

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.2830/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

DCIT Corporate Circle-2(1) Chennai.	बनाम/ Vs.	M/s. Egberts India Pvt. Ltd., 'Newry Shrey', F-34(Old No.97), 4 th street, Anna Nagar East, Chennai – 600 102.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAACE-1410-F		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri G. Vardini Karthik (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri Varuvooru Sreedhar (Addl. CIT)-Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	06-06-2022
घोषणा की तारीख / Date of Pronouncement	:	15-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)] dated 15-09-2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 15-03-2013. The grounds raised by the Revenue are as under:

1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.
- 2.1. The CIT(A) erred in directing the AO to allow the business loss as claimed by the assessee by holding that an expense of Rs.1,56,39,647/- be treated as

business expenditure relating to other business activities without considering the nexus between income and expenditure.

2.2. The CIT(A) failed to consider the remarks of the AO in his remand report dated 29.06.2017 wherein it was stated that rental income had been included in the P&L account and the same was separated and claimed as income from house property with standard deduction of 30% in the computation memo only. Hence, no further expenses can be allowed to the assessee.

2.3. The CIT(A) failed to appreciate the fact that details such as nature of expenses, etc., along with proof towards the claim of Rs.1,56,39,647/- were not furnished either at the time of assessment proceedings or at the time of appeal proceedings, to prove the genuineness of assessee's claim on business loss.

2.4. The CIT(A) failed to appreciate the fact that the expenses claimed in the P&L account under the head administrative expenses also shows the expenses relating to the property out of which rental income is admitted.

3 For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.

As evident, the sole subject matter of appeal is disallowance of business expenditure.

2. The Registry has noted delay of 02 days in the appeal, the condonation of which has been sought by the revenue. Considering the period of delay, we condone the delay and admit the appeal for adjudication on merits.

3. The Ld. DR submitted that the assessee was entitled only for statutory deduction of 30% against income from house property whereas Ld. AR submitted that business expenditure was admissible even no business income was earned by the assessee during the year. Having heard rival submissions and after due consideration of material facts, our adjudication would be as under.

4. The assessee being resident corporate assessee is stated to be engaged in the business of real estate and property development. It transpired that the assessee reflected income from house property and bank interest. However, no business income was reflected in the Profit & Loss Account. As against this, the assessee claimed business

expenditure. The Ld. AO observed that the assessee did not undertake any project nor it offered any business income and accordingly, business expenditure could not be allowed. The assessee simply debited huge expenses and claimed set-off of the same against income from house property income. Since the assessee could not produce any justification, the business expenditure was disallowed.

5. During appellate proceedings, the assessee submitted that it had two properties i.e., one at Mahabalipuram and another at Anna Nagar which was let out to M/s. Tata Consultancy Services Ltd. To develop the property at Mahabalipuram, the assessee had applied for approvals from municipal and corporation authorities. The property at Anna Nagar was let out and as per contractual terms, the assessee had an obligation to maintain the property. For the same, the assessee incurred staff and administrative costs and claim the same as business expenditure. The assessee paid interest on loans to acquire the said property which was also claimed as business expenditure. It was submitted that all the expenditure was essential to keep the property commercially exploitable so as to earn rent from the said property. Without incurring this expenditure, the property at Anna Nagar could not be made commercially exploitable. Concurring with the same, the Ld. CIT(A) held that the business expenditure represent expenditure relating to other business activities and accordingly, allowed the appeal of the assessee. Aggrieved, the revenue is in further appeal before us.

6. From the facts, it emerges that the property at Anna Nagar has been let out by the assessee and the rental income has been offered and assessed as Income from House Property. Under this head, the assessee is entitled to claim statutory deduction of 30% and interest

expenditure irrespective of actual expenditure incurred by the assessee. However, it emerges that besides 30% deduction, the assessee is claiming actual expenditure incurred on Anna Nagar property as business expenditure which is not permissible. The assessee is entitled for those expenditure which fulfil the tests of Sec.37(1). Therefore, on the facts and circumstances of the case, we set aside the impugned order and restore the matter back to the file of Ld. AO with a direction to the assessee to bifurcate the business expenditure. The expenditure incurred on Anna Nagar property would not be allowable expenditure as Business expense whereas other expenditure incurred for business purposes and to maintain corporate personality would be admissible expenditure. The assessee is directed to provide requisite details and substantiate its claim.

7. The appeal stands allowed for statistical purposes.

Order pronounced on 15th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

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

आदेश की प्रतिलिपि ँ ग्रेषित/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