

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.9693/Del/2019
[Assessment Year : 2014-15]**

ACIT, Circle-8(2), New Delhi.	vs	Emcipi Electronics Pvt. Ltd., 118, Shahpur Jat, New Delhi-110049. PAN-AAACE5229L
APPELLANT		RESPONDENT
Appellant by	Shri Vivek Kumar Upadhyay, Sr.DR	
Respondent by	Shri Upvan Gupta, Adv.	
Date of Hearing	16.01.2024	
Date of Pronouncement	27.02.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue is directed against the order passed by Ld.CIT(A), Delhi-3 dated 25.10.2019 for the assessment year 2014-15.

2. The Revenue has raised following grounds of appeal:-

1. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.2,07,63,271/- made by the AO treating the rental income as business income.*
2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.1,62,07,267/- made by the AO on account of disallowance of interest expenses.*
3. *The appellant craves leave to add, amend or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

3. Facts giving rise to the present appeal are that the assessee is a company engaged in the real estate business and development of commercial

properties and towers. The assessee filed its return of income at a loss of INR 5,39,502/- on 29.11.2014. The case was selected for scrutiny assessment and the assessment was framed u/s 143(3) of the Income Tax Act, 1961 ("the Act") vide order dated 30.1.2016. The Assessing Officer ("AO") made various additions after giving due opportunity to the assessee. The AO made addition of INR 2,07,63,271/- treating the income from house property as business income. The AO further disallowed interest expenses. These two additions were deleted by Ld.CIT(A) and are subject matter of the present appeal.

4. **Ground No.1** raised by the Revenue is related to deletion of addition of INR 2,07,63,271/- made by the AO treating the rental income as business income.

5. Ld. Sr. DR for the Revenue supported the assessment order. Ld.Sr.DR submitted that Ld.CIT(A) committed an error in treating the rental income as income from "house property". He submitted that merely because the Revenue has accepted his income from house property from other years, would not rectify his incorrect claim to be a correct claim.

6. On the other hand, Ld. Counsel for the assessee opposed the submissions of the Ld. Sr. DR and supported the order of Ld.CIT(A). He submitted that the issue is squarely covered by the judgement of Hon'ble Supreme Court in the case of **Raj Dadarkar & Associates vs ACIT reported in 394 ITR 492**. He submitted that the reliance placed by the Assessing Authority on the judgement of Hon'ble Supreme Court in the case of **Rayala Corporation Pvt. Ltd. vs ACIT [Civil Appeal No.6438 of 2016]** is not correct under the facts of the present case. He submitted that the facts are

distinguishable in the case in hand. The assessee is not engaged in the business of real estate and letting of the properties. He drew our attention to the Memorandum of Association (“MoA”) of the assessee company.

7. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by giving a finding on fact in para 5.3 to 5.3.1, which is reproduced as under:-

5.3. *“I have perused the facts of the case and the submission made by the AR. It is observed that the main contentions of the appellant are as under:*

1. *The appellant is in the business of real estate development and has shown business receipts of Rs. 1,46,91,800/- and stock in trade of more than Rs. 18 crores which shows that the appellant has valid business activities;*
2. *The major revenue receipts were on account of rental receipts as there was poor revenue generation from the real estate business and the rental receipts have been consistently shown as income from house property;*
3. *The Department has accepted the rental income as income from house property in all the earlier years and in the assessment year 2010-11, 2011-12 & 2013-14, assessments were completed u/s 143(3) of the Act and in all these assessments, the treatment of rental income as income from house property has been accepted by the AOs and the principle of consistency needs to be followed;*

4. *The AR has distinguished the case of Rayala Corporation Pvt. Ltd. vs. ACIT, which has been relied by the AO. It has been submitted that in that case, the appellant had stopped all business activities and was having only one activity of leasing its properties and earning rent therefrom and in such a case, the Apex Court had held that the rental income constituted business income whereas in the case of the appellant, regular business activities are there which are apparent from the closing stock in trade of Rs. 18.54 crores and business receipts of Rs. 1.46 crores.*

5.3.1. *The AR was asked to produce copy of rental agreement with the tenants and was asked whether the appellant was providing maintenance services also. The AR furnished the copy of rental agreement from which it is observed that the agreement is only for lease of f property and in the rental agreement itself, it has been mentioned that the tenant would be required to sign a accepted maintenance agreement with another company nominated by the appellant. On perusal of all these facts and the contentions raised by the AR, I am of the opinion that the appellant is having separate business activities and the rental income is regularly and consistently being shown as income from house property and the same has been accepted by the Department all along. There is no reason to disturb the consistent treatment of rental income. The decision of the Hon'ble Supreme Court in the case of Rayala Corporation Pvt. Ltd. vs. ACIT, relied upon by the AO is not applicable to the facts of the case. In view of these facts, I find no reason to uphold the addition made by the AO by treating the rental income as business income. Accordingly, the addition made by the AO is deleted and the ground of appeal is allowed.”*

8. Undisputedly, the Revenue has been accepting rental income as income from “house property” as accepted in Assessment Years (“AYs”) 2010-11,

2011-12 & 2013-14 i.e. immediately preceding AYs. This fact is not rebutted by the Assessing Authority. The Hon'ble Apex Court in the case of **PCIT vs Maruti Suzuki India Ltd. [2019] 107. TAXMANN.COM 375** held that *“there is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.”* Therefore, respectfully following the same, we hold that the action of the Assessing Authority is not justified. Further, the judgement as relied by the assessee in the case of *Raj Dadarkar & Associates vs ACIT* (supra) is squarely applicable on the facts of the present case. We therefore, do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby affirmed. Ground No.1 raised by the Revenue is accordingly, dismissed.

9. **Ground No.2** raised by the Revenue is against the deletion of addition of INR 1,52,07,267/- made by the AO on account of disallowance of interest expenses.

10. Ld. Sr. DR for the Revenue supported the assessment order and submitted that the Ld.CIT(A) was not justified in deleting the disallowance of interest expenses when the AO has given a categorical finding that the assessee failed to demonstrate as which funds were linked to huge interest expenses.

11. On the other hand, Ld. Counsel for the assessee opposed these submissions and submitted that Ld.CIT(A) has duly examined the facts and after examining the facts, deleted the disallowance.

12. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find Ld.CIT(A) has given a finding on fact in para 6.3 of his order by observing as under:-

6.3. *“I have perused the facts of the case and the submission made by the AR. It has been contended that the appellant has sufficient interest free funds amounted to Rs. 27.30 crores and the total free advances provided by the appellant amounts to Rs. 9.03 crores only and that too is for the purposes of the business. It is observed that the AO has pointed out some transactions in tabular form in Para 4.3 of the assessment order. The AR has explained the nature of these transactions and it is observed that the AO has not appreciated the facts properly. The amount of Rs. 8.56 crores has been given as advance for purchase of land to a group concern and the appellant has charged interest of Rs. 1,01,56,877/- on the advance and the same has been reduced from the total interest expenditure meaning thereby that this interest has been offered as income by the appellant. The next amount of Rs. 3 crores is the interest receivable by the appellant and is not an advance given from interest bearing funds. In respect of the two amounts of Rs. 2.62 crores and Rs. 1.82 crores, it has been contended that these have been given out of interest free funds of Rs. 27.30 crores available with the appellant. The balance amount of Rs. 18.51 crores is the amount paid for purchase of property which form part of stock in trade shown by the appellant in the balance sheet. In view of all the above facts, it is observed that there is nothing on record to prove that the appellant has diverted interest bearing funds as advances for non-business purposes. The AR has relied upon various case laws on the issue and the same are found to be relevant and applicable to the present case. In view of these facts,*

the addition made by the AO is deleted and the ground of appeal is allowed.”

12.1. The above finding on fact is not controverted by the Revenue by placing any contrary material on record. Therefore, we do not see any infirmity in the decision of Ld.CIT(A), the same is hereby affirmed. Ground No.2 raised by the Revenue is accordingly, dismissed.

13. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27th February, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI