

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.322/Mum./2022
(Assessment Year : 2015-16)

Wadia Ghandy & Co.
N.M. Wadia Building
123, M.G. Road, Fort
Mumbai 400 001
PAN-ANAFW1081H

...Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-16(3), Mumbai

...Respondent

Assessee by : Shri Milin Dattani
Revenue by : Shri Shekhar L. Gajbhiye

Date of Hearing- 18/05/2022

Date of Order- 15/06/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 22/12/2021, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, for the assessment year 2015-16.

2. The assessee, in the present appeal, has raised following grounds:-

"1. The learned Commissioner (Appeals) was not justified in confirming the Assessing Officer's action of disallowance of depreciation on tenancy right of Rs.2,04,057.

2. The learned Commissioner (Appeals) failed to appreciate that tenancy rights were a form of license.

3. The only grievance of the assessee in the present appeal is with regard to the disallowance of depreciation on tenancy rights.

4. During the course of hearing, at the outset, the learned A.R. submitted that the assessee has filed declaration in Form no.8, invoking provisions of section 158A of the Act stating that similar question of law is pending before the Hon'ble Jurisdictional High Court in assessee's own case in ITA no.2520 of 2010, for the assessment year 2003-04 and 2004-05.

5. The learned A.R. furnished a copy of Form no.8, along with statement of case and memorandum of appeal under section 260A of the Act filed before the Hon'ble High Court. The learned A.R. accordingly prayed that a suitable order under section 158A(3) of the Act be passed in respect of the present appeal. The declaration Form no.8 along with the necessary Annexures, as furnished by the learned A.R., were taken on record and the report of the concerned Assessing Officer was sought as per provisions of section 158A(2) of the Act. The Assessing Officer, vide report dated 15/06/2022, as required in terms of section 158A(2) of the Act, has agreed that the grounds of appeal and question of law before the Hon'ble Jurisdictional High Court in ITA no.2520 of 2010, are identical to the question of law raised by the assessee in the present appeal for the assessment year 2015-16.

6. We have carefully considered the submissions of both the sides and perused Form no.8, as well as the report of the Assessing Officer filed

before us. Both the parties have confirmed that the question of law pending before the Hon'ble Jurisdictional High Court for the assessment year 2003-04 and 2004-05 are identical to the issue involved in the present appeal for assessment year 2015-16.

7. In view of the above accepted position, we accept the claim of the assessee under section 158A of the Act. We dispose off the present appeal without awaiting for the final decision on the question of law in other case, as per the provisions of section 158A(4) of the Act. We further direct the Assessing Officer that when the decision on the question of law in the other case becomes final, it shall be applied to the relevant assessment year.

8. In the result, appeal by the assessee is allowed for statistical purpose.

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

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/06/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai