

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA JUDICIAL MEMBER**

ITA No.2948/Del/2019  
Assessment Year: 2009-10

<b>Eksay Electronics India Pvt. Ltd. Wahi &amp; Co. LLP CAs, K-1, Kailash Colony, New Delhi-110048 PAN No.AABCE1176D</b>	<b>Vs</b>	<b>ITO Ward- 8 (3) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	None
Respondent by	Sh. Vivek Kumar, Upadhyay, Sr DR

Date of hearing:	04/09/2023
Date of Pronouncement:	04/09/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-3, New Delhi dated 05.02.2019 pertaining to A.Y. 2009-10.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.11,60,399/- as income from house property against business income of Rs.181506/-.

3. None appeared on behalf of the assessee inspite of several notices from 29.11.2021 till date, therefore, we decided to proceed exparte.

4. The DR was heard at length. Case records carefully perused.

5. Briefly stated the facts of the case are that while scrutinizing the return of income the AO noticed that the assessee has shown business income from the properties let out. The AO was of the firm belief that such income has to be taxed under the head income from house property and after affording a reasonable opportunity to the assessee and after considering the submissions of the assessee the AO treated the business income as income from house property thereby disallowing all the expenses claimed and allowing statutory deduction from the income from house property.

6. The assessment was challenged before the CIT(A) and the CIT(A) found that the Tribunal in assessee's own case vide order dated 03.08.2015 in ITA No.6444/Del/2014 has decided the issue against the assessee and in favour of the revenue, following the order of the Tribunal the CIT(A) dismissed the appeal.

7. We find that the assessee had preferred the miscellaneous application against the said order of the Tribunal in ITA No.6444/Del/2014 and this Tribunal in miscellaneous

application No.195/Del/2017 has dismissed the miscellaneous application filed by the assessee by order dated 20.02.2023. Since this Tribunal has taken a view against the assessee and in favour of the revenue. Respectfully following the decision of the coordinate Bench the appeal of the assessee is dismissed. The relevant findings of the coordinate Bench read as under :-

*“5. I have considered the rival submissions and have perused the order of the Assessing Officer and the learned CIT(A). I find that in reply to a question from the Bench, the learned counsel for the assessee assessee has submitted that the assessee could not restart its business till date after its discontinuance in the year as back as 1988. The chairman of the assessee company is 88 years of age. I find that merely because in the past the issue was decided in favour of the assessee by the CIT(A) and the Revenue has not preferred any appeal to the Tribunal, it could not be said that the Department is precluded from assessing the income from the factory under the right head of income. I find from the chart filed at page 61 of the compilation by the assessee that the total amount involved in the litigation before Hon'ble Delhi High Court, Delhi Small Industrial Corporation Ltd., Sales Tax authorities, Central Excise authorities and Municipal Corporation of Delhi comes to ₹1.35 crores only. The assessee is a corporate assessee and the litigation and the amount involved in the litigation could not be said to be of that magnitude that the assessee could not restart its business during the past 27 years. The facts of the case lead to the conclusion that the assessee is no more interested in restarting its business and has let out its factory premises along with its machinery, furniture and fixtures for a fixed amount of rent and, therefore, the action of learned CIT(A) in directing to treat the income under the head 'income from house property' was justified and no interference in the same is called for.*

*In this view of the matter, the order of learned CIT(A) is confirmed and the ground of appeal of the assessee is dismissed.”*

8. In the light of the above, the appeal of the assessee is dismissed.

9. Decision announced in the open court on 04.09.2023.

Sd/-  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

Dated: .09.2023

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi