

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A' : NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRIANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 7533/Del/2019
Assessment Year : 2015-16**

Shri Ashok J. Thapar HUF
A-3, Pamposh Enclave,
New Delhi

Vs. DCIT,
Circle-62(1),
New Delhi

PAN : AADHA7372L

(Appellant)

(Respondent)

Assessee by : Dr. Rakesh Gupta, Adv. &
Shri Somil Aggarwal, Adv.
Revenue by : Shri Kanv Bali, Sr. DR

Date of hearing : 01.11.2023
Date of Pronouncement : 30.11.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Assessee against the order dated 26.07.2019 of Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 10253/2017-18, A.Y. 2015-16 arising out of an appeal before it against the order dated 20.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, New Delhi (hereinafter referred as the Ld. AO).

2. The facts of the case are that the Ld. CIT(A) has sustained the disallowance of the standard deduction u/s 24(a) of the Act amounting to Rs.63,72,000/- against the income declared by the assessee under the head Income from House Property and further confirming the addition made by the Ld. AO on account of business expenses amounting to Rs.43,62,446/- on the ground that appellant has no money lending business whereas assessee claims that the money lending business was dormant and the assessee was in litigation with the debtors to recover the principal and interest.

3. Heard and perused the matter on record.

4. In regard to ground no 2 the Ld. Counsel for assessee has submitted that that during the assessment year under consideration assessee purchased this property i.e. First Floor, Laxmi Commercial Building, Tulsi Pipe Road, Dadar, Mumbai West through Agreement to Sell and Purchase dated 01.04.2014 entered into between assessee HUF and Ashok J. Thapar (Individual) for a total consideration of Rs.5,12,52,316/- (PB 9-11). However, before the assessment year under consideration, i.e. in preceding years this property was taken out by the assessee on lease from Shri Ashok J. Thapar and was sublet out to LIC of India, and the Rental income received from sub-letting was being shown by the assessee as income from business of sub leasing the property. However, when assessee purchased this property and has taken the possession of the property vide Agreement Sell and Purchase dated 01.04.2014 the assessee declared its income from letting out this property as Income from House property.

4.1 It was submitted that Ld. AO allowed the Municipal taxes paid but did made error in not allowing the deduction u/s 24(a) of the Act, amounting to Rs. 63,72,000/- holding that the property was sub-leasing and the rent received is income under the head other sources.

4.2 Ld. Counsel submitted that Ld. CIT(A) confirmed the addition made by the Ld. AO alleging that the evidences placed on record by the assessee do not prove the assessee as owner of the property. Ld. Counsel made reference to sub-para (i), (ii) & (iii) of para 6.1.4 at page 9 of the appeal order and for the convenience same are reproduced as under:

i. "The property cannot be owned by the appellant HUF unless it is registered in its name. The same is not done in this case, therefore the appellant cannot claim to have received rent from the property which is not owned by it so far and the status of the amount received from LIC would continue to be income from subletting or sublease of the property.

ii. There is no evidence of payment of Rs. 5,12,52,316/- by Sh. Ashok J Thapar karta of the appellant HUF to Ashok J Thapar (ind.) as mentioned in the one page transfer deed made by the builder. Apparently the transfer deed was recognized by the builder on 10.06.2016.

iii. In the balance sheet of the appellant HUF the property has not been shown as the fixed assets nor there is any evidence of payment of Rs. 5,12,52,316/- by the appellant to Sh. Ashok J Thapar (Ind.). Therefore this claim of the appellant that it derived income from rent for the year does not qualify for the test of truth."

4.3 It is submitted by Ld. Counsel that Ld. CIT(A) did not consider the Agreement to Sell and Purchase copy of which is made available at PB 9-11 of PB only for the reason that the same was not registered and rejected the Transfer deed dated 10.06.2016 (PB page 53) alleging that the same was recognized by the builder on 10.06.2016 ignoring the fact that the Builders have specifically mentioned in this Transfer Deed that "*All the rights and title of the property mentioned above are vested with Mr. Ashok Thapar, Karta of Ashok Thapar HUF from 13th April, 2014 and will be solely responsible for any further matter regarding the said premises i.e. 1st Floor, Laxmi Commercial Centre, Tulsi Pipe Road, Senpati Bapat Marg, Dadar (W).Mumbai -400028*".

4.4 It is further submitted by ld. Counsel that in this Deed it is also

specifically mentioned that Assessee HUF has paid a total consideration of Rs. 5,12,52,316/-.

4.5 He pointed out that in the subsequent assessment year again, Ld. AO considered the Rental income as Income from Other Sources, against which also assessee filed appeal before the Ld. CIT(A)-20, New Delhi and the Ld. CIT(A) vide order passed dated 12.02.2020 (PB 80-85) deleted the addition made by the Ld. AO holding that the rent received by the assessee is to be assessed as Income from House Property. He referred to the observations made by the Ld. CIT(A) in para 4.1 at page 3 of his order for AY 2016-17 and same are reproduced here under:-

“.... However, from the facts of the case, it is noticed that the assessee was in possession of the property and had paid the entire amount of Rs. 5,12,52,316/- during the year as per the agreement to sell and purchase dated 1st April 2014 and as per copy of ledger account produced during the appellate proceedings. It is further seen that the property in question was a lease hold property and could not be registered. It could and was only transferred in the record of the builder/promoter of the building. It is further seen that the builder had registered the said transfer in its books of account effective from 13/04/2014 as per the assessee's application dated 13/04/2014. In this regard, the certificate of the builder is was also submitted. It is explained by the appellant that the property could not be shown in the balance-sheet of the appellant as the transfer certificate was not given by the builder till March 2016. However, there is no doubt that there was an agreement to sell and purchase dated 01/04/2014 and assessee was in possession of the property. There is further no doubt that the consideration of Rs. 5,12,52,316/- had been passed to seller. It is seen that the handing over of possession of the immovable property is one of the most important ingredients for applicability of section 2(47)(v) of the IT Act r.w.s 53 A of Transfer of Property Act (TOPA). Therefore, the transfer of the property was thus complete in terms of section 2(47)(v) of the IT Act. Therefore, in view of the above factual and legal position, both house tax paid Rs. 67,50,000/- and deduction u/s 24(a) of Rs. 56,97,000/- is allowable. The AO is directed to allow the same accordingly. ”

4.6 Ld. Counsel referred to PB 9-11 the copy of the Agreement to Sell and Purchase dated 01.04.2014 entered into between the assessee and seller of

the property Shri Ashok J Thapar to contend that same confirms that the assessee became owner of the property w.e.f. 01.04.2014. He further referred to copy of the Transfer Deed dated 10th June, 2016 PB 53, given by M/s.Amar Builders, in favour of the assessee w.e.f. 13th April, 2014.

4.7 Thus, he concluded on this ground that from the above facts brought on record it is evident that assessee was owner of the property w.e.f. 01.04.2014 and the property was owned by the assessee. Ld. CIT (A)-20, New Delhi has also made clear that since the property was a lease hold property and as such was not registered, and that there was no doubt about the consideration paid of Rs. 5,12,52,316/- which was passed on to the seller during the period 01.04.2014 to 31.03.2015 itself.

5. Further, without prejudice, it is submitted by Ld. Counsel that the claim of the assessee cannot be and should not be denied in view of the fact that the assessee was receiving rent from LIC of India and in number of judgments various Hon'ble courts have held that income from sub-letting the property in Income from House Property and is to be assessed under Income from House Property. Reliance is placed on the following judgments to support the legal propositions canvassed ***Smarts (P.) Ltd. vs. CIT, High court of Delhi, 166 taxman 53; Akola Trading Company Pvt. Ltd. vs. ITO, in ITA No. 6481/Mum/2013 order dated 01.03.2017, ITAT Mumbai Bench; Commissioner of Income Tax Vs. M/s. Vegetable Products Ltd., 88 ITR 0192 (SC).***

6. In regard to the ground No. 3 it was submitted by Ld. Counsel of assessee that Ld. AO disallowed the claim of expenses incurred by the assessee for an amount of Rs. 43,62,446/- relating to business carried out by the assessee of money lending and that it is not in dispute that this business was being carried out by the assessee for the last more than one decade, but due to litigation going on between the assessee and the parties who borrowed the

money from the assessee, this business of the assessee was in lull during the year under consideration. This fact is also not denied that the litigation was going on between the assessee and the debtors and was pending before the Courts. Ld. Counsel referred to **PB 6-8 of PB**, the copy of the balance sheet of the assessee which shows the money advanced by the assessee to borrowers for which he contended same proves the existences of the money lending business of the assessee. He further referred to **PB 12-18**, the copy of the case petition filed by the assessee against Sh. Sunil Mantri (borrower) u/s 138 of the Negotiable Instrument Act, to contend that same proves the existences of the money lending business of the assessee. Ld. Counsel referred to **PB 19-49**, the copy of petition filed by the assessee before the Hon'ble High Court of Bombay against the borrower i.e. M/s Mantri Reality Ltd.

6.1 Ld. Counsel submitted that assessee is engaged in the money lending business has also been confirmed by Hon'ble ITAT, Delhi in order passed in MA for AY 2011-12 in MA No. 771/Del/2018 (in ITA No. 815/Del/2016) vide order dated 16-07-2019 (PB 80- 85) and it will be appropriate to reproduce the findings he relied as under:-

“Though the interest income is treated as income from other sources, the expenses incurred by the assessee and claimed as business expenses have to be considered income from sub leasing and money lending business of the assessee.”

6.2 Ld. Counsel stressed that this fact that the assessee is engaged in the business of money lending is further confirmed by Ld. CIT(A) in order for AY's 2012-13, 2013-14, 2014-15 and even in the subsequent year i.e. AY 2016-17.

6.3 It is submitted that due to litigation and business in lull period for the assessment year under consideration assessee did not receive interest income from its money lending business and also for the reason as litigation was

pending before Hon'ble Courts, for recovery. This fact cannot be brushed aside that expenses are incurred by the assessee on litigation, maintenance of office, conveyances. Therefore, as the business of the assessee during the year under consideration was in a lull period but it cannot be said that this business has ceased to exist. He relied order of Ld. CIT(A)-20, New Delhi vide order passed dated 12-02-2020 for AY 2016-17. The findings relied by Ld. Counsel are reproduced herein below;

“The contentions of the AR have been considered and the order of the AO has also been perused, In view of the decision of the Hon'ble ITAT for A.Y. 2011-12, it is clear that there are some expenses, which are necessary for the maintenance of establishment and to keep the litigation alive, Therefore, considering the facts and circumstances of the case, the action of the AO in disallowing the expenditure of Rs. 38,09,851/- is not tenable and accordingly, the AO is directed to allow the expenditure. The additions of Rs. 38,09,851/- is therefore deleted. ”

7. The ld. DR has, however, opposed the aforesaid contentions on both the counts and has stressed on the fact that since the sale deed was not a registered document it did not create an ownership on the assessee and, therefore, the receipts were rightly treated as 'Income from other sources' disallowing claim u/s 24(a) of the Act. The ld. DR has heavily relied on the judgement of the Hon'ble Supreme Court in the case of ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)*** to contend that the Hon'ble Supreme Court has held that the documents like general power of attorney, agreement to sell and Will do not bestow any title on a person and these documents cannot be considered certainly by the courts.

7.1 This was rebutted by the ld. AR by relying on the order of the coordinate Bench in the case of ***Rita Kuchal in ITA No.6154/Del/2013*** vide ***order dated 22.05.2015*** submitting that the judgement of the Hon'ble Supreme Court in the case of ***Suraj Lamp & Industries (supra)*** has been considered by the coordinate

Bench and distinguished from cases regarding taxability of income from property.

7.2 The ld. DR has defended the same by submitting that the coordinate Bench has relied on another judgement in the case *CIT vs.Smt. Kamla Sondhi dated 20.02.2004, 141 Taxman 278 (Del)* and *CIT vs. Podar Cement Pvt. Ltd. (1997) 226 ITR 625 (SC)*, but, in these two judgements, the judgement of the Hon'ble Supreme Court in the case of **Suraj Lamps & Industries (supra)** was not discussed and distinguished. Accordingly, he submitted that the judgement of the Hon'ble Supreme Court in the case of Suraj Lamps & Industries (supra) is binding and registration of a document is indispensable.

8. In regard to the disallowance of expenditure of Rs.43,62,446/-, it was submitted by him that this is the disallowance made by the AO of the expenses incurred by the assessee on earning from money lending business. The assessee has claimed that he is in regular business of money lending. The facts have been examined and discussed by Ld CIT (A) in para 6.1.6, 6.1.7 and 6.1.8 of the appellate order. The Ld CIT (A) has clearly discussed that advances were given to two persons some ten years back and these were given as advances for property to developers. There is no interest income and principal amounts are also not received back. There being no regularity in money lending and unexplained transactions with two entities being more than ten years old, by no stretch can be termed as money lending business. The disallowance has rightly been upheld by Ld CIT (A).

9. The Bench has given thoughtful consideration to the matter on record and what comes up before us is that the agreement to sell for purchase of the property available at pages 9-11 of the paper book shows that while entering into this agreement on 01.04.2014, the present assessee as HUF had agreed to

pay a sum of Rs.5,12,52,316/- to the proprietor who was the owner and in possession of the premises and had agreed to pay this amount by 31st March, 2015. The payment of this amount by 31st March, 2015 is not disputed. Admittedly, at the time of this transaction, the property was under tenancy of Life Insurance Corporation of India and the tenancy right stood assigned. The assessee has relied on a letter dated 10.06.2016 titled as 'transfer deed' wherein, on the basis of this transaction on 01.04.2014 and the fact of payment of consideration, the builder recognized that all the rights entitled of the property now vested with the assessee from 13th April, 2014 onwards.

10. Now, for the purpose of section 24(a) of the Act, the conveyance of the title seems to be not of much consequence. We are of considered opinion that judgement of the Hon'ble Supreme Court in the case of ***Suraj Lamps & Industries (supra)*** is in regard to transfer and conveyance of a title for civil consequences between private parties. However, with regard to the fiscal purposes, between assessee and Revenue, where on the basis of existence of an interest in an immovable property, certain rights or interest including those right to executed further convey the title are involved, the documents like GPA, sale agreement or Will have to be considered valid and effective for all purposes for creating a liability on assessee or to give benefit to the assessee. Although in the judgement relied by the ld. AR in the case of ***Rita Kuchal (supra)*** there is no specific discussion on this aspect, however, cognizance of the judgement of the Hon'ble Supreme Court in the case of ***Suraj Lamps & Industries (supra)*** was taken, but, for the purpose of section 24(a), the right of an assessee to be entitled to receive the rental income was given precedence. As for benefit, the findings in paras 8 and 8.1 are reproduced below:-

“8. We have heard the both parties and perused and considered the relevant record available with us, especially the order of the Hon'ble High Court of ITA NO.6154/Del/2013 Delhi decided in the case of CIT

vs. *Smt. Kamla Sondhi* dated 20.2.2004 reported in 2004 141 Taxman 278 Delhi. We find that Hon'ble High Court has adjudicated the issue as under:-

"ORDER The question mentioned herein below has been referred by the Tribunal. However, the notice In the respondent has yet not been effected. Anyhow, notice is not required in the instant case as the case is covered by the decision of the Apex Court in favor of the assessed. The question that has been referred by the Tribunal is as under:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that rental income from flat in a multistoreyed building is assessable in the hands of the assessed under the head 'Income from house property even though the assessed had not acquired legal title to the ownership of the said property through a registered sale deed in her favor?"

2. In view of the Supreme Court decision in the case of CIT v. Podar Cement (P) Ltd. (1997) 226 ITR 625 (SC), the answer is required to be given in favor of the assessed and against the revenue. The Apex Court in the said decision has held as under:

"We are conscious of the settled position that under the common law, owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act, etc. But, in the context of section 22 of the Income Tax Act, having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, to tax the income, we are of the view, owner is a person who is entitled to receive income from the property in his own right."

Accordingly, the reference is answered in favor of the assessed."

8.1 We find that the Ld CIT(A) got carried away by the judgment of Hon'ble Supreme Court in the case of Suraj Lamps and Industries Pvt. Ltd. (Supra), wherein, the Hon'ble Supreme Court delivered the judgment in a different context and highlighted the well settled law on the importance of registration of property as per the Registration Act and frowned upon the menace of transaction being done of immovable property by General Power of Attorney and the said case has nothing to do with the Income Tax Act 1961, which we are dealing with. However we find that the aforesaid order of the Hon'ble High Court of Delhi bolsters the case and claim of the appellant. Since there is no dispute that income/rent from the flat No-21, Hope Apartments, Sector-15, Gurgaon is received by the assessee/appellant then ITA No.6154/Del/2013 as per the Income Tax Act, owner is the person who is entitled to receive income

in his own right. Respectfully following the order of the Hon'ble High Court in the case of CIT vs. Smt. Kamla Sondhi (Supra) as held by the Hon'ble Supreme Court in Podar Cement (supra), we set aside the order of the revenue authorities and decide the issues in dispute in favour of the assessee by accepting the Appeal of the assessee."

11. Thus, the judgement which the Id. AR has relied in ***CIT vs. Smt. Wiran Bai Jaggi, (2002) 125 Taxman 0651***, wherein the judgement of the Hon'ble Supreme Court in case of ***CIT vs. Podar Cement*** has been relied is still applicable to the case of the assessee. The observations of the Hon'ble Supreme Court in the case of ***Podar Cement Pvt. Ltd. (supra)*** are worth to be reproduced to understand how the law propounded in regard to section 22 of the Act is different from the one propounded for the purpose of section 17 of the Registration Act in ***Suraj Lamps & Industries (supra)***:-

"Thus the juristic principle from the view point of each one is to determine the true connotation of the term "owner" within the meaning of s.22 of the Act in its practical sense, leaving the husk of the legal title beyond the domain of ownership for the purpose of this statutory provision. The reason is obvious. After all, who is to be taxed or assessed to be taxed more accurately - a person in receipt of money having actual control over the property with no person having better right to defeat his claim of possession or a person in legal parlance who may remain a remainder man, say, at the end or extinction of the period of occupation after, again say, a thousand years? The answer to this question in favour of the assessee would not merely be doing palpable injustice but would cause absurd inconvenience and would make the Legislature to be dubbed as being a party to a nonsensical legislation. One cannot reasonably and logically visualise as to when a person in actual physical control of the property realising the entire income and usufructs of the property for his own use and not for the use of any other person, having the absolute power of disposal of the income so received, should be held not liable to tax merely because a vestige of legal ownership or a husk of title in the long run may yet clothe another person with the power of a residual ownership when such contingency arises which is not a case even here. A plain reading of clause 4 of the agreement, as extracted above, clearly goes to show that the physical possession of the properties has passed on or is deemed to have passed on to the assessee to have and to hold for ever and absolutely with the power to use the same in whatsoever manner it thinks best and the assessee shall derive all income and benefits together with full power of disposal of the properties as well

as the income thereof. Can it then be said that the recipient of the income being the assessee only having an absolute and exclusive control over the property without any let or hindrance on the part of the so-called vendor which, indeed, under law it was not entitled to do, as we shall presently show, shall be immune from the taxing provision in [Section 22](#) of the Act? The answer in our view is clearly in the negative. The reason is simple. The consideration money has been paid in full. The assessee has been put in exclusive and absolute possession of the property. It has been empowered to deal with the income as it likes. It has been empowered to dispose of and even to alienate the property.”

12 Thus, furthermore, the ld. DR could not defend the argument that in the subsequent years the CIT(A) has deleted the addition made by the AO holding that the rent received by the assessee is to be assessed as ‘income from house property.’ Thus, we are inclined to allow this ground no 2.

13. Now, coming to the ground No.3, it comes up that the whole stress of the ld. AR was on the fact that the Tribunal in AY 2011-12 and CIT(A) in AY 2012-13, 2013-14 and 2014-15 and in subsequent assessment year 2016-17 has accepted that the assessee is engaged in the business of money lending and, therefore, has allowed the expenditure. As we appreciate the copies of these orders made available by the assessee in the paper book, it comes up that initially, the Tribunal in assessee’s own case in **ITA No.815/Del/2016 for AY 2011-12, order dated 26.09.2018**, had considered this issue and had observed in para 5 as follows:-

“5. We have perused me submissions advanced by both sides in light of records placed before us. On perusal of grounds raised by assessee before Ld. CIT (A), it is observed that assessee has not challenged the change of head by Ld.AO regarding interest income. Therefore in a way assessee has accepted interest income to be treated as income from other sources. On a query being put up by the Bench to Ld.AR, it has been submitted that consciously assessee has not disputed this issue before Ld.CIT(A) and also before this Tribunal. Therefore, in our considered opinion, the argument advanced by Ld.AR, of considering expenses incurred by assessee also for money lending activities stands rejected.”

13.1 However, subsequently, in **MA No.771/Del/2018**, **vide order dated 17.07.2019**, at the behest of the assessee, this part of the order was got rectified and we consider it appropriate to reproduce para 4:-

“4. We have carefully considered the rival submissions and have perused the order of the Tribunal dated 26.09.2018. In so far as grievance raised vide ground no. 1 in ITA No. 815/Del/2016 is concerned the Tribunal held that the change of head of income regarding interest income from business income to income from other sources have not been disputed by the assessee and while concluding the Tribunal held “therefore, in our considered opinion, the arguments advanced by the Ld. AR all considering expenses incurred by assessee also for money lending activities stand rejected”. In our considered opinion, when in the past assessments u/s 143(3) both the sub-leasing and money lending business of the assessee has been accepted. The claim of expenditure under these heads have to be allowed. Though the findings of the Tribunal are apparently erroneous, as the expenditure has been considered as deduction from interest income which has been taxed under the head “income from other sources”. To this extent, we find a mistake has crept in the order of the Tribunal which needs rectification. We, accordingly, modify the findings of the Tribunal at para 5 of its order and the same read as under:

“Though the interest income is treated as income from other sources, the expenses incurred by the assessee and claimed as business expenses have to be considered income from sub leasing and money lending business of the assessee.”

13.2 However, what is material is the fact that in that year the assessee was found to be earning interest income and that justified the claim of being into money lending business. In AY 2013-14, the Id.CIT(A) has accepted the claim of the assessee only on the finding that in earlier years the Department had accepted the assessee’s claim of doing business of money lending. In AY 2014-15, the Id. CIT(A)-11, New Delhi, has restricted the disallowance to 5% rather than 15% as made by the AO on the basis of possibility of personal usage. The order of the Id.CIT(A) shows that in that year the assessee had shown himself to be engaged in the business of leasing of properties only and there was no adjudication on the question of money lending business. In AY 2016-17, the Id.

CIT(A)-20, New Delhi, relied on the Tribunal decision for 2011-12 to hold that the assessee was doing money lending business which was dormant and that there are some existence which are necessary for the maintenance of establishment to keep the litigation alive and, therefore, deleted the disallowance of expenditure. In AY 2012-13, the Id.CIT(A)-20, New Delhi, while dealing with the disallowance of expenses of Rs.2,87,80,430/- by the AO, the issue was appreciated in the light of the fact that the money lending business was accepted in AY 2005-06, 2006-07, 2007-08 and 2008-09 where income of interest was shown as business income and, thus, the Id.CIT(A) in AY 2012-13 has interfered into the issue holding that the interest income from money lending of Rs.1,15,60,000/- should have been taken as business income and, accordingly, allowed the expenditure.

13.3 Now, coming to the present assessment year, at the outset, we would like to reiterate the settled proposition of law that every assessment year is independent and there is no applicability of principle of *res judicata*, if the facts are distinguishable and there is evidence in that regard. In the present year 2015-16, the assessee is no more into subletting business, but, has earned income from property and has also claimed deduction u/s 24(a) of the Act which we have allowed in ground No.2. During the year, the assessee has changed the receipts from LIC India from one received in the capacity as a lessee who has created the sublease to an owner who has rented the premises. Thus, certainly the expenses of the description mentioned in the assessment order could not be attributed to the income from property as standard deduction u/s 24(a) of the Act stands allowed.

13.4 It appears that during assessment proceedings the assessee claimed that apart from leasing of property business the assessee is also engaged in money lending business. This was considered by the AO to be an afterthought, but, the

Id.CIT(A) has gone into the issue in a more detailed manner making the following relevant observations in para 6.1.6 to 6.1.8 as follows:-

“6.1.6 The Assessing Officer in the assessment order gave a finding that the appellant has shown receipts from subletting of property and claimed the business expenditure of Rs. 43,62,446/- on the same. During assessment proceedings at a very later stage the appellant in reply to the show cause letter of the Assessing Officer submitted that it is also engaged in money lending business besides being engaged in leasing of property business. The expenses claimed were incurred wholly and exclusively for business purposes and therefore deserve to be allowed. The Assessing Officer did not have any reasons to rely on the last submission of the appellant because the appellant had not shown any income from money lending business and high expenditures have been claimed under heads such as salary, repair and maintenance, vehicle running and maintenance and depreciation etc. totaling to Rs. 43,62,446/-. The Assessing Officer therefore disallowed the expenditure.

6.1.7 The appellant during appeal hearing submitted that it did not earn any interest on money lending in this year because the parties to whom loans were advanced have stopped paying interest and principal amount and the matter is under litigation. Expenses have been made on litigation to recover the same. But the money lending business has not ceased to exist. The appellant further submitted that expenses were made to maintain office establishment and on legal and professional charges but however personal use of vehicle running and maintenance including interest on car loan and depreciation on car cannot be denied.

6.1.8 From verification of the balance sheet of the appellant it appears that there are two entries/transactions which the appellant has termed as money lending business i.e. advance against property (Birla Power] amounting to Rs. 3,87,50,000/- and advance to Sunil Mantri Developer of Rs. 3,21,18,077/- which happened much earlier may be before 10 years and interest have ceased to come against those advances. It further appears that the advances were for purchase of properties, it is not known under what circumstances and for what reasons these amounts have been given as advance for property to the developer. What has transpired between the appellant and both the persons and how the advance for property changed its money lending. Why the amount of principal and interest have not been paid back to the appellant. To consider it as money lending business would be stretching it very far. As such no income has been shown from money lending business for quite some years in the past too. The income from money lending business if any as per the Hon'ble ITAT, Delhi should be income from other sources'. However, under these circumstances there is no case for allowing business expenditure of Rs. 43,62,446/- against

nothing. The action of - the Assessing Officer in disallowing the amount is confirmed.”

13.5 Now it comes up that in the present assessment year there is no interest income at all either under the heads, ‘Income from other sources’ or ‘business income.’ The claim of the assessee is that the lending business should be accepted on the basis of consistency. However, the same cannot be accepted as Id.CIT(A) has made a very specific observation on the basis of the financials. There are only two entries which the assessee claims to be money lending business. Now, in regard to one of those the assessee has filed a copy of complaint u/s 138 of the Negotiable Instruments Act filed against Sunil Mantri Realty Ltd., which is available at page 12-16 of the paper book and the averments of this complaint shows that the assessee had entered into an agreement on 01.01.2010 to purchase certain flats from Sunil Mantri Realty Ltd., for which payments were made, but, as that vendor could not supply the flats, the vendor had given a cheque of Rs.4,10,00,000/- to the assessee to return the sale consideration and that cheque was dishonoured. Thus, the averments in the complaint do not at all indicate that the money claimed to have been standing as a loan was ever given as a loan for the purpose of money lending business. In fact, in AY 2012-13, there was an issue of undisclosed income of Rs.12 lakhs wherein the AO had made an addition of Rs.12 lakhs on the ground that the assessee has been showing interest income from M/s Sunil Mantri Realty Ltd. on accrual basis. M/s Sunil Mantri Realty Ltd., had paid interest and deducted tax which was reflected in 26AS, but, there was lack of reconciliation. The order of Id.CIT(A) for AY 2012-13 at page 94 of the paper book vide para 5.3 show that there is a mention of cheque of Rs.4,10,00,000/- given by the debtor on 01.09.2013 which could not be encashed and for which the assessee has filed the case and the Id.CIT(A) had confirmed the addition of Rs.12 lakhs. Thus, we are of the considered view that what Id. AR has relied in regard to the

previous or subsequent years about the money lending business of the assessee is not sustainable in the facts discussed above from the perspective of Id.CIT(A) and we do not consider that there is any error in the sustenance by Id.CIT(A). Accordingly, this ground is decided against the assessee.

14. In the result, the appeal is partly allowed.

Order pronounced in the open court on 30th November, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Dated, 30th November, 2023

dk

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**