

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1333/Mum/2023
(A.Y. 2018-19)**

DCIT 5(3)(1) Room No. 573, Aayakar Bhawan, Mumbai- 400 020	Vs.	West Pioneer Properties (India) Private Limited 1002, 10 th Floor, Tower- 3, Indiabulls Finance Centre, Elphinstone Road, Mumbai - 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACW5756A		
Appellant	..	Respondent

**C.O No.52/Mum/2023
(A.Y. 2018-19)**

West Pioneer Properties (India) Private Limited 69C, Ashiana, 2 nd Floor, Bhulabhai Desai Road, Mumbai – 400 026	Vs.	DCIT 5(3)(1) Room No. 573, Aayakar Bhawan, Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACW5756A		
Appellant	..	Respondent

Appellant by :	Kishore Dhule
Respondent by :	Vijay Mehta

Date of Hearing	06.07.2023
Date of Pronouncement	26.07.2023

आदेश / ORDER

Per Amarjit Singh (AM):

ITA No. 1383/Mum/2023 (Revenue Appeal)

2. Fact in brief is that return of income declaring net loss of Rs.231,77,987/- was filed on 30.10.2018. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 23.09.2019. The assessment u/s 143(3) of the Act was finalised on 20.05.2021 treating the income from running the mall as income from house property instead of income under the head profit and gains of business or profession as claimed by the assessee. Accordingly, the assessing officer had disallowed the claim of depreciation amounting to Rs.501,97,656/- and also made addition of notional straight-lining lease rental of Rs.35,65,363/-.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the revenue.

4. During the course of appellate proceedings before us the ld. D.R supported the order of assessing officer and also relied on the decision of Hon'ble Supreme Court in the case of East India Housing & Land Development Trust Limited Vs. CIT (42 ITR 49).

On the other hand, the ld. A.R contended that in the assessment order 2008-09 the assessing officer has accepted the claim of the assessee of treating the income from managing the mall as income from business and profession and Hon'ble Bombay High Court has dismissed the appeal of the revenue as a defective appeal because defect were not removed by the revenue. Further from the assessment year 2015-16 to 2017-18 also the revenue has accepted the income as business income as claimed by the assessee. However, in the assessment year 2009-10 to 2014-15 the revenue has treated the same as income from house property. The ld. Counsel submitted that rule of consistency should be

followed if there is no change in the fact and supported the order of Id. CIT(A). The Id. Counsel further submitted that identical issue on similar facts has been decided by the coordinate bench of the ITAT Mumbai in the case of the assessee itself vide ITA No. 3879/Mum/2014 for A.Y. 2009-10 i.e M/s West Pioneer Properties (India) Pvt. Ltd Vs. The ACIT - 5(3).

5. Heard both the side perused the material on record. The assessee company is engaged in the business of setting up, operating and managing commercial malls by undertaking a complex set of activities in an organised manner as part of a planned business activity with the basic intention of commercial exploitation of the property viz. a shopping mall and entertainment complex named metro junction constructed by it at huge cost on a piece of industrial land admeasuring about 69000 square metres at Kalyan to earn profit from the mall business. The entire mall building is used by the assessee for running the business of operating its mall. The commercial mall is a complex of shops representing merchandisers with interconnecting walkways enabling visitors to easily walk from unit to unit along with parking also with a food court surrounding a shared seating area, license for use. The assessee is managing the entire mall and on the different portion of the premises various persons have been allowed to operate their shops to sale their goods/services. The assessee company has been providing various services of manage the operation of mall to attract persons to operate from the premises of the mall. The various kinds of services performed by the assessee company are briefly stated as under:

- “(i). Purchase, transformation, distribution of electricity with 100% power back-up (DG Set)*
- (ii). Electricity cabling/wiring as per requirement of the licensees.*
- (iii) Supply of hot and cold water including water softening, filtration and testing facility.*
- (iv). Central Air Conditioning*
- (v) Chilled water for air-conditioning*

- (vi) *Fire Fighting arrangements and equipments including fire detectors, Disaster management*
- (vii) *Round the clock Security Services with crowd management CCTV surveillance management and data backup review*
- (viii) *Parking Facilities including management thereof, traffic management*
- (ix) *Elevators including operation and management thereof*
- (x). *First Aid Room and First Aid Kits*
- (xi). *Cleaning & Sanitation and waste management, pest control*
- (xii) *5 Nos Cinema Theatres (screen)*
- (xiii) *Water bodies and fountain*
- (xiv). *Loading and unloading Decks*
- (xv). *Garden and amusement park including maintenance thereof, music system and public address*
- (xvi) *Biometric Reader (Electronic Attendance System)*
- (xvii). *Permission to put up signage, display boards, etc on the premises ENT*
- (xviii). *Telecommunication services*
- (xix). *Sewage and Effluent Cleaning. Treatment, Disposal, Management thereof, Rain Storm Water Discharge-*
- (xx). *Insurance of property, Public Liability Insurance*
- (xxi) *Marketing, Advertising and Media*
- (xxii) *Gas Bank and supply of LPG*
- (xxiii) *Provision of Video Gaming, etc”*

The licensees pay to the assessee company a monthly fees which is either a fixed amount or linked to the turnover of the licensee or a combination of both. In some cases the licensee pay to the assessee a sum calculated at a specified percentage of the licensee’s sale as well as revenue. In respect of business activities the assessee use to obtain various licenses and permissions which may be briefly as under:

- “(i) *Land User Change for commercial from Collector, Thane,*
- (ii) *Environmental clearance from State Government under Environment Impact Assessment Notification, 2006 and Consent from State Pollution Control Board*
- (iii) *Location clearance for construction of 5-Screen Multiplex,*
- (iv) *Permission from Police Department under Maharashtra Cinemas (Regulation) Rules, 1966,*
- (v) *License to work lifts*
- (vi) *Public performance license; license for Musical Works*
- (vii) *Registration under Shops & Establishment Act, 1948, Service tax Rules, etc., etc.”*

The Id. Counsel also submitted that the coordinate bench of the ITAT has adjudicated the identical issue on similar fact in the case of the

assesse itself for assessment year 2009-10 and for assessment year 2010-11 and 2011-12. In this regard, the assessee has placed reliance on the decision of ITAT i.e M/s West Pioneer Properties (I) Pvt. Ltd. Vs. The ACIT 5(3) vide ITA No. 3879/Mum/2014 dated 05.01.2016 and the decision of ITAT in the case of M/s West Pioneer Properties (I) P. Ltd. Vs. DCIT, Circle 5(3)(1) vide ITA No. 3104 & 3105/Mum/2015 dated 20.01.2017. With the assistance of the Id. Representative we have perused the decision of ITAT for assessment year 2009-10 vide ITA No. 3879 as referred above the reliance part of the decision is reproduced as under:

- “8. *We have given a thoughtful consideration to the orders of the authorities below. We have also gone through the judicial decisions relied upon by the Ld. Counsel. The entire dispute has to be considered in the light of the decision of the Hon’ble Supreme Court in the case of Chennai Properties & Investments Ltd Vs CIT 373 ITR 673 wherein the Hon’ble Apex Court has held that letting out of the properties being the business of the assessee, the income from which has to be treated as income from business. The Hon’ble Supreme Court has further observed that the Memorandum of association of the assessee company clearly mentions that main objects is to acquire and hold the properties and holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. Therefore, any income earned has to be taxed under the head ‘Income from ‘business’.*
- 8.1. *In the present case also we find that in A.Y. 2008-09, the AO himself has accepted the nature of business of the assessee as “Operation of Mall’ therefore any income earned by the assessee by the operation of mall has to be taxed under the head Profits & Gains of Business or Profession. The main object of the company as per the Memorandum of Association also refers to such activities as the main object for which the company is incorporated. As the main object itself shows that the assessee-company has been incorporated for running shopping malls / departmental stores, super markets, shopping arcades, shopping outlets, entertainment, recreation and amusement centre therefore any income earned from such activities has to be taxed under the head profits and gains of business. This will be in line with the ratio laid down by the Hon’ble Supreme Court in the case of Chennai Properties & Investment Ltd (supra). We, accordingly set aside the findings of the Ld. CIT(A) and direct the AO to treat the income under the head Profits & Gains of Business.*
- 8.2. *Having held that the income is to be taxed under the head Profits & gains of business. The assessee is entitled for the claim of depreciation and also brokerage expenses. The AO is directed to allow the same. Ground No. 1 is accordingly allowed.”*

Similarly, after following the aforesaid decision of ITAT the coordinate bench has also adjudicated the issue for assessment year 2010-11 and 2011-12 for the ITA No. 3104 & 3105 in favour of the assessee by holding that income earned by the assessee from running and operating of mall and service charge as income from profit and loss of business. During the course of appellate proceedings before us the ld. Departmental representative has referred the decision of Hon'ble Supreme Court in the case of East India Housing & Land Development Trust Ltd. Vs. CIT (1961) 42 ITR 49 (SC). We consider that facts in the case of the assessee are distinguishable from the facts of the case of East India Housing & Land Development Trust Ltd. Vs. CIT. In that case in 1946 the assessee had purchased land and constructed shops and platform on that land and received income from the tenants of the shops and stalls. Whereas in the case of the assessee the assessee was engaged in the business of operating and managing the commercial mall complex as a part of business activity with the basic intention of commercially exploitation of the property. We find that coordinate benches of the ITAT has placed reliance on the decision of the Hon'ble Supreme court in the case of Chennai Properties and Investment Ltd. Vs. CIT 373 ITR 673. In the case of the Chennai Properties and Investment Ltd. Vs. CIT the Hon'ble Supreme Court has also considered the decision of Hon'ble Supreme Court in the case of East India Housing & Land Development Trust ld. Vs. CIT (1961) 42 ITR 49 (SC) before coming to the conclusion that letting out of the properties being the business of the assessee, the income from which has to be treated as income from business. Looking to the facts in the case of the assessee it had earned income not merely by letting out shops in mall but also by providing amenities and facilities at shopping mall. Such amenities and facilities were special facilities for running shopping mall and were meant to attract customers and provide them comfort and convenience

of shopping. It is also considered that by providing various services operations and running of the mall, the assessee has operated the mall as commercial activity. In view of the above considering that there is no change in the fact in the case of the assessee, therefore, in consisting with the decision of coordinate bench of the ITAT as referred supra we don't find any reason to interfere in the decision of Id. CIT(A), therefore, all the ground of appeal of the revenue stand dismissed.

6. The appeal of the revenue stand dismissed.

C.O. No.52/Mum/2023

7. In the cross objection the assessee submitted that the notional rental income is determined in the books of account on straight-line basis in accordance with the provision of Company Act 2013 and Accounting Standard 19 and the same is not taxable income of the assessee company.

8. Heard both the sides and perused the material on record. We find that the assessing officer has not given any specific finding and reason for adding the notional lease rent computed by the assessee following the accounting standard 19 for the purpose of Company Act 2013 in its books of account. Since the assessee company has offered the actual lease rental income, therefore, we consider that adding notional rental income without any basis as income under the head income from house property is not justified, therefore, we direct the assessing officer to delete the impugned addition after verification that assessee has already offered the actual lease rental income in its total receipt under the head business income. Therefore, this ground of cross objection filed by the assessee is allowed for statistical purposes.

9. In the result, the appeal filed by the revenue stand dismissed and the cross objection filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 26.07.2023

Sd/-

Sd/-

(Aby T Varkey)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 26.07.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.