

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI  
BEFORE SHRI M. BALAGANESH, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 1847 & 1848/Mum/2021  
(Assessment Years: 2015-16 & 2016-17)

Dy. CIT, Central Circle-1(2), Mumbai	Vs.	M/s. Omega Associates 511, Dalamal Towers, 211, Nariman Point, Mumbai-400 021
PAN/GIR No. AAAFO 0350 M		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri K. Gopal
<b>Revenue by</b>	:	Ms. Sujata Iyengar
<b>Date of Hearing</b>	:	14.11.2022
<b>Date of Pronouncement</b>	:	08.02.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

These appeals have been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals)-47, Mumbai passed u/s.143(3) of the Income Tax Act, 1961 ('the Act') dated 22.07.2021, pertaining to the Assessment Years ('A.Y.' for short) 2015-16 & 2016-17 respectively. As the facts are identical, we hereby pass a consolidated order in both these appeals by taking ITA No. 1847/Mum/2021 as a lead case.

**ITA No. 1847/Mum/2021**

2. The solitary issue involved in these appeals are that the Id.CIT(A) has erred in deleting the disallowance of expenses amounting to Rs.1,77,37,817/- and Rs.1,90,93,072/- for A.Ys. 2015-16 and 2016-17 respectively, which are calculated on

the proportionate basis without considering that the income from leasing of units is offered under 'income from house property' on which standard deduction of 30% u/s.24(a) of the Act has been claimed, where the impugned expenses are alleged to be related to both the licensing unit as well as the business income which are not to be wholly allowable against the business income.

3. The brief facts are that the assessee company is a registered partnership firm who is into construction and development of properties and licensing activity. The assessee has filed its return of income dated 04.09.2015, declaring total income at Rs. Nil and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny and the assessment order dated 11.12.2017 was passed u/s. 143(3) of the Act where the A.O. determined the total income at Rs.1,57,13,440/- by making various additions/disallowances. It is observed that the assessee has derived income from house property by licensing activities and also business income from sale of flats. The A.O. had disallowed depreciation of Rs.11,71,074/- claimed by the assessee on furniture and fixtures on the ground that the assessee has offered receipts from licensing activities under the head 'income from house property' and has also claimed standard deduction u/s. 24 of the Act. It is also observed that the A.O. has disallowed the expenses proportionately an amount of Rs.1,77,37,817/- out of the total expenses, amounting to Rs.2,13,93,603/- by considering the total project area of 1,28,760 sq. ft., the area of units related to licensing activity to 93,215 sq.t. was calculated for disallowance. The A.O. has considered the submission of the assessee that the assessee has *suo moto* disallowed a

sum of Rs.36,55,786/- as disallowance on maintenance, thereby the A.O. made a disallowance of Rs.1,77,37,817/- and added the same to the assessee's total income.

4. The assessee was in appeal before the Id. CIT(A), challenging the assessment order passed by the A.O.

5. The Id. CIT(A) dismissed the ground of disallowance of depreciation, amounting to Rs.11,71,074/- for the reason that the assessee was not receiving any rent separately for furniture's and fixtures and that the said furniture's and fixtures on which depreciation was claimed is given on rent along with the premises rented out by the assessee. The Id. CIT(A) also held that the income received from licensing is offered by the assessee under the head 'house property', for which the only expenditure permissible was 'interest on housing loan' and 30% deduction on account of 'repairs and maintenance' as per section 24 of the Act is observed that the Id. CIT(A) dismissed this ground of appeal raised by the assessee for which the assessee has not appealed further.

6. The next ground of appeal challenging the disallowance of Rs.1,77,37,817/- made the A.O. on proportionate expenses related to 'income from licensing activity' was deleted by the Id. CIT(A) on the ground that the disallowance worked by the A.O. was not based upon any rational criteria, as the assessee has already allocated the expenditure between sold units and other units (sold and stock-in-trade) on a rational basis. The Id. CIT(A) held that the assessee has shown part of the income as 'income from licensing activity' and the rest as 'business income'. The Id. CIT(A) further stated that the assessee

has not claimed any expenditure related to the area which has been sold out and has only claimed expenditure pertaining to the leased area or which was held by the assessee.

7. The Revenue is in appeal before us, challenging the deletion of disallowance of the impugned expenditure claimed by the assessee.

8. The learned Departmental Representative (ld. DR for short) for the Revenue contended that since the assessee has both 'income from licensing activities' and 'business income', the assessee cannot claim deduction under both the heads. The ld. DR further contended that the assessee has failed to bifurcate the impugned expenses pertaining to license activity and expenses incurred for business activity. The ld. DR stated that the A.O. has rightly disallowed the expenses on a proportionate basis, pertaining to income from licensing activity. The ld. DR relied on the order of the A.O.

9. The learned Authorized Representative (ld. AR for short) for the assessee, on the other hand, controverted the same and stated that the assessee has made *suo moto* disallowance of Rs.36,55,786/- on maintenance. The ld. AR further stated that the expenses pertaining to brokerage, security and telephone expenses are exclusively 'business expenses' which are to be fully allowed and the other expenditure pertaining to repair and maintenance, etc. has been allocated by the assessee and only expenses related to the units owned by the assessee or leased out are claimed as expenses. The ld. AR further contended that the expenses pertaining to sold out units have not been included in the said expenses. The ld. AR relied on the decision of the ld. CIT(A).

10. We have heard the rival submissions and perused the material on record. It is observed that from the assessee's submission that the assessee has constructed four

commercial buildings named as Alfa, Delta, Olympia and Sigma. The assessee has stated that some of the units have been sold and the other have been retained by the assessee, out of which most of the units are leased out by the assessee and some of the units remained as stock-in-trade. The assessee submitted that the building by name Olympia in which the assessee's office premises is situated has been exclusively used by the assessee for which the expenses, pertaining to security, electricity, telephone, housekeeping and repair and maintenance are expended by the assessee. The assessee further stated that it had bifurcated the expenditure related to maintenance, property tax and other such expenses in the ratio of lease units and sale units. It is also observed that out of the total electricity expenditure, amounting to Rs.2,01,90,903/-, the assessee has bifurcated Rs.1,55,12,818/- as expenditure pertaining to unsold units and Rs.57,78,085/- for the sold units. Similar bifurcation has been made for expenses pertaining to housekeeping, repair and maintenance, security expenses, etc. by the assessee. The expenses pertaining to telephone is said to have been expended wholly by the assessee for its office premises at Olympia building and no bifurcation was required for the impugned expenses. The assessee has submitted that the water charges amounting to Rs.26,85,638/- pertains to the sold units and that the same are debited to the respective assets account. The assessee has stated during the assessment proceeding that the assessee manages the entire commercial buildings for which the assessee collects maintenance charge inclusive of property tax from the respective unit owners. For the leased out premises, the assessee collects maintenance and property tax from the concerned licensee. The assessee further stated that the maintenance for the said units are included in the leased units for which no separate maintenance is received. The assessee further stated that maintenance expenses,

amounting to Rs.36,55,786/- pertains to the leased stock which has been disallowed by the assessee in computation of business income and only municipal taxes, amounting to Rs.1,30,16,405/- have been claimed in the computation of income from house property. The assessee contended that the total receipts out of the leased units are separately reflected in the profit and loss account and receipts towards maintenance of sold units are credited to the P & L account and maintenance and other charges are bifurcated for each building and the same are reflected on the debit of profit and loss account of the assessee. The assessee has also stated that it had incurred brokerage charges, amounting to Rs.73,64,073/-, which was expended wholly and exclusively for the purpose of business of the assessee by engaging professional to sell the units in stock held by the assessee. The assessee contends that the said expenses are part of the business activity which ought to be allowed u/s. 37(1) of the Act.

11. From the above submission, it is evident that the assessee has receipts from both 'rental income' as well as 'business income' for which the assessee has incurred expenditure pertaining to the rental units, the units held by the assessee and also the sold units. Though the assessee has given the bifurcation of the expenditure such as maintenance, property tax and other expenses pertaining to the said unit, the same was not considered by the A.O. The A.O. had disallowed the total expenses by calculating the total area of the project from the leased area and by reducing the *suo moto* disallowance made by the assessee and had worked out the disallowance to Rs.1,77,37,817/-. The Id. CIT(A), on the other hand, had deleted the said disallowance without bifurcating the expenses pertaining to the leased premises and those retained by the assessee without

having licensed/sold units. The Id. CIT(A) has also held that the expenses relating to maintenance such as housekeeping, etc. are common expenses calculated for both the units leased and owned by the assessee and had stated that the same could not be segregated. The Id. CIT(A) has also held that the assessee has not debited expenditure pertaining to the sold units in the books of accounts of the assessee. On a perusal of the profit and loss account of the assessee for the impugned year, it is evident that the assessee has not bifurcated the expenditure pertaining to the leased units and the units which are owned by the assessee. Even otherwise, the assessee has submitted that the assessee's business premises is situated at Olympia building which was exclusively for carrying out the assessee's business activity. By assuming that the rest of the properties were leased out by the assessee in which the assessee has received rental income inclusive of maintenance and the assessee has not shown any material evidence to prove that the assessee has not claimed double deduction u/s. 24 and section 57 of the Act. Neither the A.O. nor the Id. CIT(A) has looked into this aspect. The assessee has also not proved by any documentary evidence as how much maintenance the assessee is charging from the lessee for maintaining the area occupied by the lessee. In view of the same, we are of the considered opinion that the said appeal has to be remanded back to the A.O. for proper verification of the fact that the expenses claimed by the assessee pertain to the business activity of the assessee or relevant to the leased units. The Id. A.O. is directed to verify whether the maintenance expenses and other expenditures claimed by the assessee has not been claimed under 'income from house property' as well as 'business income'. The A.O. is also directed to consider the claim of the assessee in view of the receipts to be filed by the assessee to substantiate its claim and to consider whether the impugned

expenditure pertains to 'income from house property' or 'expenditure for business activity'. The assessee is directed to furnish relevant documents to prove by way of receipts each of the expenses claimed by it and bifurcate those from the leased and sold units and to give a rational working of the common area maintenance charge borne by both the assessee as well as the lessee/purchasers of the units. We hereby direct that this matter may be remanded back to the A.O. for considering the said facts and to decide the case on merits. Hence, this appeal is allowed for statistical purpose.

12. The same observation applies mutatis mutandis for ITA No. 1848/Mum/2021 also.

13. In the result, both the appeals filed by the Revenue are allowed for statistical purpose.

*Order pronounced in the open court on 08.02.2023*

Sd/-

(M. Balaganesh)  
Accountant Member

Mumbai; Dated : 08.02.2023

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai