

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7970/Del/2019  
(Assessment Year : 2012-13)

M/s. SGS Infratech Limited R-10, Green Park Main, South West Delhi-110016 PAN : AABCS6180M	Vs.	Dy. CIT, Circle-7(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri R.K.Kapoor, Adv.
Revenue by	Shri Abhishek Kumar, Sr. DR

Date of hearing:	18.10.2022
Date of Pronouncement:	07.11.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Assessee against order dated 22.08.2019 in appeal no. 10084/18-19 in assessment year 2012-13 passed by Commissioner of Income Tax (Appeals)-XXV, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 05.11.2014 u/s 143(3) of the Income Tax Act, 1961 passed by the DCIT,

Circle-7 (1), New Delhi (hereinafter referred to as the Assessing Officer or in short 'AO').

2. The facts of the case are that the assessee company is engaged in the business of operation of Commercial Mall in Pune, renting of mall & properties and also share trading business. The gross receipts of Rs.36,06,91,809/- consisted of the following amounts as also noted by CIT(A) on Pg.10 of the order:

Rental receipts from Mall	Rs. 17,84,89,988
Share Trading Business	Rs. 16,66,88,579
Promotional rent and stall/ parking receipts	<u>Rs.1,55,13,242</u>
<b>Total receipts</b>	<b>Rs.36,06,91,809</b>

2.1 The Ld. AO was of the view that assessee has incurred various administrative expenses which are also attributable to the earning of rental income and he disallowed 50% of total administrative expenses of Rs. 2,50,43,297/- alleging that it relates to earning of rental income also and these are common for rental and business income.

2.2 The Ld. AO in para 4.2 & 4.5 of the order observed that since rental income of Rs. 17,84,89,988/- constitutes substantial portion of total receipts of Rs.36,06,91,809, thus 50% of total administrative expenses should be disallowed to the tune of Rs. 1,25,21,648/-.

2.3 It was submitted by the assessee before the Ld.AO as well as Ld.CIT(A) that out of administrative and corporate expenses of Rs.2,50,43,297/-, the sum of Rs.59,28,185 has already been set-off being net over recoveries from tenants relating to administrative expenses. This fact has been noted in CIT(A) order para 2.32 page 17. Thus without prejudice, the net administrative and corporate expense of Rs.1,91,15,112 should have

been considered.

2.4 It is alleged by Ld. AO in para 4.4 that assessee claimed entire administrative and corporate expenses to the tune of Rs.2,50,43,297/- against business income, whereas business income declared by the assessee is 4.30% of total receipts. Thus the Ld. AO disallowed 50% of total administrative & corporate expenses to the extent of Rs. 1,25,21,648/-.

2.5 Ld. CIT(A) in 2<sup>nd</sup> para on pg. 19 noted that the business income of the assessee comprise share trading receipts also of Rs. 16,66,88,579/- other than the mall operation receipts of Rs. 1,55,13,242/-, thus the business receipts are 50.51% of total receipts and not 4.30% as observed/ alleged by the AO in the order.

2.6 The Ld. CIT(A) also noted on Pg.19 that the incurring of expense may not always give returns/ profits. The assessee earned a rental income of Rs. 17,84,89,988/- and the appellant attributed an expense of Rs. 13,39,32,387/- towards the said income which included the property tax and interest paid on loans, insurance etc. Ld. CIT(A) in last page of the order appreciated that the *“It is clear that the disallowance cannot be made by general remarks”*. CIT(A) also stated that *“it is clear from the information examined that the action of the AO in making the disallowance of more than Rs. 1.25 cr. without properly understanding the nature and facts of the case cannot be made.”* Ld. CIT(A) however, instead of allowing complete relief to the assessee, chooses to sustain 20% of total administrative and corporate expenses as against 50% disallowed by the Ld. AO, by stating that it may be possible that certain expenses may be incurred and attributed to the mall income, resulting in some double claims by the assessee.

3. The assessee is in appeal before this Tribunal raising following grounds :

*“1. The learned CIT(A) erred in law and on facts in confirming addition of a sum of Rs. 50,08,659/- for an ad-hoc disallowance @20% of the common administrative expenses debited to the Profit & Loss Account, while ignoring that in the preceding assessment year the Hon’ble just confirmed 20% of the salary paid to directors by allowing all other such expenses. Thus, the addition made should be deleted by restricting to 20% of the salary paid to directors.*

*2. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”*

4. Heard and perused the record.

5. It was submitted on behalf of the assessee that the sole reason for making disallowance by Ld. AO was that the business receipts are 4.30% of total receipts. The Ld. CIT(A) after benefiting the assessee with argument that incurring of expense and earning of income are not directly related made on adhoc disallowance. It was also submitted that if the expenses available as annexure 1 of the submissions is considered it will be established that the same are of the nature related with the business and not to rental income. He relied the Coordinate bench decision in ITA no 743/Del/2015 for AY 2010-11 in assessee’s own case where such ad hoc addition was deleted.

5.1 On the other hand Ld. DR submitted that there is no error in finding of the Ld Tax Authorities below and defended the orders under challenge.

6. Appreciating the matter on record it can be observed that the assessee

is the only aggrieved party and revenue as such has not challenged the reduction of ad hoc disallowance to 20% instead of 50% as made by the Ld AO. Thus based on findings of Ld. CIT(A) it stands final that the factual question of the appellant attributing an expense of Rs. 13,39,32,387/- towards the rental income which included the property tax and interest paid on loans, insurance etc. is not disputed then by what reason, except arbitrariness, the Ld CIT(A) has still sustained disallowance to extent of 20% on mere possibility. It can be observed that Assessee had justified all the expenses in submission to Ld. CIT(A) and same were considered then what remained to give part relief. Assessee/appellant is fairly claiming that in terms of directions given in AY 2010-11, by the Tribunal, relief be allowed and there seems to be no reason to deny the same. The ground raised is sustained.

7. **The appeal is allowed.** Thus, the ad-hoc 20% addition sustained by the Ld. CIT(A) stand deleted, however 20% of the salary paid to directors may be disallowed by Ld. AO.

**Order pronounced in the open court on 07<sup>th</sup> November, 2022.**

**-Sd/-**

**(SHAMIM YAHYA)**

**ACCOUNTANT MEMBER**

*Date:07.11.2022*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**-Sd/-**

**(ANUBHAV SHARMA)**

**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI