

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “B”, MUMBAI**

**BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5140/M/2019
Assessment Year: 2015-16**

M/s. Nasser S Al Hajri Corporation Pvt. Ltd., Unit No.2, 2 nd Floor, A-Wing Timesquare, Andheri Kurla Road, Opp. Mittal Estate, Andheri (E), Mumbai – 400 059 PAN: AADCN 7852M	Vs.	ACIT, Circle – 10(3)(1) and CIT(A)-17, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri C.T. Mathews, D.R.

Date of Hearing : 14 . 06 . 2022
Date of Pronouncement : 05 . 07 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Nasser S Al Hajri Corporation Pvt. Ltd. (hereinafter referred to as ‘the assessee company’) by filing the present appeal, sought to set aside the impugned order dated 31.05.2019 passed by Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2015-16 on the grounds inter alia that :-

“1. On the facts and circumstances of the case and in law, both the Assessing Officer (AO) as well as CIT(A) has erred in:

i) Sustaining the assessed income at Rs.1,09,10,120/- as against returned income of Rs.77,13,686/-.

ii) Disallowing depreciation of Rs.39,21,893/- on movable assets stating that the leave and license agreement dtd.25th June, 2014 did not provide any bifurcation of rent between immovable and movable property. The depreciation claim made on movable assets was u/s.57 of the Income Tax Act and comprised of furniture & fixtures, computers, electrical fittings and office equipment. The appellant has netted off rentals of Rs.24,18,030/- in respect of furniture & fixtures, computers, electrical fittings and office equipment against depreciation of Rs.39,21,839/-, thereby claiming a loss of Rs, 15,03,809/- under the head income from other sources. The appellant be allowed depreciation claim of Rs.39,21,839/- as claimed u/s.57 of the Income Tax Act.

iii) Rejecting the working provided by the appellant in respect of apportioning the rent received between immovable and movable properties. The compensation received of Rs. 1,34,64,315/- as per agreement dtd. 25th June, 2014 was composite one. The allocation made of Rs.1,10,46,285/- towards property and Rs.24,18,030/- towards amenities such as furniture & fixtures, computers, electrical fittings and office equipment was arrived at as per the answers in the FAQs published by the Income Tax Department in respect of composite consideration. In doing so the AO as well as the CIT(A) have further erred in taxing the above amount of Rs.24,18,030/- as income from house property as against income from other sources shown by the appellant.

iv) Without prejudice to the above, the CIT(A) ought to have assessed composite compensation received of Rs. 1,34,64,315/- in respect of the facilities provided at Times Square, Andheri Kurla Road, Andheri (East), Mumbai 400 059, as either income from business or other sources.

2. The appellant reserves its right to add to, alter, amend, modify or delete any of the grounds taken in this appeal. The grounds taken above are without prejudice to each other.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee filed return of income for A.Y. 2015-16, the year under consideration, at the total income of Rs.77,13,686/-. The assessee's case was selected for scrutiny under limited scrutiny category. Assessee has made claim of

Rs.39,21,839/- under section 57 of the Income Tax Act, 1961 (for short 'the Act'). Declining the contentions raised by the assessee company that he is entitled for depreciation on the furniture and fixture amounting to Rs.39,21,839/- against the rental income of movable assets, Assessing Officer (AO) proceeded to disallow the claim on the ground that the assessee has failed to prove on record that if he has given two separate items i.e. premises as well as movable properties on rent.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the disallowance/ addition made by the AO by dismissing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, the assessee company has rented out the premises to M/s. Jet Privelege Pvt. Ltd. by virtue of lease agreement dated 25.06.2014 at the monthly lease rent of Rs.14,96,035/- for the period 01.07.2014 to 30.06.2017 and thereafter the said amount was to be increased to Rs.17,20,440/-. It is also not in dispute that there is no specific reference of furniture and fixture in the agreement.

6. In the backdrop of the aforesaid undisputed facts the sole question arises for determination in this case is

“As to whether assessee is entitled to bifurcate the entire receipts on account of rent from M/s. Jet Privelege Pvt. Ltd. into premises (immovable property) and furniture and fixture for the purpose of claiming depreciation on the furniture and fixture against the rental income of movable assets?”

7. The Ld. A.R. for the assessee challenging the impugned order contended that since the assessee has made investment in the immovable property (premises) and movable assets (furniture and fixture) to the ratio of 82.04% and 17.96% respectively. The amount of Rs.39,21,839/- is allowable deduction on account of depreciation on furniture and fixture and relied upon the decision rendered by Hon'ble Karntaka High Court in case of Mohan Kumar HUF 12 taxmann.com 361 (Kar), decision rendered by Hon'ble Supreme Court in case of Raj Dadarkar & Associates 394 ITR 592 SC, Serendipity Apparels (P.) Ltd. 78 taxmann.com 154 (Ahmedabad – Trib.) and Oriental Building & Furnishing Co. Ltd. 79 Taxman 374 (Delhi) (Mag.).

8. However, on the other hand, Ld. D.R. for the Revenue to repel the arguments addressed by the Ld. A.R. for the assessee contended that when there is no clause in the lease agreement as to renting out the immovable and movable property separately the AO as well as the Ld. CIT(A) have rightly disallowed the deductions claimed by the assessee and relied upon the decision rendered by the Hon'ble Supreme Court in case of Sultan Brothers Pvt. Ltd. 51 ITR 353 and decision rendered by Hon'ble Supreme Court in case of Raj Dadarkar & Associates 394 ITR 592 SC.

9. Bare perusal of the lease agreement entered into between the assessee and the lessee relevant clauses of which are extracted by

the Ld. CIT(A) in para 4.3 of the impugned order goes to show that there is not even a whisper as to renting out the furniture and fixture by the assessee along with the premises/immovable properties. In case of contract, parties to the agreement make law for themselves to which nothing can be added or deleted. When there was no intention of the parties to the lease agreement (supra) that rent is being paid for immovable and movable assets separately no amount of rent can be attributed to the furniture and fixture as claimed by the assessee.

10. Hon'ble Supreme Court in case of Raj Dadarkar & Associates (supra) while deciding the identical issue held that ancillary/service/fixtures and fittings cannot be separated from the basic charge of rent, the operative part of decision rendered by Hon'ble Supreme Court is extracted for ready perusal as under:

"17. In the instant case, therefore, it is to be seen as to whether the activity in question was in the nature of business by which it could be said that income received by the appellant was to be treated as income from the business. Before us, apart from relying upon the aforesaid clause in the partnership deed to show its objective, the learned counsel for the appellant has not produced or referred to any material. On the other hand, we find that ITAT had specifically adverted to this issue and recorded the findings on this aspect in the following manner:

"26. ...On this issue facts available on record are that the assessee let out shops/stalls to various occupants on a monthly rent. The assessee collected charges for minor repairs, maintenance, water and electricity. As per the terms of allotment by the BMC, the assessee was bound to incur all these expenses. The assessee, in turn, collected extra money from the allottees. The assessee collected 20% of monthly rent as service charges. Such service charges were also used for providing services like watch and ward, electricity, water etc. This in our opinion was inseparable from basic charges of rent. The assessee has made bifurcation of the receipt from the, occupiers of the shops/stalls as rent and service charges. As rightly held by the Assessing Officer, decision of Hon'ble Supreme Court in the case of Shambu Investment Pvt. Ltd., 263 ITR 143 will apply. The assessee has not established that

he was engaged in any systematic or organized activity of providing service to the occupiers of the shops/stalls so as to constitute the receipts from them as business income. In our opinion, the assessee received income by letting out shops/stalls; and therefore, the same has to be held as income from house property."

11. Even in case of Sultan Brothers Pvt. Ltd. (supra) Hon'ble Supreme Court held that when a building & plant, machinery or furniture are inseparably let the Income Tax Act contemplates the rent from the building as a residuary head of the income and not one to be computed under section 9 of the old Act" meaning thereby when immovable property and furniture and fixtures have been inseparably let out by the assessee with no specific reference, "furniture and fixtures" cannot be separated for the basic charge of rent for the purpose of claiming depreciation by the assessee.

12. Moreover, when it is nowhere case of the assessee that it is to exploit movable property "furniture and fixtures" as a business as is also apparent from the lease agreement, the Ld. Lower Authorities have rightly disallowed the depreciation claimed by the assessee under section 57 of the Act. Moreover, lease agreement (supra) speaks for itself that it is for immovable property only. So the question framed is answered in negative. Finding no illegality or perversity in the impugned order passed by the Ld. CIT(A), present appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 05.07.2022.

**Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 05.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.