

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.119/Del/2020

निर्धारणवर्ष/Assessment Year: 2016-17

DCIT Circle 3(1) Room No. 380 B, C.R. Building, New Delhi.	बनाम Vs.	Arham IT Infrastructure Ltd., H-334, Ground Floor, New Rajendra Nagar, New Delhi. PAN No. AAACA7413Q
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Sh. Kanav Bali, Sr. DR
निर्धारितकीओरसे /Assessee by	Sh. Sudesh Garg, Adv. Sh. Prince Bansal, CA

सुनवाईकीतारीख/ Date of hearing:	13.07.2022
उद्घोषणाकीतारीख/Pronouncement on	08.8.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-32, New Delhi dated 18.10.2019 for the AY 2016-17.

2. The only issue in the appeal of the Revenue is whether the Ld. CIT(A) erred in law and on facts in directing the AO to treat receipt of common area maintenance charges as income from business instead income from house property.

3. The Ld. Counsel for the assessee, at the outset, submitted that the issue in appeal is squarely covered by the decision of the Tribunal in assessee's own case for the assessment years 2013-14 and 2014-15 in ITA Nos. 5300/Del/2016 dated 27.07.2021 and ITA 6564/Del/2017 dated 23.09.2021 for the assessment years 2013-14 and 2014-15 respectively. Copies of the order are placed on record.

4. The Ld. DR fairly submits that the issue in appeal is decided by the Tribunal in favour of the assessee.

5. Heard rival submissions, perused the orders of the authorities below and the order of the Tribunal in assessee's own case placed before us.

6. On perusal of the order of the Tribunal for the AY 2014-15 in ITA 6564/Del/2017 dated 23.09.2021, we observe that identical grounds raised by the Revenue i.e. as to whether common areas maintenance charges should be treated as business income instead income from house property came up for hearing and the Tribunal following the order of the Tribunal in assessee's own case for the AY 2013-14 vide order dated 27.07.2021 in ITA No. 5300/Del/2006 upheld the order of the Ld. CIT(A) in holding that the common area maintenance charges are assessable under the head "income from business" as against income from house property as held by the AO. While holding so the Tribunal observed as under:

“6.0 We have heard the rival submissions and have also perused the material on record. We agree with the contention of the Ld. AR that the issues raised by the Department in the present appeal stand decided against the Revenue are in favour of the assessee by the order of this Tribunal in the immediately preceding assessment year i.e. AY 2013-14 vide order dated 27.07.2021 in ITA No. 5300/Del/2016. The relevant observations and conclusion arrived at by the Coordinate Bench of this Tribunal in AY 2013-14 are being reproduced here-in-under for a ready reference: -

“13. We have given thoughtful consideration to the orders of the authorities below and have also considered the judicial decisions relied upon by both the parties. It is not in dispute that the appellant had agreement with the tenants and in such agreement, there was specific clause in respect of common area maintenance charges and in the agreement it has been specifically mentioned that maintenance charges shall be payable from rent commencement date.

14. In all the cases relied upon by the Assessing Officer/Ld. DR, none of the cases had such agreement for maintenance of common area and providing other facilities. In none of the cases relied upon by the Ld. DR, no separate expenses were incurred by any of the landlord and none of the cases had mixed income like income from house property and business and profession.

15. The Hon’ble High Court of Delhi in the case of Abhishek Govil ITA No. 19/2016 and ITA 21/2016 has held that contractual receipt received by the assessee, being owner of house property, after deducting TDS pursuant to maintenance agreement cannot be treated as rental income in the hands of the assessee.

16. In this case also, the assessee claimed that receipts on account of rent as well as maintenance charges were liable to be taxed under the head “income from house property”. The Assessing Officer rejected the claim of the assessee to treat the receipts on account of maintenance agreement as rental income and taxed the same under the head

“income from other sources”. In the case in hand the assessee is showing receipt as ‘Business income’.

17. *The Hon’ble High Court of Bombay in the case of Runwal Developers Pvt. Ltd. 115 Taxmann.com 196 has held that maintenance charges received were towards maintenance and promotion of common area and the amounts received towards maintenance charges were business receipts liable to be assessed under the head ‘Income from business’.*

18. *The Hon’ble Supreme Court in the case of Karnani Properties 82 ITR 547 has held that services rendered by the assessee to its tenants were result of its activities carried on continuously in an organized manner with a set purpose and with a view to earn profit and hence those activities were business activities and income arising therefrom was assessable as ‘business income’.*

19. *Considering the totality of the facts in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the findings of the Ld. CIT(A). Both the grounds taken by the Revenue are accordingly dismissed.”*

7.0 *Accordingly, in view of the above and respectfully following the order of the Coordinate Bench in assessee’s own case for the immediately preceding assessment year, on identical set of facts, we dismiss the grounds raised by the department.”*

7. Facts being identical. Respectfully following the said decision, we uphold the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 08/08/2022

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 08/08/2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi