

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
A N D
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.69/Del/2023
निर्धारणवर्ष/Assessment Year: 2018-19

DCIT, Central Circle : 2, New Delhi.	<u>बनाम</u> Vs.	Entertainment City Ltd., 10-Metro Walk, Sector 10 Near Rithala Metro, Rohini, New Delhi - 110 085, PAN No. AAACI9211Q
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	Shri Kapil Goel, Advocate;
राजस्वकीओरसे / Department by :	Shri T. James Singson, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	24/08/2023
उद्घोषणाकीतारीख/Pronouncement on :	31/10/2023

आदेश /O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the
ld. Commissioner of Income Tax (Appeals)-23 [hereinafter referred

to CIT (Appeals)]/New Delhi, dated 11.10.2022 for the assessment year 2018-19.

2. The Revenue has raised the following substantive grounds:-

- “1. The Order of Ld. CIT (A) is not correct in law and facts.
2. On the facts and circumstances of the case, the Ld. CIT (A)-23, New Delhi has erred in holding that the rental income received from commercial complex should be assessed under the head Income From House Property instead of Business Income.
3. The Ld. CIT (A) failed to appreciate that the assessee carried the activity of letting out the commercial complex as a systematic business activity, performing substantial value addition functions, incurring major expenses & bearing the consequential risks, which are the essential features of business income.
4. The Ld. CIT (A) failed to appreciate that the income earned by the assessee on letting out the commercial complex is not a passive income liable to tax as house property income.
5. On the facts and circumstances of the case, the Ld. CIT (A)-23, Delhi has erred in deleting the additions made by the AO after ignoring the facts mentioned in the tax Audit Report as business of Amusement Parks and commercial complex have been shown against the nature of business and profession.
6. On the facts and circumstances of the case, the Ld. CIT (A) -23, Delhi has erred in applying the ratio of decision of Hon'ble Supreme Court in the case of M/s Raj Dadarkar and Associates Vs. ACIT whereas the facts of the case are different as object of the company was to carry out business of amusement and entertainment parks and promote, acquire, purchase, develop and sell of properties,

which is similar to the case of Chennai Properties and investment limited Vs. CIT (375ITR673)(SC) as decided by Apex Court.”

3. At the outset, the ld. Counsel for the assessee submits that the sole issue in this appeal is whether the income from commercial complex is assessable under the head income from house property or under the head income from business and the issue has been decided in favour of the assessee by the Tribunal in ITA. No. 7770/Del/2019 for the assessment year 2010-11 holding that the income from the property held by the assessee is assessable under the head income from house property. Copy of the order of the Tribunal is placed on the record.

4. The ld. DR relied on the order of the Assessing Officer.

5. Heard rival submissions perused the order of the Tribunal in assessee's own case and find that identical issue came up before the Tribunal for adjudication wherein the Tribunal sustained the order of the ld. CIT (Appeals) in holding that the income from property of the assessee should be assessed under the head income from house property instead income from business. While holding so the Tribunal observed as under:-

“2. The brief facts of the case are that the assessee company was allotted land by Noida Authority on 90 years lease of the development of amusement park. The permissible use is on area of 85% under 'theme amusement and entertainment park' and area of 15% under commercial facilities supportive of park. The assessee claimed that during the year under review it derives its income from development of real estate purpose of amusement park, signage, kiosks and promotional services, maintenance and parking charges at tenancy of

licensed area. The claim of assessee is that it has been offering income from tenancy of licensed area as income from house property since beginning and there has been no change in the facts of the company. In the assessment of the last three years u/s 143(3) of the Act, the income from tenancy right has been offered to tax and accepted. It is submitted that later on the income tax assessment for the year 2010-11, 2011-12 and 2012-13, assessment year was completed u/s 153A and the property income so declared has been accepted. It is the case of assessee that for A.Y. 2014-15 and 2015-16 also with rental income under head 'income from house property' has been accepted. Ld. AO however taking note of the nature of business activities observed that the main operational revenue of assessee was coming from letting out commercial complex and maintenance charges and parking charges at commercial complex out of the total revenue earned. Thus, the income which assessee claimed to be from tenancy was to be assessed as income from business. Accordingly, made the addition which has been deleted by the Ld. CIT(A) with following relevant findings in para no. 5.6, 5.7 and 5.8 as follows ;

“5.6 Regarding the factual matrix of the case, the appellant is earning lease rental from the leased area. I have examined the balance sheet of the appellant and area is shown separately as building given on operating lease and not forming part of stock-in-trade.

5.7 The Ld. AR also brought to my notice that the department has consistently accepting the taxability leased rental under the head income from house property in the preceding assessments u/s 143(3) of the Act and also assessment u/s 153A r.w.s 143(3) for various assessment years. The Ld. AR also placed copy of the assessment orders on record.

5.8 In view of the aforesaid finding, I intend to agree with the submission of the Ld. AR that the ratio of the decision of Hon'ble Supreme Court in the case of Raj Dadarkar & Associates Vs. ACIT (supra) and ITAT decision in the case of Select Infrastructure Pvt. Ltd are applicable to the facts of the case. The issue involved in the case under consideration has been elaborately dealt

by Hon'ble Supreme Court and held that where assessee has obtained a property on lease, constructed various shops and stalls and gave the same to various persons on sub-license basis, then the income from sub-license was to be taxed as income from house property and not as business income. Therefore respectfully following the decision of Hon'ble Supreme Court and ITAT, the addition made by the AO is deleted and this ground of appeal is Allowed."

3. *Revenue is in appeal raised following grounds ;*

"1. The order of Ld. CIT (A) is not correct in law and facts.

2. On the facts and circumstances of the case, the Ld. CIT(A)-22 New Delhi has erred in holding that the rental income received from commercial complex should be assessed under the head Income From House Property instead of Business Income.

3. On the facts and circumstances of the case, the Ld. CIT(A)-22, New Delhi has erred in not appreciating the facts of the case mentioned in the order of Assessing Officer passed u/s 143(3) on 23.03.2016.

4. On the facts and circumstances of the case, the Ld. CIT (A)-22, New Delhi has erred in deleting the addition made by the AO after ignoring the facts mentioned in the Tax Audit Report as business of Amusement parks and commercial complex have been shown against the nature of business and profession.

5. On the facts and circumstances of the case, The Ld. CIT (A) has erred in applying the ratio of decision of Hon'ble Supreme Court in the case of M/s. Raj Dadarkar and Associates, Vs ACIT whereas the facts of the case are different as object of the company was to carry out business of amusement and entertainment parks and promote, acquire, purchase. develop and sell of properties.

6. *On the facts and circumstances of the case, The Ld. CIT (A) has erred in appreciating the facts that the main operational revenue of the assessee was coming from the letting out the commercial complex and maintenance charges and parking charges from commercial complex out of the total revenue earned i. e. service charge.*

7. *The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

4. *Heard and perused the record.*

5. *Ld. DR has primarily submitted that there is no error in the findings of Ld. AO and he has duly appreciated the nature of business and the manner of revenue generation. It was submitted that each year is a separate event and principle of res judicata is not applicable.*

5.1 *On the other hand Ld. counsel for appellant relied the orders of Ld. CIT(A). He further relied the judgment of Hon'ble Delhi High Court in the case of **Prem Kumar Chopra vs. ACIT, W.P.(C) 12104/2022** order dated 25.05.2023 to contend that principle of consistency was rightly appreciated by ld. CIT(A) and same needs no interference.*

6. *Appreciating the matter on record it can be observed that Ld. DR could not dispute the fact that in the preceding and subsequent years the assessee's claim of income from rent has been accepted and same has been foundation of relief given by Ld. CIT(A). The reliance of ld. DR and Ld. AO on the judgment of Hon'ble Supreme Court of India **M/s. Chennai Properties & Investments Ltd. vs. CIT, Central III, Civil Appeal no. 4494 of 2004** is not of much consequence and benefit to the Revenue. As that was the case where the assessee was holding the properties and earning income by letting out those properties under the main objective of the company and accordingly, Hon'ble Supreme Court has upheld the factual finding that letting of the properties was the business of assessee. The Revenue's claim to treat is as income from house property was not accepted. Here it is otherwise, as Revenue wants the rental income claim to be considered as business income.*

7. *Thus, the Bench is of considered opinion that though the principle of res judicata does not apply to the income tax proceedings still when the revenue has accepted the head of income in the preceding and subsequent year's assessment, then attributing income on a different head in a stray manner cannot be made. The reliance of ld. CIT(A) on the judgment of Hon'ble Supreme Court in the case of **Raj Dadarkar & Associates Vs. ACIT SLP(C) no. 7277 of 2015** cannot be interfered. Consequently, the grounds raised by the Revenue have no substance. **The appeal of Revenue is dismissed.**"*

6. Respectfully following the decision of the Tribunal we hold that there is no infirmity in the order passed by the ld. CIT (Appeals) in holding that the assessee has rightly offered its income from commercial complex to tax under the head income from house property and is eligible for deduction under section 24 of the Act. Grounds raised by the Revenue are rejected.

7. In the result appeal of the Revenue is dismissed.

Order pronounced in the open court on : 31/10/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 31/10/2023.

MEHTA

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT

4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	30.10.2023
Date on which the typed draft is placed before the dictating member	31.10.2023
Date on which the typed draft is placed before the other member	31.10.2023
Date on which the approved draft comes to the Sr. PS/ PS	31.10.2023
Date on which the fair order is placed before the dictating member for pronouncement	31.10.2023
Date on which the fair order comes back to the Sr. PS/ PS	31.10.2023
Date on which the final order is uploaded on the website	31.10.2023
Date on which the file goes to the Bench Clerk	31.10.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	