify the deduction of an expense. 1 agree on this question with the decision of the Courts below.*

3.6. Reliance was also placed in this regard on the decision of the Hon'ble Supreme Court in the case of CIT vs. Rajendra Prasad Moody reported in 115 ITR 519. It is sufficient that the asset becomes capable of generating

income for the purpose of allowability of business expenditure or business deductions. As far as the finance cost is concerned, once the borrowed funds are utilized for the purpose of business of the assessee, the interest paid on such borrowed funds becomes an allowable deduction u/s.36(1)(iii)of the Act from the date of commencement of business. We have already held that on 29/12/2017 itself, the business of the assessee of letting out , had commenced. Admittedly, the borrowed funds were utilized only for the purpose of business as is evident from the perusal of the financial statements enclosed in the paper book filed by the assessee. Either way, it is not the case of the Revenue that borrowed funds were not utilized by the assessee for the purpose of its business. The reason for not recovering any rentals for the period of first six months i.e. from 29/12/2017 to 28/06/2018 has been clearly spelt out in the letter of intent dated 29/04/2017 clearly specifying the intention of the parties. We further find that the very same AO had allowed other expenses claimed by the assessee in the form of professional fees, insurance, security charges, security maintenance charges and audit fees, totaling to Rs.19,48,264/- under the head 'income from business' during the year under consideration. This clearly shows a divergent stand taken by the ld. AO in respect of part of expenses as meant for the purpose of business and partly not. How can there be a situation that in respect of part of the expenses, the assessee has carried out the business activity during the year and for part of the expenses the assessee had not carried out any business activity during the year.

3.7. We find that the Hon'ble Supreme Court in the case of CIT vs. Shaan Finance Pvt. Ltd., reported in 231 ITR 308 on the allowability of investment allowance u/s 32A(1) of the Act in respect of leaing of machines had held that when the business of the assessee itself is leasing

of machines, the machines so leased out are being used for the purpose of assessee's business and hence, the income by way of hire charges which that assessee receives would be taxed as business income of the assessee and consequently the assessee would be eligible for investment allowance u/s 32A of the Act.

3.8. We further find that the Hon'ble Calcutta High Court had addressed the issue in dispute before us in the case of Multican Builders Ltd., vs. CIT reported in 278 ITR 142 especially on the allowability of depreciation and the relevant operative portion of the said judgement is reproduced hereunder:-

> *"9. The leasing of the article or thing would amount to employment of the article or thing for profitable use, since the advantage of the possession or acquisition of the article or thing is being obtained by reason of such leasing. Whether the rent is payable at a later date or the profit that will accrue at a later point of time would not be relevant for the purpose of determining the use of the article or thing. In a business of leasing the moment the article or thing is leased out, the article or thing is put to use for the purpose of leasing or is used for leasing, the business. The rent or profit, which will accrue, will accrue on account of grant of lease from the date when the lease is granted, even though the profit or the rent may accrue at a later point of time."*

3.9. In fact, the ld. CIT(A) in para 7.3.1 of his order had observed that assessee had indeed derived rental income after the expiry of initial moratorium period of six months and had offered the same as business income in subsequent years in consonance with the objects enumerated in LLP agreement. This factual finding given by the ld. CIT(A) had not been controverted by the ld. DR before us. With regard to taxability of rental income under the head 'business income', we find that the issue is no longer res integra in view of the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd., vs. CIT reported in 373 ITR 673 wherein it was held as under:-

***"5.** The Memorandum of Association of the appellant-company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B) respectively. The main object of the appellant company is to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasise is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. It may further be recorded that in the return that was filed, entire income which accrued and was assessed in the said return was from letting out of these properties. It is so recorded and accepted by the assessing officer himself in his order.*

***6.** It transpires that the return of a total income of Rs.244030 was filed for the assessment year in question that is assessment year 1983-1984 and the entire income was through letting out of the aforesaid two properties namely, "Chennai House" and "Firhavin Estate". Thus, there is no other income of the assessee except the income from letting out of these two properties. We have to decide the issue keeping in mind the aforesaid aspects.*

***7.** With this background, we first refer to the judgment of this Court in East India Housing & Land Development Trust Ltd.'s case (supra) which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question arose for consideration was whether the rental income that is received was to be treated as income from the house property or the income from the business. This court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.*

***8.** Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P.) Ltd. (supra), we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. CIT [1962] 44 ITR 362 (SC). That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The income*

which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: —

> *"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The diving line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."*

9. *After applying the aforesaid principle to the facts, which were there before the Court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the aforesaid judgment in Karanpura Development Co. Ltd.'s case (supra) squarely applies to the facts of the present case.*

10. *No doubt in Sultan Brothers (P.) Ltd.'s case (supra), Constitution Bench judgment of this Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at an conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words: —*

> *"We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature."*

> ***11.*** *We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs.*

3.10. We further find that the Co-ordinate Bench decision of Chennai Tribunal in the case of Ambattur Infra Developers vs. ACIT in ITA Nos. 689 & 690/CHNY/2018 for A.Yrs 2013-14 and 2014-15 dated 01/08/2018 had an occasion to consider all the Hon'ble Supreme Court judgements on the issue with regard to taxability of rental income in consonance with the object clause provided in the Memorandum of Association. We find that the Chennai Tribunal had elaborately discussed in its judgement and held as under:-

> *7. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that assessee was a recognized IT park and had rented it out to various software companies. It is also not disputed that assessee had entered into two agreements with its lessees, one for renting out the space and other for providing services and maintenance. The question before us is whether the payments received by the assessee through these two agreements are to be considered under the head income from house property or income from other sources or income from business. Ld. Assessing Officer himself had observed that assessee had leased out the space alongwith a host of supporting features which helped its business. Assesses had obtained approval from Department of Information Technology, Ministry of Communications and Information Technology, Government of India through a letter dated 30.06.2009 which has been placed at paper book page 16 & 17. What was mentioned in the above letter is reproduced hereunder: —*
>
> > *'Your application was considered by the Inter-Ministerial Standing Committee (IMSC) for Software Technology Park (STP) and Electronics Hardware Technology Park (EHTP) Scheme in its meeting held on 27.08,2007 and I am directed to convey the approval of the Government for setting up of infrastructure facility for STP units under the STP Scheme namely "Ambit" located at Plot No. 32A & 32B, Industrial Estate, Ambattur, Chennai 600 058".*
>
> *Hon'ble Karnataka High Court in the case of Velankani Information Systems (P) Ltd. (supra) where also space was let out by a software technology park, through*

different agreements, one for renting out the space and other for providing spaces, had held as under: —

> *"25. We have to find out in that context what was the intention of the parties in entering into the lease transaction. It is not the number of agreements, which are entered into between the parties which is decisive in determining the nature of transaction. What is the object of entering into more than one said transactions is to be looked into. However, if for enjoyment of lease, the subject matter of all the agreements is necessary, then notwithstanding the fact that there are more than one agreement or one lease deed, the transaction is one. As all the agreements are entered into contemporaneously and the object is to enjoy the entire property viz : building, furniture and the accessories as a whole which is necessary for carrying on the business, then the income derived there from cannot be separated based on the separate agreement entered into between the parties. What has to be seen is, what was the primary object of the assessee while exploiting the property. If it is found applying such principle that the intention is for letting out the property or any portion thereof, the same may be considered as rental income or income from properties. In case, if it is found that the main intention is to exploit immovable property by way of complex commercial activities, in that event it must be held as business income".*

Thus, what is to be looked into is intention of the parties while entering into the lease. Admittedly, the agreements entered by the assessee with the lessees were contemporaneous. Objects of the lease was to allow enjoyment of the entire property with all services related to its use as technology centers. Main object of the assessee firm as it appears in its partnership deed is reproduced hereunder: —

> *'The business of the firm shall be to purchase, sell, subdivide, consolidate any land and plots, construct, promote, develop, industrial parks, information technology buildings, commercial buildings for sale, rent, lease or both on installment or otherwise".*

Contemporaneous nature of the agreements entered by the assessee with its lessees, nature of the premises rented out and object of the assessee firm all, in our opinion, demonstrate its intention to provide the space on lease, as a part and parcel of its business. Hon'ble Apex Court in the case of Rayala Corporation Pvt. Ltd. (supra), relying on its own earlier judgment in the case of Chennai Properties & Investments Ltd. (supra) held as under at para 10 & 11 of the 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".

It is to be noted that Hon'ble Apex Court in the case of Chennai Properties & Investments Ltd. (supra) had considered all the judgments relied on by the Id. Commissioner of Income Tax (Appeals) including that of the five judge Bench in the case of Sultan Brothers Pvt. Ltd. (supra), before holding in favour of the assessee. We are therefore of the opinion that Id. Commissioner of Income Tax (Appeals) erred in trying to distinguish the judgment of Hon'ble Apex Court in the case of Rayala Corporation (supra), which had placed specific reliance on the judgment of Chennai Properties & Investments Ltd. (supra). As to the case of Raj Dadarkarand Associates (supra), of Hon'ble Apex Court in the said case, concerned assessee had income apart from leasing out of the property. Here there is no case for the Revenue that assessee had any different type of income. In the circumstances, we are of the opinion that the income of the assessee both from leasing the space as well as providing maintenance services had to be considered only under the head income from business. Ld. Assessing Officer fell in error in treating such amounts under the head income from house property. We are of the opinion that assessee's income has to be considered only under the head "income from business". Ordered accordingly

3.11. In view of the above observations and respectfully following the various judicial precedents stated supra, we hold that assessee would be eligible for depreciation of Rs.10,63,89,191/- and also shall be eligible for deduction of interest of Rs. 3,39,24,035/- and deduction towards property tax of Rs.33,30,583/- under the head 'income from business'. The ld. AO is hereby directed to recompute the total income of the assessee by accepting the returned income thereon. Accordingly, the grounds raised by the Revenue are dismissed.

3. In the result, appeal of the Revenue is dismissed.

Order pronounced on 31/05/2022 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(PAVAN KUMAR GADALE)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 31/05/2022
KARUNA, *sr.ps*

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, Mumbai