

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 325/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2017-18)

Assistant Commissioner of Income-tax, Corporate Circle 3(1), Nungambakkam, Chennai – 600 034.	बनाम/ Vs.	M/s. Shriram Housing Finance Limited, No. 4, Mookambika Complex, Lady Desika Road, Mylapore, Chennai – 600 004.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAPCS-3213-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Gautham Venkata Narayanan, Advocate
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/ Date of Hearing	:	07.06.2022
घोषणा की तारीख / Date of Pronouncement	:	15.06.2022

आदेश / ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-15, Chennai in appeal No. 0297/CIT(A)-15/2019-20 order dated 22.09.2020. Assessment was framed by ACIT, Corporate Circle-6(1), Chennai for AY 2017-18 u/s. 143(3) of the Income-tax Act, 1961 (herein after referred to as 'the Act') vide order dated 31.12.2019.

2. At the outset, it is noted that this appeal filed by Revenue is barred by limitation by 282 days. The Revenue has filed condonation petition stating the reason that the order of appeal was received on 06.10.2020 and the delay is due to pandemic period of Covid 19 and subsequent events and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Since the Hon'ble Supreme Court has condoned the delay during the said period, respectfully following the same we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is against the order of CIT(A) held that expenditure incurred towards payment of royalty was revenue in nature and thereby deleting the addition. For this Revenue has raised the following two effective grounds which read as under:

"2. The Ld. CIT(A) ought to have been appreciated that a similar decision of the Hon'ble tribunal, on identical facts, in the assessee's own case for the AY 2012-13 & 2013-14 has not been accepted by the Department and an appeal u/s. 260A has been preferred before the Hon'ble High Court.

3. The Ld. CIT(A) erred in holding that the expenditure incurred towards payments of Royalty was revenue in nature and deleting the addition."

4. At the outset, Ld. Counsel for the assessee stated that this issue is squarely covered by Tribunal decision in assessee's own case and CIT(A) following the tribunal order for AY 2013-14 & 2016-17 of exactly identical issue

allowed the case of assessee. Ld. Counsel took us through the order of the CIT(A) para 5 wherein CIT(A) has allowed the appeal of assessee by following the order of the Tribunal which read as under:

"I have carefully perused the findings of the A.O in the assessment order and submissions of the Appellant before me in support of their grounds of appeal.

5.1 *The AO has disallowed the payment of royalty of Rs. 2,25,61,151/on the ground that it was not a revenue expenditure. Therefore, the AO capitalised the same and allowed depreciation@ 25%. The Appellant relied on the following decisions of the Appellate Authorities, which are favourable to them:*

In Appellant's own case

Sl	AY	Appellate Authority	Order No.	Date
1	2013-14	ITAT, Chennai	ITA No. 853/Chny/2017	29.05.2018
2	2016-17	CIT(A), Chennai	ITA No. 2006/Chny/2019	22.08.2019

The appellant's AR has relied on a favorable decisions in Appellant's own case by Hon'ble ITAT, Chennai for AY 2013-14 in ITA No. 853/CHNY/2017 dated 29.05.2018 and by CIT(A) for AY 2016-17 in ITA. No. 2006/Chny/2019 dated 22.08.2019 where the payment towards royalty was held to be revenue expense.

*Respectfully following the above mentioned decisions of Hon'ble ITAT Chennai and my predecessor in the appellant's case, the AO is directed to allow the appellant's claim of royalty payment of Rs. 2,25,61,151/- as revenue expenditure. The AO is also directed to withdraw the depreciation @ 25% allowed by the AO in the assessment order. The appellant's grounds are **allowed.***

5.2 *Next ground of appeal is that while computing the total income, the A.O proceeded from the total income as per revised return of income (filed on 27.03.2018) of Rs.46, 12,49,040/- instead of proceeding from the total income returned as per revised return of income (filed on 19.12.2018) of Rs.44,32,54,850/-. The AO is directed to verify the*

appellant's above claim and adopt correct income as per provisions of I.T. Act. This ground of appeal is partly allowed."

5. When these facts were confronted, Ld. Sr. DR could not controvert the above fact situation. Even in the concerned grounds of appeal raised by Revenue it is admitted that the issue is covered in assessee's own case for AY 2012-13 & 2013-14 but that has not been accepted by the Department. On appeal u/s. 26A of the Act has been preferred before the Hon'ble High Court of Madras. As the issue is covered and there is no distinguishable fact in the present case, respectfully following the co-ordinate bench decision, we dismiss the appeal of Revenue.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 15th June, 2022.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

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

चेन्नई / Chennai; दिनांक / Dated : 15-06-2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded 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