

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI

श्री जी मंजूनाथा, लेखासदस्य, एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A No. 1814/CHNY/2019  
निर्धारणवर्ष/Assessment Year: 2014 - 2015

M/s Estancia IT Park Pvt. Ltd.,  
Plot 140, 151, Vallanchery Village,  
Chengalpatu Taluk - 603202

PAN: AAFCA6860N

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अपीलार्थी/Appellant

Vs.

Assistant Commissioner of Income Tax (OSD),  
Corporate Range 2,  
Chennai 600032

.....

प्रत्यर्थी/Respondent

Appearances:

For the Appellant/Assessee : Shri N V Balaji , Advocate  
For the Respondent/Department : Shri Guru Bashyam, CIT-DR

Date of conclusion of hearing : 01.06.2022

Date of pronouncement of order : 26.08.2022

आदेश /ORDER

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order passed by the Learned Commissioner of Income Tax (Appeals) - 5, Chennai [hereinafter referred to as the 'the CIT(A)'], dated 12.04.2019 dismissing the appeal against the Assessment Order, dated 26.12.2016, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].
2. The Appellant has raised following grounds of appeal:

- “1. *That the order of the learned Commissioner of Income Tax (Appeals) [‘CIT (A)] is contrary to the facts and circumstances of the case and against the principles of equity and natural justice.*
2. *The CIT(A) erred in upholding the disallowance of depreciation claimed by the appellant on a major part of the building to the tune of Rs.9,04,90,023/ on the pretext that the entire building was not used for the purpose of business.*
3. *The CIT (A) erred in holding that the building was not ready for use during the previous year relevant to the assessment year 2014-15. The CIT(A) could not have come to such a conclusion based on material before it. The finding of the CIT(A) is perverse.*
4. *The CIT (A) failed to appreciate that the entire 3,21,229.84 sqft of building was completed and ready for use since AY 2011-12 and therefore the appellant was eligible for depreciation on the entire building.*
5. *The CIT(A) erred in directing the assessing officer to take actions in previous years in respect of depreciation on building claimed by the appellant, without appreciating the fact that the building was complete and ready for use since AY 2011-12.*
6. *The CIT(A) erred in upholding the compensation of Rs.4,03,63,200/- paid to old tenant for vacating the premises. The CIT(A) failed to appreciate that the appellant had entered into long term lease agreement with the said tenant and compensation was paid for early termination of the lease.*
7. *The CIT(A) erred in holding that the appellant ought to have given notice to the old tenant. The CIT (A) failed to appreciate that he cannot sit in the arm chair of the appellant to make business decisions. The CIT (A) failed to appreciate that a sum of Rs.4,03,63,200/- was paid to the old tenant and that the same was allowable expenditure.*
8. *The CIT (A) erred in holding that the payment of Rs.4,03,63,200/- paid as compensation for vacating the old tenant was capital in nature.*
9. *The CIT (A) erred in not following the decisions cited by the appellant in its favour.*
10. *The Appellant crave leave to reserve itself the right to add, alter, amend or vary any ground(s) at or before the time of hearing.”*

3. The Appellant is a company incorporated by the name of Arun Infrastructure P. Ltd. with the object of carrying on business of infrastructure development, builders, contractors, civil engineers etc. When L&T Group took over the Appellant-company the name was

changed to L&T Chennai Projects P. Ltd. which was changed again to Estancia IT Park P. Ltd. after L&T Group sold their entire shareholding in the Appellant-company to Zoho Corporation Private Limited, vide Share Purchase Agreement, dated 09.05.2013.

4. The Appellant filed return of income for the Assessment Year 2014-15 on 30.09.2014 declaring total loss of INR 18,57,26,760/-. The return of the Appellant was selected for scrutiny. The Assessing Officer completed assessment under Section 143(3) of the Act vide order, dated 26.12.2016 assessing the total loss at INR 5,48,36,170/- by making, inter alia, (a) disallowance of INR 9,04,90,023/- holding the same to be excess depreciation claimed in respect of portion of building 'Signature Towers' not let out during the relevant previous year, and (b) disallowance of INR 4,03,60,000/- being the compensation paid to the tenant to vacate a portion of the same building debited to Profit & Loss Account during the relevant previous year.
5. The Appellant preferred appeal before CIT(A) challenging both the above disallowances. However, the appeal was dismissed by CIT(A), vide order, dated 12.04.2019, which has been impugned by way of the present appeal.
6. The Appellant has raised 10 grounds of appeal. Ground No. 1, 9 and 10 are generally in nature and do not call for adjudication. Ground No. 2 to 5 pertaining to disallowance of depreciation of INR 9,04,90,023/-. Ground No. 6 to 8 pertaining to the disallowance of compensation paid to the tenant for vacating the premises amounting to 4,03,60,200/-.

7. The relevant facts, common to both the disallowances, are that the Assessee/Appellant, being a SEZ developer, constructed a building known as 'Signature Tower' at Vallancheri Village, Chengalpet Taluk, having 3,21,229.84 Sq. Ft. area [hereinafter referred to as 'the Building']. The Building was ready as a 'warm shell' during the previous year relevant to the Assessment Year 2011-12 and was ready to be let out to the tenants who would carry out further work (interiors, furnishing, fitting etc.) as per their own requirements. The Appellant struggled to get suitable tenants for the Building and could only let out around 25,000 Sq. Ft. of area initially. During the previous year relevant to the Assessment Year 2013-14 and 2014-15 the let-out area further reduced to 12,950 Sq. Ft., and on account of poor occupancy L&T Group exited the business by selling entire shareholding in the Appellant-company to the present shareholders. The Appellant wanted to let out the entire premises of the Building to a single tenant and therefore, the Appellant asked the only tenant - M/s Maverick Systems Ltd. [hereinafter referred to as 'the Existing Tenant'], to vacate the premises. The Appellant had entered into a long term lease for 99 years with the Existing Tenant with 3 year lock-in-period. After detailed negotiation, which were carrying on since August 2011, the Existing Tenant had agreed to vacate the premises for compensation of INR 5,20,00,000/-, vide Memorandum of Understanding, dated 01.10.2012. Out of the aforesaid amount INR 4,03,63,200/- paid to the Existing Tenant was debited to the Profit & Loss Account as 'Exceptional Item' during the previous year relevant to the Assessment Year 2014-15. On 08.09.2014 the Appellant entered

into a Lease Deed with Zoho Corporation Private Limited [hereinafter referred to as 'the New Tenant'], the shareholder of the Appellant Company at the relevant time. The New Tenant wanted a 'Plug and Play' facility for their software development activities and therefore, asked the Appellant to carryout the interior works, fitting etc. in the Building. The possession of the Building was handed over to the New Tenants on 01.10.2014. Ocean Interior Limited started interior work on 06.03.2015 which continued till 16.03.2015. As per Note No. 11 on Fixed Assets forming part of the Financial Statements for the previous year relevant to the Assessment Year 2014-15, the addition of INR 38,672,112/- for Assessment Year 2014-15 and INR 146,63,84,772/- for Assessment Year 2015-16 was made to Land and Building.

Ground No. 2 to 5

8. On the strength of facts narrated in paragraph 7 above, the Learned Authorised Representative for the Appellant submitted that the Building, as 'warm shell', was completed during the previous year relevant to the Assessment Year 2010-11. The Appellant had, in proceedings before CIT(A), had filed (i) a copy of the Property Tax Assessment dated 09.10.2011, (ii) copies of property tax demands/receipt, (iii) Rental & Service Agreements with tenants, (iv) copies of audited financials for the year ending 31.03.2010 & 31.03.2011 evidence in capitalisation of fixed assets relating to 'Signature Tower', (v) receipts of rental income, (vi) ledger extracts of the rental income for the Assessment Years 2010-11, 2011-12, 2012-13, 2013-14, and 2014-15 and (vii) copy of SEZ approvals. The competent local authority that is Maraimalai Nagar

Municipality had inspected and assessed the Building before charging property tax on the same, vide order dated 9.10.2011. He further submitted that the Appellant has consistently claimed depreciation from the Assessment Year 2010-11 to 2014-15. For the Assessment Year 2013-14, the case of the Appellant was selected for scrutiny but no addition was made on account of excessive depreciation as made during the relevant Assessment Year 2014-15.

9. For Contra Learned Department Representative vehemently contended that the Building was not completed during the previous year relevant to the Assessment Year 2010-11. Relying upon the statement included in the Director's Report for the Financial Year ended 31.03.2015 relevant to Assessment Year 2015-16 the Learned Department Representative submitted that the commencement of operations in 'Signature Tower' took place in December 2014. Referring to the details of expenditure incurred on plant and machinery during the Assessment Year 2015-16, the Learned Department Representative submitted that the machinery such as spider-lifts and generators were installed during the Assessment year 2015-16 only. He submitted that addition of INR 146,63,84,772/- was made Land and Building during the previous year relevant to Assessment Year 2015-16 which clearly shows the Building was not completed. Further, the possession was handed over to the New Tenants on 01.10.2014 only and therefore, it cannot even be said that the Building was ready to use or put to use before 01.10.2014. Ocean Interior Private Limited had carried out interior work and had, in response to notice issued under Section 133(6) of the Act, submitted

that interior workers continued till 16.03.2015. The aforesaid, clearly suggests that the Building was not completed in the previous year relevant to the Assessment Year 2010-11 and therefore, the Assessing Officer was justified making disallowance in respect of the excess depreciation claimed by the Appellant amounting to INR.9,04,90,023/-.

10. We have considered the rival submissions and perused the material on record. After giving thoughtful consideration to the material on record we have come to a conclusion that the Building was complete during the previous year relevant to the Assessment Year 2010-11. The Building was in the form of a 'warm shell' and was, as per the business model followed by the Appellant at the relevant time, ready to be let out to the tenants who were responsible for carrying out the interior work, furnishing & fittings. The Appellant found it difficult to get tenants for the Building. However, when the New Tenant agreed to rent the Building the Appellant undertook the work to meet the requirements of the New Tenant who wanted a 'plug & play' facility for software development business and not just a building in the form of a 'warm shell'. The Appellant has also filed the documents specified in paragraph 8 above in proceedings before CIT(A). In our view various documents relied upon by the Appellant cannot be discounted merely on the basis of a statement of the director contained in the Director's Report. The Appellant has been consistently claiming depreciation since the Assessment Year 2010-11 and no addition has been made on account of excessive depreciation claimed by the Appellant in any of the preceding assessment years including Assessment Year 2013-14 for

which the case of the Appellant was selected for scrutiny. It is admitted position that during the relevant previous year a part of the Building was let out. In view of the aforesaid, we are inclined to accept the contention advanced on behalf of the Appellant that the Building was ready for use during the previous year relevant to the Assessment Year 2010-11. We have examined the break-up of the additions to Land and Building made during the previous year relevant to the Assessment Year 2014-15 and 2015-16 which include landscaping works, road construction at the entrance of the building, fencing work, modification work, plumbing work, strengthening work etc. The additional work carried out by the Appellant during the previous year relevant Assessment Year 2014-15 and 2015-16 can only be considered as work done for modification or improvement of the Building. According to the Assessing Officer, for allowing the claim for depreciation, the entire Building should have been actually used for the purpose of business during the relevant previous year and in this regard assessing officer has relied upon the judgement upon the Hon'ble Bombay High Court in the case of Dineshkumar Gulabchand Agrawal Vs. CIT: 67 ITR 768 (Bombay). Having perused the aforesaid judgment, we are of the view that the same was rendered in the context of plant and machinery and is, therefore, distinguishable on facts. Further, In the case of Dineshkumar Gulabchand Agarwal (supra) the asset (i.e. plant & machinery) was not actually used, whereas in the present case the asset (i.e. the Building) has been used as a part of the Building has been let-out. In the present case the Assessing Officer has granted depreciation on the building area-wise and therefore, allowed depreciation in respect of 12950 Sq. ft.

which was let-out, and has not allow depreciation in respect of area of 3,06,279.8 Sq. Ft. which has not let-out. The fact that plant & machinery could not utilized in full capacity or that the entire building was not let-out cannot lead to the conclusion that proportionate part of the plant & machinery and/or Building was not used. The approach adopted by the Assessing Officer, in our view, cannot be countenanced as the same is contrary to the provisions of the Act which provide that depreciation is to be granted in respect of the written down value of the block of asset used for the purpose of business. In our view the authorities below have failed to appreciate the building as 'warm shell' was ready during the previous year relevant to the Assessment Year 2010-11 which was improved upon and upgraded to a 'plug & play' facility later on. We note that the transaction of letting out of part of the Building, accrual of rental income and the claim of depreciation in respect of the Building have all been accepted in the preceding assessment years as genuine/bonafide transactions/claims.

11. In view of the above, we set aside the order of the CIT(A) on this issue and delete the disallowance of INR 9,04,90,023/- made by the Assessing Officer. Accordingly, Ground No. 2 to 5 raised by the Appellant are allowed.

Ground No. 6 to 8

12. Relying upon facts stated in paragraph above 7 above, the Learned Authorised Representative for the Appellant submitted that the Appellant paid INR 4,03,60,200/- to the Existing Tenant to vacate the premises in

the Building so that the entire Building could be let out to a single tenant. He submitted that the Appellant was in negotiation with the Existing Tenant over long period of time. Relying upon correspondences between the Appellant and Existing Tenant placed at pages 193 to 206 of the paper-book, he submitted that after detailed discussions and negotiations the amount of compensation was arrived at, premises were vacated by the Existing Tenant, and the Appellant was finally able to lease out the premise entire building to the New Tenant on 08.09.2014. Therefore, the commercial business decision taken by the Appellant could not be doubted by the Assessing Officer.

13. Countering the submission advance by the Learned Authorised Representative for the Appellant, the Learned Department Representative submitted that as per the Lease Deed between the Appellant and the Existing Tenant only 3 months were left in the lock-in-period and upon expiry thereof, the Appellant could have asked the Existing Tenant to vacate the premises by giving 3 months notice as per clause 3.5 of the Lease Deed between the parties. There was no business exigency and, therefore, the Appellant should have waited for 3 more months instead of making payment of this huge compensation to the Existing Tenant to vacate the premises.

14. We have considered the rival submissions and perused the material on record. The Revenue has not doubted the fact that compensation of INR 4,03,60,200/- as been paid to the Existing Tenant. The contention of the Revenue is there was no business exigency to make such payment. In our view, the business expediency & exigency is to be judged from the

perspective of the Appellant. When viewed from the perspective of the Appellant/Assessee, we find that the business decision was governed by the rationale to maximize the profits by letting out the entire Building to a single tenant. The Appellant was in fact able to let out the entire Building, though after expiry of one year from the date on which the lock-in-period with the Existing Tenant would have ended.

15. The Learned Authorised Representative has relied upon the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Birla Cotton Spinning & Weaving Mills Ltd.: 82 ITR 166 (SC) to support the contention that expenditure incurred for the purpose of business is much wider than the expenditure incurred for the purpose of earning profits. He submitted that the expense were incurred on account of business exigency and we wholly & exclusively for the purpose of business of the Appellant. In this regard he relied upon the judgment of the Hon'ble Calcutta High Court in the case of CIT Vs. Auto Distributors Ltd: 210 ITR 222 (Calcutta) to support his contention that the payment made to the Existing Tenant is to be allowed as business expenditure under Section 37(1) of the Act. Whereas the Learned Departmental Representative has relied upon the judgment of the Hon'ble Calcutta High Court in the case of United Spirits Ltd Vs. Commissioner of Income Tax (Central)-1, Calcutta: 421 ITR 300 (Calcutta) wherein it has been held that in the amount paid by an Appellant to tenant in terms of settlement in order to obtain vacant and peaceful possession of its business premises was capital expenditure not eligible for deduction under Section 37 (1) of the Act.

16. In the case of United Spirits Ltd (supra), the Hon'ble High Court observed as under:

*“14. We think that the principles are plain that when one is examining an expenditure in connection with property, one has to see what is the dominant purpose of making this expenditure. If it results in acquisition of any right to property, whether free hold, lease hold or a mere right to possession, having some kind of permanence and of enduring nature the expenditure is capital. But if the expenditure is pre-dominantly for expansion of business although it results in acquisition of some capital, then the business purpose of the expenditure is paramount. The expenditure has to be taken as revenue.*

*In the present case, it is just not established how the business of the assessee was perceived to grow out of the property acquired by them by negotiating the eviction of the said occupants. In fact, through the negotiation the assessee acquired some kind of an enduring right of possession over the occupied area of the said premises surrendered to them by those occupants. It had the incidents of permanence.” (Emphasis Supplied)*

17. In our view the judgment of the Hon'ble Calcutta in the case of United Spirits Ltd (supra) is not applicable to the facts of the present case as the payment of compensation has not resulted in acquisition of any new or enduring right to the Appellant. The ownership of the Building was not under dispute. There was also no dispute over the possession. The Appellant wanted to terminate lease during the operation of the lock-in-period. Further, in the facts of the present case the intention of the Appellant to lease entire Building to one tenant after exit of the existing tenant was apparent. To the contrary, the facts in the case of CIT Vs. Auto Distributors Ltd: 210 ITR 222 (Calcutta) are identical to the facts of the present case as in that case the Appellant, a company engaged in the business of taking buildings on lease and letting them out for rent,

had paid compensation to the existing tenant to obtain peaceful possession of the portion of the building so that the same could be leased to the tenants hiring the building. The aforesaid expenses were allowed by the Hon'ble High Court as being revenue in nature holding as under:

*"12. The counsel for the assessee drew our attention to the decision of the Kerala High Court in Bombay Burmah Trading Corpn. Ltd.'s case (supra). In this case, it was found by the Tribunal that the assessee had incurred an expenditure of Rs. 5,312.35 in the previous year relevant to the assessment year 1968-69 under two heads, viz., for the eviction of a tenant from a building within the estate premises, and, secondly, for filing a writ petition challenging the legality of the levy of some toll. The Tribunal took the view that the first item aforementioned was an expenditure incurred to protect the appellant's title to the property. The Kerala High Court, on a reference, agreeing with the Tribunal, held that the eviction of a quondam tenant who was in occupation of a shop situated within the estate of the assessee, was a step necessary for a protection of the estate from which income was being derived by the assessee and for the preservation of the undisturbed rights of the assessee to peacefully collect the income from the said estate and as such, it had a direct nexus with the earning of the agricultural income. This case clearly supports the assessee. In this reference too, it has been found by the Tribunal that by making a payment of Rs. 6,96,288 to Laxmi Textile Mills (P.) Ltd., the assessee was able to obtain possession of the portion of the first floor of FIRPO building which was in the occupation of Laxmi Textile Mills (P.) Ltd. without there being any contract with the respondent-assessee. The assessee was able to let out the same space to the bank at higher rates soon after getting the area vacated by Laxmi Textile Mills (P.) Ltd. By making payment of the said amount, the assessee did not acquire any leasehold and/or tenancy rights in the said property. Therefore, the payment of Rs. 6,96,288 made by the respondent-assessee was an expenditure incurred on grounds of commercial expediency and was revenue in nature. In Ashok Leyland Ltd.'s case (supra), the assessee-company had appointed Car Builders Ltd. as their managing agents under an agreement dated 18-10-1948, for a term of 14 years from the date of its registration. The managing agents*

were to be paid at the rate of Rs. 2,000 per month as office allowance and ten per cent of the annual profits with a minimum of Rs. 18,000 per annum in respect of inadequacy and/or in the absence of profit. On 29-1-1955, by means of an agreement between the company and the managing agents, the managing agency agreement was terminated on payment of compensation of Rs. 2,50,000. This compensation was claimed by the assessee-company as a revenue expenditure laid out wholly and exclusively for the purpose of business. It was held by the Supreme Court that the compensation paid for termination of the services of the managing agent was a payment made with a view to save business expenditure in the accounting period as well as a few subsequent years; it was not made for acquiring any enduring benefit or income-yielding asset. By avoiding certain business expenditure, the company could not be said to have acquired enduring benefit or any income-yielding asset. The expenditure was of a revenue nature and was an allowable deduction in computing the profits of the assessee-company. This case also supports the respondent-assessee in this reference. If the assessee-company had taken legal proceedings against Laxmi Textile Mills (P.) Ltd., it could have incurred huge legal expenses and substantial time might have been spent in getting the leasehold premises vacated from Laxmi Textile Mills (P.) Ltd. By making payment of the said sum of Rs. 6,96,288, the assessee-company was able to remove Laxmi Textile Mills (P.) Ltd. forthwith and to let out the very same space to the bank at a much higher rent and also receive substantial deposits from the new tenant. These facts clearly go to support the case of the respondent-assessee that the expenditure in question was a revenue expenditure and was laid out wholly and exclusively for the purpose of the business of letting of properties. The assessee did not acquire any new asset, right or advantage of an enduring nature by making the payment of Rs. 6,96,288 to Laxmi Textile Mills (P.) Ltd. We do not consider it necessary to deal with the various other cases cited on behalf of the assessee in this case.

13. The first question does not arise out of the order of the Tribunal and we, therefore, decline to answer the first question” (Emphasis Supplied)”

18. In our view, the judgment of the Hon'ble Calcutta High Court in the case of Auto Distributors Ltd (Supra) is squarely applicable to the facts of the present case. Further, the payments made to the Existing Tenant were compensatory in nature as the Existing Tenant was compensated for the breach of the agreement by the Appellant resulting from termination of lease during the lock-in-period. The authorities below fell in error in holding that there was no breach of contract by the Appellant.

19. In view of the above, we set aside the order passed by the CIT(A) on this issue and allow deduction for INR 4,03,60,200/- as claimed by the Appellant. Accordingly, Ground No. 6 to 8 raised by the Appellant are allowed.

20. In result, appeal filed by the Appellant is allowed.

21. Order pronounced in the court on 26.08.2022 at Chennai.

Sd/-

Sd/-

(जी मंजूनथ) (G. MANJUNATHA)  
लेखासदस्य/ACCOUNTANT MEMBER

(राहुल चौधरी) (RAHUL CHAUDHARY)  
न्यायिकसदस्यएवं /JUDICIAL MEMBER

चेन्नई/Chennai,  
दिनांक/Dated, the 26<sup>th</sup> August, 2022

Alindra, PS

आदेशकीप्रतिलिपिअग्रेषित/Copy to: 1. अपीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकरआयुक्त (अपील)/CIT(A)  
4. आयकरआयुक्त/CIT  
5. विभागीयप्रतिनिधि/DR  
6. गार्डफाईल/GF