

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

BEFORE SHRI ABY T VARKEY, JM  
AND  
SHRI PRASHANT MAHARISHI, AM

**ITA No. 1961/Mum/2023**  
(Assessment Year 2013-14)

Beams Research Company Pvt. Ltd. Plot No. 674, Beams Hospital, 16 <sup>th</sup> Cross Road, Khar West, Mumbai-400052	Vs.	ITO-12(1)(3), Mumbai [Current Jurisdiction Circle 4(1)(1), Mumbai) Aayakar Bhavan, M. K. Road, New Marine Lines, Churchgate, Mumbai-400020
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AAACB4683P</b>		

**Assessee by** : Mr. Snehal Shah  
**Revenue by** : Shri. Ashok Ambastha

**Date of hearing:** 10.10.2023  
**Date of pronouncement :** 31.10.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Beams Research Company Private Limited (assessee/appellant) for assessment year 2013 – 14 against the appellate order passed by the National faceless appeal Centre NFAC, Delhi (the learned CIT – A) dated 29/3/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of The Income Tax Act, 1961 (the act) by The Income Tax Officer – 12 (1) – 3, Mumbai (the learned AO) was partly allowed.



02. Assessee aggrieved with that in memorandum of appeal has raised following two grounds: –

1) the learned CIT – A, NFAC, Delhi has erred in confirming the action taken by the learned assessing officer by treating amount of ₹ 9,639,500 as income chargeable under the head income from other sources instead of income chargeable under the head profits and gains from business or profession.

2) The learned CIT – A NFAC, Delhi has erred in confirming the action taken by the learned AO for disallowing the set-off of current business losses of ₹ 5,294,539/- by erroneously treating hospital receipt of ₹ 9,639,500/- as income from other sources and thereby further erred in not considering the computation of income as per the chapter IV- D under the head profits and gains from business or profession.

03. Assessee is a company engaged in the research activities. It filed its return of income on 29/9/2013 declaring total income of Rs. Nil. The computation of the total income attached with the return of income shows the business loss of ₹ 5,294,539/- and loss from house property of ₹ 1,374,931/- against income of ₹ 3,789,183/- under the head income from other sources. Thus the unabsorbed depreciation of ₹ 2,880,287/- was carried forward. The case of the assessee was selected for scrutiny. Necessary notices under section 143 (2) was issued on 3/9/2014.



04. The learned assessing officer noted that ongoing through the profit and loss account it was seen that the assessee has shown income from revenue from operation at ₹ 9,639,500/- and other income of ₹ 14,841,183/- aggregating to ₹ 24,480,683/-. Revenue from operation of ₹ 9,639,500/- was shown as a hospital receipt and other income was shown as ₹ 14,841,183/- which is comprising of the rent received of Rs 110 lakhs/- amenities of ₹ 882,000/- and miscellaneous income of training of ₹ 1,450,000/-, Interest income from non-current investment of ₹ 1,457,183/- and dividend income of ₹ 52,000/- . Assessee has set off business loss of ₹ 5,294,539/- and loss from house property of ₹ 1,374,931/- against the income of ₹ 3,789,183/- reflected in the head income from other sources and determined unabsorbed depreciation of ₹ 2,880,287/-.
05. During the course of assessment proceedings, the assessee was asked to furnish a detailed note on nature of business activities undertaken during the year and also furnish copy of earlier years assessment orders etc. In response to the above letter, assessee merely stated that the revenue from operation is received from Beams Hospital Private Limited of ₹ 9,639,500/-, no further explanation ,description, modus operandi with supporting were produced as to how this revenue is received from that company was earned. Learned assessing officer on the basis of the information about the address of that party, issued notice under section 133 (6) of the act which



returned. One more notice was issued under section 133 (6) as per the address found out from the copy of the rent agreement between the assessee company and beams Hospital also remained unserved. Therefore the assessing officer issued a show cause notice that why the hospital receipt of ₹ 9,639,500/- should not be treated as income from other sources as no supporting is available with respect to the claim of the assessee that it is a business receipts. In response to that show cause notice assessee submitted a letter on 21/3/2016 stating that assessee has received an income on account of operating 3D machines which is highly technical activity that can be operated purely through technical skill, educational qualification expertise under the leadership and supervision of the qualified doctors. The revenue from operation reflected at ₹ 9,639,500/- is nothing but the amount received on account of operating 3D machines by those doctors of beams Hospital private limited. The learned assessing officer did not accept the explanation of the assessee. On the basis of perusal of the agreement that assessee is not into the business of running of the hospital in earlier assessment years, learned assessing officer further noted that assessee has accepted that it has received the income of 3D machines and further the TDS certificates received by the assessee are also under section 194J issued by the Sun pharmaceutical industries Ltd and not beams Hospital private limited. Accordingly the learned assessing officer held that assessee has received income by giving these machines on hire to the Drs. The learned AO further



referred the earlier years assessment order where there was no business during the assessment year for that year as per the submission of the assessee. He further noted that in earlier years the business loss was also not allowed to be set off. Accordingly he held that income from other sources received by the assessee is shown as revenue from operation and claimed set off of losses and unabsorbed depreciation of earlier years. Accordingly he held that income of ₹ 9,639,500 shown by the assessee is hiring charges of 3D camera which squarely falls under the ambit of section 56 of the income tax act and therefore it is to be treated as income from other sources. Accordingly claim of the assessee that this is a business income was rejected. As a consequence to that, the assessing officer further disallowed the expenses claimed by the assessee under section 30 – 43D of the act. This resulted into denial of the deduction of the expenditure to the assessee and depreciation on equipments. The income from house property was also computed by reduced deduction of interest on borrowed capital. Accordingly total income of the assessee was computed at ₹ 9,010,943/- by passing an assessment order under section 143 (3) of the act on 29/3/2016.

06. Assessee aggrieved with that preferred an appeal before the learned CIT – A, wherein he upheld the action of the learned assessing officer of treatment of professional receipt of ₹ 9,639,500/- as income chargeable under the head income from other sources. As a consequence to

that, all the expenses claimed by the assessee against the business income disallowed. Accordingly appeal of the assessee was partly allowed.

07. The assessee is aggrieved with that appellate order and is in appeal before us. The first ground of appeal is with respect to the taxability of ₹ 9,639,500/- as income chargeable under the head income from other sources as determined by the learned assessing officer but treated by assessee as chargeable to tax under the head profits and gains from business or profession. The learned authorized representative submitted a detailed written submission. According to written submission, it appears that assessee is though engaged in the business of research activities, has also purchased 3D laparoscopic machines. Those machines are in fact used by the doctors of Beams Hospitals Private Limited for surgical activities. For the use of machines, which is operated and maintained by the assessee, each patient was billing is made for 3D laproscopy Machine. He submitted the copies of the bills of those machines in the paper book . He also referred to the memorandum of Association of assessee company to show that the assessee is authorised to carry on the activity of allowing the use of these machines to beams hospitals private limited. He submits that the ownership of the machine rest with the assessee and it has not been let out to that hospital but hospital uses the machine at the premises of the assessee for each patient. He further submitted that assessee incurs the expenditure for the



clinical and surgical expenses, repairs and maintenance etc. therefore it is a business activity of the assessee and the income should be chargeable to tax under the head business income and consequent expenses should be allowed as deduction. He further submitted that if the income of the assessee is treated as business income then the computation of the assessee which is placed at page number 10 of the paper book may be seen wherein the loss incurred by the assessee should be allowed to be carried forward and necessary depreciation should also be allowed to be carried forward to the extent it is unabsorbed.

08. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that based on the information available on record of past assessment year it is clear-cut that the assessee is not carrying on any of the business. He further submitted that during the course of the assessment proceedings the assessee could not explain the nature of the business carried on by the assessee and therefore the lower authorities are correct in treating the income of the machinery as income from other sources. And consequently the unabsorbed business losses carried forward correctly disallowed.
09. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that only issue involved in this appeal is whether the income earned by the assessee from Beams Hospitals Private



Limited of ₹ 9,639,500/- on account of use of machinery is to be treated as business income or income from other sources. Undisputedly the assessee was mainly engaged in the business of research. Assessee has acquired the machinery [ 3D laparoscopic machines ] which is being used by the doctors of Beams Hospitals Private Limited. For such use, assessee is in receipt of each patient wise income in relation to the different patient operated by beams on daily basis, wherein the bill amount from patient to patient is charged by specialised doctors. The assessee has also to Drs, namely Dr Rakesh Sinha and Dr Manju Sinha along with other related professionals who are operating this machines. On looking at the memorandum of Association, the assessee's main object is also carrying on of surgical procedures. The assessee has shown that the fees towards the use of the above machine is separately charged in the course of carrying out operations of the surgery. However we find that during the course of assessment proceedings as well as appellate proceedings the assessee could not furnish the exact nature of activities to the satisfaction of the lower authorities. Assessee has also not furnished even the balance sheet/annual accounts of the assessee company. Therefore, during the course of hearing before us we directed the assessee to furnish the balance sheet and annual accounts of the company. Same was furnished. On perusal of the balance sheet we find that the 3D machine revenue is shown as revenue from operation amounting to ₹ 9,639,500/-. As per schedule 19 of the annual accounts



the assessee has claimed the deduction of various expenditure in the profit and loss account of ₹ 8,113,456/-. Such expenditure include clerical and surgical expenses, professional fees paid, conference expenses, repairs and maintenance, electricity expenditure, salaries and wages and other miscellaneous expenditure. In the computation of total income furnished before us assessee has only claimed those expenses which are related to the revenue from the above machines. In view of this we are of the opinion that assessee is carrying on an organized activity of allowing the use of machine to the beams hospital which is chargeable to tax under the head business income and not under the head income from other sources. However, on computation of the business income, it resulted into a loss of ₹ 5,294,539/-. In the other expenses, the assessee has also claimed rent rates and taxes and other expenditure because of that the losses arising. However as the assessee has not furnish the annual accounts before the learned assessing officer and did not substantiate the expenditure, for computation of the business income, same deserves to be examined. In view of the above facts we set-aside the whole issue back to the file of the learned assessing officer with a direction to the assessee to substantiate the computation of the business income before the lower authorities by submitting the details of income earned as well as the expenses incurred. The learned assessing officer may examine the same and decide the issue afresh by treating the income from machinery as business income.



Accordingly, ground number 1 of the appeal is allowed with above direction.

010. Ground number 2 of the appeal is consequential in nature for allowance of set-off of current business losses. Accordingly, ground number 2 of the appeal is also allowed subject to the computation of business income of the assessee as per ground number 1.

011. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31.10.2023.

Sd/-

(ABY T VARKEY)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.10.2023

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Copy of the Order forwarded to :

BY ORDER,

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai