

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

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial member

ITA No. 7726/Del/2018 : Asstt. Year: 2012-13

RMZ Infotech P. Ltd., (Erstwhile M/s. Vital Construction P. Ltd., since merged with company) M-11, Middle Circle, Connaught Place, New Delhi 110001 (APPELLANT)	Vs	The DCIT, Circle 26(2), New Delhi 110002 (RESPONDENT)
PAN No. AAACG 0815 A		

ITA No. 70/Del/2019 : Asstt. Year: 2012-13

The ACIT, Circle 26(2), New Delhi 110002 (APPELLANT)	Vs	Vital Construction P. Ltd., M-11, Middle Circle, Connaught Place, New Delhi 110001 (RESPONDENT)
PAN No. AABCV 8990 N		

**Assessee by : Sh. Ajay Bhagwani, CA
Revenue by : Sh. Vivek Vardhan, Sr. DR**

Date of Hearing: 31.08.2023	Date of Pronouncement: 17.11.2023
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ORDER

Per Dr. B. R. R. Kumar:-

The present cross appeals have been filed by assessee and Revenue against the order of Ld. CIT(A)-31, Delhi dated 05.10.2018.

2. The assessee is a company incorporated under the Companies Act, 1956. It is engaged in the business of real estate earning rental income from let out of property, providing

maintenance services earning income from hire charges on assets given on hire and small interest income. The assessee filed return of income declaring loss of (Rs.23,57,18,238/-). The assessment was completed u/s 143(3) vide order dated 13.03.2015 at income at Rs.4,57,03,589/- after making additions and disallowance aggregating Rs.28,14,21,827/- details as under:-

<i>"Returned loss (as declared)</i>	<i>Rs.(23,57,18,238/-)</i>
<i>Add:</i>	
<i>Addition: vide para No.1 of Assessment order</i>	<i>Rs.9,67,62,246</i>
<i>Addition: vide para No.2 of Assessment order</i>	<i>Rs. 3,20,07,310/-</i>
<i>Addition: vide para No.3 of Assessment order</i>	<i>Rs.3,94,97,258/-</i>
<i>Addition: vide para No.4.4(i) of Assessment order</i>	<i>Rs.7,22,62,040/-</i>
<i>Addition: vide para No.4.4(j) of Assessment order</i>	<i>Rs 4,08,92,973/-</i>
<i>Net Taxable Income</i>	<i>Rs.4,57,03,589/</i>

3. Aggrieved, the assessee filed appeal before CIT- (A), who allowed relief in respect of following additions / disallowances made by AO:-

<i>Addition: vide para No.1 of Assessment order</i>	<i>Rs.9,67,62,246/-</i>
<i>Addition: vide para No.2 of Assessment order</i>	<i>Rs.3,20,07,310/-</i>
<i>Addition: vide para No.3 of Assessment order</i>	<i>Rs.3,94,97,258/-</i>
<i>Addition: vide para No.4.4 of Assessment order</i>	<i>Rs. 2,60,50,582/-</i>

4. With regard to the addition at para 4.4 of the assessment order, direction was given by CIT(A) in his order to disallow depreciation on Lifts. The AO made disallowance of depreciation of Rs.1,48,42,391/- on Lifts.

However no opportunity was provided to assessee before giving appeal effect. Total disallowance of depreciation of Rs.1,48,42,391/- on Lifts is made by the AO as against total depreciation claimed by assessee of Rs.1,19,,16,345/- on total Plant and Machinery meaning thereby that disallowance of depreciation on Lifts made by AO far exceeds total amount claimed as depreciation on *Plant & Machinery* which includes other assets as well.

5. Aggrieved, the assessee as well as Revenue filed appeal before us.

6. The Department has filed appeal only in respect of relief allowed by CIT(A) in respect of additions on account of disallowance of depreciation of Rs.2,60,50,582/- out of total addition made on account of disallowance of depreciation of Rs.4,08,92,973/-.

7. The assessee has taken following Grounds of appeal as under :-

1. *That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-31, New Delhi are bad in law and void ab initio.*

2. *That on the facts and circumstances of the case, the CIT(A)-31, New Delhi erred in confirming disallowance of Maintenance expenses of Rs. 7,22,62,040/- without appreciating the facts of case of appellant.*

2.1 *That on the facts and circumstances of the case, the CIT(A)-31, New Delhi erred in confirming disallowance of Maintenance expenses of Rs.7,22,62,040/- without considering the submission of appellant and dealing with same while passing the order.*

2.2 *That on the facts and circumstances of the case, the CIT(A)-31, New Delhi erred in confirming addition of Rs.7,22,62,040/- made by Assessing Officer in respect of Maintenance expenses in the ratio of maintenance income bears to total income despite the fact that these maintenance expenses do not have any nexus with earning of Rental income.*

2.3 *That on the facts and circumstances of the case, the CIT(A)-31, New Delhi erred in confirming disallowance of Maintenance expenses of Rs.7,22,62,040/- without appreciating that appellant has charged separate maintenance charges to its tenants and maintenance expenses were incurred in respect maintenance business.*

2.4 That on the facts and circumstances of the case, the CIT(A)-31, New Delhi erred in disallowed maintenance expenses of Rs. 7,22,62,040/- simply on presumption, assumption and on the basis of hypothetical example as given in order instead of actual facts of case of appellant."

8. Heard the arguments of both the parties and perused the material available on record.

9. Facts of the case are that the assessee has constructed Commercial Building at Plot No. 15, Udyog Vihar, Phase-IV, Gurgaon which is let out to various tenants which includes Foreign / MNC Companies like FIS / Fidelity / Deloitte / Cisco and BPTP etc., and earning rental income. Assessee is also providing Maintenance Services to various occupants of Property from which there is Revenue of Rs.11,67,64,484/-, besides earning income from Car Parking, Interest income and earning income from Hire charges of Rs.4,44,73160/- from hire of Furniture, fixtures, Computer, Plant & Machinery & other assets which is embedded under Rental Income in the Profit and Loss account.

10. There are two segments of Revenue one of Rental income out of letting out of Property at Plot No.15, Udyog Vihar, Phase-IV, Gurgaon including Hire Charges of assets given on hire and next of Maintenances charges out of maintenance services rendered. Assessee has not claimed any depreciation on Building let out which has been accepted by the Assessing Officer.

11. Working of depreciation claimed on fixed assets is at page 4 of Paper Book. The expenses related to Maintenance debited to Profit and Loss account and claimed as per Schedule No.18 of Balance

sheet and P & L a/c of Rs.9,49,81,650/- details as under:-

S. No	Details	Amount
A	Maintenance expenses building:	Rs.1,24,72,305/-
B	Maintenances expense Plant and Machinery:	Rs.1,25,38,998/-
C	Maintenances expense Other:	Rs.67,09,162/-
D	Project Management Fees:	Rs.55,00,000/-
E	Security and Housekeeping:	Rs.2,66,49,620/-
F	Electricity and water charges:	Rs.3,11,11,565/-
	Total	Rs.9,49,81,650/- -

12. It was submitted before the Revenue Authorities that the above expenses were incurred wholly and exclusively in respect of maintenance business for providing maintenances services in respect of Commercial premise at Plot No.15, Udyog Vihar, Phase-IV, Gurgaon, Haryana. Building maintenance and various expenses claimed in respect of maintenance business includes expenses in respect of cleaning, horticulture, landscaping, fixing and replacement of grills, light, bulbs, cleaning and replacement of fire tank, Housekeeping services, providing Security Services and payment of Security, salaries of guards, cleaning expenses of outer facade of Building, cleaning of basement and common area, Lift & Lift area etc. Electricity and water charges, providing power back up which includes expenses for providing electricity in common area, lift, water for common area, cleaning toilets, horticulture, land scape etc. providing Power Back up Services, purchase of fuel for running of DG Sets. It was

submitted that these expenses are not having any nexus with let out of Property. Instead these expenses are related to earning of Maintenance Income earned and which was offered to tax of Rs.11,67,64,484/-.

13. Copies of Rent agreement were filed before the Assessing Officer. Sample copy of Rent agreement is placed at page no.1-295 of Paper Book-II. There was no mention of providing any maintenance Service along with rent agreement. The assessee has entered into separate maintenance agreement with tenant as per which the assessee is supposed to provide maintenance Services separately and to charge maintenance charges separately. Sample Copy of the maintenance agreement is placed at 53-74 of Paper Book-II.

14. During the course of assessment proceedings, the assessee was asked to show cause as to why these maintenance expenses incurred and claimed are not added back in computation as these are related to let out of property. The assessee submitted that they had claimed deduction of Rs.9,49,81,650/- in respect of maintenance expenses against "Maintenance Income offered to Tax" of Rs.11,67,64,484/- being the sum received from tenants on account of maintenance services provided. There were separate maintenance agreement with tenant for providing maintenance services and charging maintenance charges, copies of which were filed before AO and CIT(A).

15. The Revenue stated in the assessment order that maintenance services provided to tenants were related to the building given on rent by the assessee. It was further stated in para 4.4 at page 7 of assessment order that as per rent agreement furnished, the assessee was to provide various services part of maintenance services and these

services were related to area given on rent and without these services, giving the said building on rent has no value. Further, it was stated in para 4(d) that lease agreement with tenants were mainly for the area given on rent and intention of assessee was to let out the said property and the maintenance charges received were subservient to the exploitation of property given on rent. Further, in para 4.4 (e), (f), and (g), the contention of part of building lying vacant was repeated for disallowing expenses of Rs.7,22,62,040/-. In para 4.4 (h), it was mentioned that assessee has claimed deduction u/s 24(a) @ 30% of rent received and standard deduction in respect of house property income which covers deduction in respect of all repairs, maintenance charges, depreciation charges etc.

16. After the above observations, the Revenue held that deduction will only be allowed to the extent of 23.92% of the total claim of expenses of Rs.9,49,81,650/-. This percentage was worked out by dividing Maintenance Income of Rs.11,81,39,484/- to the total income of Rs.49,38,13,516/-. It was submitted that the AO and CIT (A) without appreciating the fact and without bringing on record any adverse evidence in support of the fact that there expenses were not in respect of maintenance related activities and related to Rental income.

17. The assessee has entered into separate maintenance agreement with tenant clearly defining scope of maintenance services and maintenance charges to be paid to tenants. Sample copies of maintenance agreements are placed at page 53-74 of Paper Book-II. The Id. CIT (A) has treated the maintenance income as part of Rental income by relying on hypothetical example.

18. The contention of the Revenue is that the assessee was allowed standard deduction u/s 24(a) @30% of Rent which cover up all repairs, maintenance and depreciation of building. This is contrary of facts on record as assessee has not claimed standard deduction @ 30% in respect of maintenance income received of Rs.11,81,39,484/- and offered to tax under the head 'Business income'. There were two separate agreements for providing maintenance services with tenants. There were of maintenance income and rental income which are totally different and expenses of different business cannot have same ratios and expenses cannot be disallowed *simply on the basis of ratio of income of different business*. The activity of maintenance and rental income is totally separate and identifiable activity and nothing to do with area given on rent and standard deduction was claimed in respect of rental income and not in respect of maintenance charges which can be verified from the computation at page 2-7 of Paper Book. The property was given on Rent and no depreciation on Property was claimed on by assessee. There was no nexus of these maintenances expenses incurred and claimed with earning of rental income. Copy of lease agreement and maintenance agreement entered with tenant are placed at page 1-295 of Paper Book Part - II.

19. It is a fact on record that in *the AY 2013-14 no disallowance has been made on the same issue and the return income has been accepted*. Further the assessment proceedings on similar facts for AY 2011- 12 and AY 2013-14 , AY 2014-15 are completed without making any addition / disallowance in respect of same assessee on same set of facts on this issue. Copies of assessment orders for the AY 2011-12 and 2013-14 to 2014-15 are placed at page no 53-63 of Paper Book which shows that no

such disallowances and additions were made in case of same assessee on same facts in earlier as well as later years. Rule of consistency demand that the same should be allowed in the year under consideration as well as there is no change in the facts. Reliance is being placed on the decision rendered in the case of **CIT vs. Excel Industries 358 ITR 295(SC)**. Wherein it was held that, once having accepted this position, the Assessing Officer cannot change his opinion in immediate next and previous assessment year without there being any change in facts and circumstances.

20. In view of the entire facts of the case as narrated above taking into consideration the action of the Revenue in the case of the assessee for different years , and considering the of judicial pronouncements we hold that no disallowances is called for in this case.

21. In the result, the appeal of the assessee on this ground is allowed.

Revenue Appeal in ITA No. 70/Del/2018

Depreciaton on fixed assets:

22. The Revenue has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case the Ld. CIT (A) erred in allowing depreciation on Fixed Assets (Other than on Lift) without appreciating that these fixed assets were part of the Building which was given on rent and the assessee had claimed 30% deduction u/s 24, thus by allowing depreciation on these fixed assets the assessee has got double deduction."

Ground no.3 and 3.1 of Assessed Appeal:-

"3. That on the facts and circumstances of the case, the CIT (A)-31, New Delhi erred in confirming the disallowance of depreciation on lifts on the contention that

lift is an essential part of multi-story building and cannot be treated separate from building.

3.1. That on the facts and circumstances of the case, the CIT (A)-31, New Delhi erred in confirming the disallowance of depreciation on lifts without appreciating the facts of the case of appellant that depreciation on normal lifts which were part of building were capitalized alongwith building and no depreciation on such lift were claimed by appellant and depreciation on additional lifts which were installed on request of tenants was claimed by appellant."

23. During the year under consideration, the assessee had claimed total depreciation of Rs.5,37,49,964/- on various fixed assets (excluding Building and various assets part of building) used in respect of various sources of income in respect of maintenance business and hire of assets which were offered to tax under the head "Business Income". The AO has made the disallowance of depreciation of Rs.4,08,92,973/- out of total depreciation claimed of Rs.5,37,49,964/- @ 76.08% in the ratio of maintenance income of Rs.11,81,39,484/- which bears to total income of Rs.49,38,13,516/-.

24. We find that the assessee has offered hire charges of Fixed Assets of Rs.4,44,73,160/- under the head "Business" which has nothing to do with Rental Income. Depreciation on assets given on hire itself works out to Rs.1,12,90,496/-. Further, no logic / reason is given by the Assessing Officer for disallowing depreciation on assets given on hire despite the fact that income from hire of assets was offered to tax under the head 'Business'.

25. For the same reasoning as in preceding para, depreciation to the extent of 23.92% was allowed on the basis of ratio which maintenance income of Rs.11,81,39,484/- bears to total income of Rs.49,38,13,516/-. As maintenance income was 23.92% of total income, 23.92% of total

depreciation claimed of Rs.5,37,49,964/- was allowed and balance Rs.4,08,92,973/- was disallowed.

26. This action of the AO is erroneous as claim of depreciation was in respect of assets given on hire also and various assets like as lift, elevators, DG Sets for power back up, plant and machinery for air conditioning, temperature control and ventilation, Electric Control Panel, Chiller Plant, Plant & Machinery used for cleaning of building in respect of maintenances business. No part of depreciation on Building and fixed assets used in Building was claimed which was related to activity of area given on rent. The CIT (A) has decided this issue and partly allowed the appeal by confirming the disallowance of depreciation on lifts on the contention that lift is an essential part of multi-story building and cannot be treated separate from building without appreciating the facts of the case of appellant that depreciation on normal lifts which were part of building were capitalized alongwith building and no depreciation on such lifts were claimed by appellant. Depreciation on additional lifts which were installed at specific request of tenant was claimed by appellant. Total depreciation claimed on Additional Lifts installed at the request of tenants was Rs.6,25,849/- as against depreciation on Lift disallowed of Rs.4,08,92,973/- by the assessing officer and confirmed by CIT-A of Rs.1,48,42,391/-. The total depreciation claimed on Plant & Machinery was Rs.1,19,16,345/- which includes various assets given on hire as against total depreciation on Lifts disallowed of Rs.1,48,42,391/- pursuant to order of CIT(A).

27. The assessee had different the activities of rental, maintenance and hiring of assets which are totally separate and identifiable activity and nothing to do with area given on rent and standard deduction claimed was

in respect of rental income received in respect of rending of immovable property and not in respect of hire charges in respect of assets given on hire and maintenance charges. There is separate income from providing of these maintenance services of Rs.11,81,39,484/- and Hiring of assets of Rs.4,58,48,160/-. There is no nexus of claim of depreciation on Fixed Assets used in maintenance business from which these was income of Rs.11,81,39,484/- and business of Hiring of assets from which these was income of Rs.4,58,48,160/- with earning of rental income. Accordingly, no part of deprecation claimed be disallowed. Neither standard deduction @30% was claimed by assessee in respect of Maintenance income of Rs.11,81,39,484/- and Hire Charges of Rs.4,58,48,160/-which itself account for Rs.4,91,96,293/- 30% of (118139484 + 45848160) nor these income were considered by AO for allowing Standard Deduction @ 30% which clearly shows contradictory stand taken by the AO. For logical conclusion, if the assessing officer is treating hire charges and maintenance income as part of rental income then he should have allowed standard deduction @ 30% of the hire charges and maintenance income treated as part of Rental income which is not done by AO.

28. The depreciation claimed of Rs.5,37,49,964/- on fixed assets during the year under consideration as under:-

Particulars	Depreciation	Remarks
Computer	1,10,35,313/-	Not the part of Building and this is not related to Rental Income. This is Part of Hiring Business
Electrical Equipment	84,06,210/-	Not the part of Building and this is not related to Rental Income. This is Part of Maintenance Business

Furniture and Fitting	1,95,08,591/-	Not the part of Building and this is not related to Rental Income. This is Part of Hiring Business
Office Equipment	28,82,505/-	Not the part of Building and this is not related to Rental Income. This is Part of Maintenance Income and Business of assets given on Hire
Plant and Machinery	1,19,16,345/-	Not the part of Building and this is not related to Rental Income. This is Part of Maintenance Income and part of Business of assets given on hire. Further, out of total depreciation claimed of Rs. 1,19,16,345/- in respect of Plant and Machinery, the

29. It is a fact on record that **in the AY 2013-14 no disallowance has been made on the same issue and the return income has been accepted.** Further the assessment proceedings on similar facts for AY 2011- 12 and AY 2013-14 , AY 2014-15 are completed without making any addition / disallowance in respect of same assessee on same set of facts on this issue. Copies of assessment orders for the AY 2011-12 and 2013-14 to 2014-15 are placed at page no 53-63 of Paper Book which shows that no such disallowances and additions were made in case of same assessee on same facts in earlier as well as later years. Rule of consistency demand that the same should be allowed in the year under consideration as well as there is no change in the facts. Reliance is being placed on the decision rendered in the case of **CIT vs. Excel Industries 358 ITR 295(SC)**. Wherein it was held that, once having accepted this position, the Assessing Officer cannot change his opinion in immediate next and previous assessment year without there being any change in facts and circumstances.

30. In view of the entire facts of the case as narrated above taking into consideration the action of the Revenue in the case of the assessee for different years , and considering the of judicial pronouncements we hold that no disallowances is called for in this case.

31. With regard to following of direction of the Id. CIT(A) to the AO on account of depreciation on Lift , we direct the AO to compute the allowance as per the directions given by Id. CIT(A) in his order. We also direct that the assessee shall submit the depreciation chart before the Assessing Officer with all the details.

32. In the result, the appeal of revenue is dismissed.

33. In the result, the appeal of the assessee is allowed and the Revenue appeal is dismissed.

Order Pronounced in the Open Court on 17/11/2023.

Sd/-
(Astha Chandra)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 17/11/2023

NV, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI