

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
Before Shri G.S. Pannu, Hon'ble President
and
Shri Anubhav Sharma, Judicial Member

ITA No. 2657/Del/2019
(Assessment Year: 2014-15)

National Housing Bank, Core-5A, India Habitat Centre, Lodhi Road, New Delhi PAN: AABCN2600H (Appellant)	Vs. ACIT, Circle-17(2), New Delhi (Respondent)
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Assessee by :	Shri Kamal Bansal, CA
Revenue by:	Shri N. C. Swain, CIT DR

Date of Hearing	26/05/2022
Date of pronouncement	15/05/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the Assessee against the order dated 23.01.2019 of Ld Commissioner of Income Tax (Appeals)-6, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 6/10709/2016-17 arising out of an appeal before it against the assessment order dated 23.12.2016 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') passed by the Id. Assessing Officer, Asst. Commissioner of Income Tax, Circle-17(2), New Delhi (hereinafter referred as the Ld. AO).

2. Facts in brief are that the assessee is a financial institution engaged in the business of providing finance to banks, housing finance companies and housing finance institutions. The assessee is also, by virtue of its statute, a Regulator for housing finance

companies, organizations and institutions which are engaged in the business of providing housing finance and registered with National Housing Bank. Thus, the assessee is a Regulator and a financier to such institutions and entities. The Assessee is also investing in housing finance companies as a promotional activity and as envisaged in its charter. In order to meet with the financial needs it arrange long term and short term funds according to the availability thereof at the best competitive rates, both in the domestic market as well as from international lending agencies. The learned Assessing added back a sum of Rs. 31,95,481/- being part of depreciation claimed by the assessee on account of cost of office premises at India Habitat Centre. The notes to accounts brought out the facts that the title deeds in respect of the Office Premises have yet to be executed. The Bank has claimed depreciation at the applicable rate as per Income Tax Rules on the amount paid as cost of premises.

3. The appeal of assessee was also dismissed so the the Assessee has raised the following grounds of appeal:-

"1. That the Id CIT(A), New Delhi has erred both on law as well as on facts, while affirming the arbitrary disallowance made by the Learned Assessing Officer for a sum of Rs. 31,95,481/- being part of depreciation claimed by the Assessee on account of cost of office premises at Indian Habitat Center.

The notes to accounts brought out the fact that the title deeds in respect of the office premises have yet to be executed. The bank has claimed the deprecation at the applicable rate as per Income Tax Rules on the amount paid as cost of premises."

4. Heard and perused the records.

5. It was submitted by the Id counsel for the Assessee that in Assessee's own case for Assessment Year 2012-13, the controversy has been decided in favour of the Assessee in ITA No. 477/Del/2017 vide order dated 10.02.2020.

6. The copy of same is on record. It can be observed that in Assessee's own case for Assessment Year 2012-13 the coordinate bench observed as under:-

"(E) We have heard both sides. We have also perused the materials available on record. It is not in dispute that the issue in dispute in the present appeal is squarely covered in favour of the assessee by aforesaid orders in the case of Joint Commissioner of Income-Tax vs. Rajesh Exports Ltd. (supra) and order dated 28.03.2019 of Co-ordinate Bench of ITAT, Delhi, (supra). Also, no distinguishing facts and circumstances have been brought to our notice by either side to persuade us to take a view different from the view taken by the ITAT in the aforesaid orders in the case of Joint Commissioner of Income-Tax vs. Rajesh Exports Ltd. (supra) and order dated 28.03.2019 of Co-ordinate Bench of ITAT, Delhi, (supra). For ease of reference, the relevant portion of the aforesaid order dated 28.03.2019 of Co-ordinate Bench of ITAT in assessee's own case is reproduced below:

"25. AO as well as Id. CIT (A) has disallowed an amount of Rs.40,44,605/- claimed as depreciation on office building on the ground that the same is attributable towards cost of land.

26. Ld. AR for the assessee contented that in the absence of any segregation of value of land, depreciation has been claimed on the basis of total cost paid to India Habitat Centre because land is also leasehold being subject to amortization and effectively the total cost paid for the premises will be considered For amount of depreciation. Ld. AR relied upon the decision rendered by the coordinate Bench of the Terminal in CIT vs. Rajesh Exports Ltd. (2006) 9 SOT 28 (Bang.) which has further than relied upon by the co-ordinate Bench of the Tribunal in ease of ITO vs Millennium Spire India Management (P) Ltd. ITA No.3297/Del/2013.

27. Operative part of the aforesaid decisions rendered by the coordinate Bench of the Tribunal in CIT vs. Rajesh Exports Ltd. (supra) is extracted for ready perusal as under:

"Under section 32(1) of the Act, the word " building" is to be interpreted as the superstructure and not land. Where the assessee purchases building and the purchase price (as per sale deed) is a composite one (sale deed does not indicate the prices of land and building separately), then no

distinction at least in the consideration paid to the vendor can be made. However, if there is a clear-cut identity in respect of price paid to the land and building (Le., sale deed indicates price of land and building separately), then Assessing Officer is right in allowing depreciation only on the building."

28. In this case also, when the assessee bank does not have any segregation value of land and building of the said premises and it has paid composite price, the entire depreciation claim is allowable under Section 32 of the Act. So, following the aforesaid decision rendered by the Co-ordinate Bench of the Tribunal in CIT vs. Rajesh Exports Ltd. (supra), and when it is categorical case of the assessee that the purchase price of land and building is composite one and it has no segregation of value of land and building separately, disallowance made by the AO/CIT (A) is not sustainable in the eyes of law. So, Ground No. 5 to 8 of ITA No. 6888/Del/2014 (AY 2011-12) of assessee's appeal is determined in favour of the assessee."

(E.1) Respectfully following the aforesaid order dated 28.03.2019 of Co-ordinate Bench of ITAT in assessee's own case, we also decide the issue in dispute in the present appeal before us, in favour of the assessee and direct the AO to allow the assessee's claim for depreciation amounting to aforesaid Rs. 36,40,145/-."

7. The Id DR could not submit anything to distinguish the controversy on facts or cite any other proposition of law to the contrary.

8. Considering the same and respectfully following the aforesaid order dated 10.02.2020 of Co-ordinate Bench of ITAT in assessee's own case, the issue in dispute in the present appeal is decided in favour of the assessee and the Ld.AO is directed to allow the assessee's claim for depreciation amounting to extent as claimed i.e Rs. 31,95,481/-."

9. Order pronounced in the open court on 15/06/2022.

Sd/-
(G.S. Pannu)
Hon'ble President
Dated: 15/06/2022

Sd/-
(Anubhav Sharma)
Judicial Member

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi