

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2246/Mum/2023 (A.Y 2012-13)

ITA No. 2247/Mum/2023 (A.Y 2013-14)

ITA No. 2248/Mum/2023 (A.Y 2014-15)

ITA No. 2249/Mum/2023 (A.Y 2015-16)

ITA No. 2250/Mum/2023 (A.Y 2016-17)

ITA No. 2251/Mum/2023 (A.Y 2017-18)

IslandStarMallDevelopers Private Limited, Market City Resources Pvt Ltd, Ground floor, R.R Hosiery Bldg, Shree Laxmi Woollen Mills Estate, Mumbai-400011.	Vs.	DCIT, Circle 6(3)(1), Room No.522, Aayakar Bhawan, M.K.Road, Mumbai-400020.
PAN/GIR No. : AABCI4988F		
Appellant	..	Respondent

ITA No. 2352/Mum/2023 (A.Y 2012-13)

ITA No. 2353/Mum/2023 (A.Y 2013-14)

ITA No. 2354/Mum/2023 (A.Y 2014-15)

ITA No. 2355/Mum/2023 (A.Y 2015-16)

ITA No. 2356/Mum/2023 (A.Y 2016-17)

ITA No. 2357/Mum/2023 (A.Y 2017-18)

DCIT, Circle 6(3)(1), Room No.522, Aayakar Bhawan, M.K.Road, Mumbai-400020.	Vs.	IslandStarMallDevelopers Private Limited, Market City Resources Pvt Ltd, Ground floor, R.R Hosiery Bldg, Shree Laxmi Woollen Mills Estate, Mumbai-400011.
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PAN/GIR No. : AABCI4988F		
Appellant	..	Respondent

Appellant/Respondent.by	Shri.Vijay Mehta.AR
Respondent/Appellant.by	Shri.Jayant Jhaweri.CIT-DR. Shri.H.M Bhatt. Sr.DR.

Date of Hearing	02.01.2024
Date of Pronouncement	27.02.2024

आदेश / O R D E R

Per Bench:

These are the cross appeals filed by the assessee and the revenue against the common order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 250 of the Act.

2. Since the issues involved in these appeals are common, identical and interlinked, hence they are clubbed, heard and a consolidated order is passed. For the sake of convenience, we shall take up ITA No. 2246/Mum/2023, A.Y 2012-13 as lead case and the facts narrated. The Assessee has raised the following grounds of appeal as under:

1. The Ld. CIT(A) erred in confirming the action of the Ld. AO in bringing to tax income from house property of Rs.14,86,78,609 under the head "Income from Business/ Profession". The Ld. CIT(A) ought to have held that income of Rs.14,86,78,609 have been taxed under the head "Income from House Property".

2. Without prejudice to ground No.1, the Ld. CIT(A) erred in not holding that the other expenses amounting to Rs.1,92,20,831 is required to be allowed under the head business income, which were suo-moto disallowed by the appellant as it had considered the rent income as "Income from House Property".

3. The Ld. CIT(A) erred in not holding that interest expense of Rs.1,85,07,827 is required to be allowed under the head business income.

4. Without prejudice to the above grounds, the Ld CIT(A) erred in not following the procedure laid down by the Ministry of Finance vide Faceless Appeal Scheme, 2021 notification no. 139/2021 dated 28.12.2021 and accordingly not provided an appropriate opportunity to the appellant. Thus, the order passed by the LdCIT(A) is bad in law and void ab initio.

At the time of hearing, the Ld. AR of the assessee, has not pressed the ground of appeal no.4 and accordingly the ground of appeal is treated as withdrawn and is dismissed

3. The brief facts of the case are that, the assessee company is engaged in the business of development of commercial, retail and entertainment complex and also engaged in rental and ancillary services. The assessee has filed the return of income for the A.Y 2012-13 on 29.09.2012 disclosing a total loss of Rs. 28,23,19,521/-. Subsequently the case was selected for scrutiny and notice u/sec 143(2) and u/sec 142(1) of the Act along with the

questionnaire are issued. In compliance to notice, the Ld. AR of the assessee appeared from time to time and furnished the details and information. The Assessing Officer (AO) on perusal of the financial statements found that the assessee company has received composite rent chargeable under the head income from business but has disclosed under the head income from house property. Further the assessee has disclosed loss of Rs.9,30,86,099/- under the head income from house property. The AO dealt on the clauses and recitals of Leave and License Agreement in respect one tenant on the issues of charging of license fees i.e fixed and variable fees, common area maintenance charges, extended timing charges, service tax and other taxes chargeability dealt at Page 2 to 7 of the assessment order and came to a unilateral conclusion that the income shown under the head "income from house property" is chargeable to tax under head "income from business" and made the detailed observations at Page 7 of the order as under:

" From the above detailed analysis and plain reading of agreement clauses. following conclusions drawn:

"The agreement executed is not only for use of Premises but also for use of amenities installed in the premises which is inseparable and which can be termed as Composite agreement

because letting out of premises not possible until and unless licensee agrees to pay the compensation for use of amenities installed in the premises.

Also, there is no fixed license fee for the use of premises, there are other consideration also which the licensee required to pay for use of premises beyond the normal working hours which is clear by reading following cause:

for such operation beyond Mall Timings, the LICENSEE will be required to pay additional charges towards "Extended Timing Charges" at the rate of Rs. 5/- (Rupees Five only) per sq. ft. on the chargeable area, per day in addition to electricity/air-conditioning charges.

It is also pertinent to note that the assessee has put a condition to provide regularly sales statements and other data to the LICENSOR for the purpose of determining the Variable License Fees and other associated purposes. By reading this clause, it shows assessee commercial intention to decide and increase rental income, which in normal circumstances are not permissible. It shows that the assessee has a close watch on violation of any terms mentioned in Leave & license agreement.

On detailed examination of Leave & License Agreement, it is found that letting out and other services offered cannot exist in isolation and hence the arrangement cannot be termed as Income from letting out of premises.

Hence, it is concluded that the intention of the assessee to execute Leave and License agreement was not only for letting out of building for rent, but also carrying on a complex commercial activity of setting up a Mall in which various amenities and fil-outs have been provided. Since the entire activity carried out in an organized manner to earn profit out of

the investment made by the taxpayer, it should be treated as a commercial venture. Accordingly, the rental income should be chargeable to tax as business income. Letting out of building along with amenities and fit-outs amounted to complex commercial venture of the taxpayer and had to be taxed under the head 'Profits or Gains of Business or Profession'. Since, the activities of the taxpayer constituted as business, interest, depreciation and other expenditure were incurred in the ordinary course of the business and were allowable as business expenditure”

4. Whereas the A.O has denied the deduction u/sec24 of the Act of Rs. 4,27,79,140/- claimed by the assessee under income from house property. The AO on second disputed issue, found that the assessee has incurred finance cost @ 21% being Rs.4,22,00,258/- on the funds borrowed from Phoenix Mills Ltd of Rs. 60,75,00,000/- and such charging of interest is at higher side and is not reasonable and called for the explanations. In compliance, the assessee has filed a letter dated 06.02.2015 explaining the basis and details of payment of interest and also in comparison to interest paid to financial institutions and banks. The AO observe that the assessee is paying higher rate of interest to its sister concerns and whereas the lower rate of interest charged/paid to others is @5.34%. The AO found that the interest paid by the assessee to its sister concern is excessive and made average interest rate disallowance

@ 9.21%, which worked out to Rs.1,85,07,827/-. On the third disputed issue, the AO found that the assessee has received interest income on fixed deposits of Rs. 28,28,643/- and out of which Rs. 1,20,299/- is offered to tax and remaining amount of interest is capitalized to the work-in-progress(WIP).Whereas the assessee has filed details vide letter dated 06.02.2015 explaining the reasons, basis of claim and offering of the interest income. But the AO was not satisfied with the explanations and observed that set off of interest on fixed deposits against the work-in-progress (WIP) is not tenable and was taxed under income from other sources. Finally the AO after setoff of business has assessed the total loss of Rs.21,82,03,911/- and passed the order u/sec 143(3) of the Act dated 23.03.2015.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, statement of facts, submissions of the assessee, findings of the AO and has confirmed the action of the assessing officer in taxing the rental income under income from business and has sustained the disallowance of deduction u/sec24 of the Act claimed by the assessee under income from house property. Further the CIT(A)

granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee and revenue has filed appeal before the Hon'ble Tribunal.

6. At the time of hearing the Ld.AR of the assessee submitted that the CIT(A) has erred in sustaining the action of the AO in bringing to tax income from house property under the head income from business. The Ld.AR submitted that the assessee has constructed a mall and has let out the shops and spaces to various tenants and the assessee was receiving rental income and was offered to tax under income from house property. Whereas out of the composite rent which includes amenities, maintenance expenses and other charges as per lease and license agreement, the assessee has offered such receipts to tax and simultaneously claimed the actual expenditure as per the terms of agreement under income from business. The Ld.AR mentioned that alternatively, if the claim of expenditure is not allowed under Income from house property, the same has to be allowed under income from business. The Ld. AR submitted that the Ground of appeal No.2 & 3 are only alternative grounds, if the rental income is treated as business income, then the expenditure incurred has to be

allowed as deduction. The Ld.AR emphasized on the clauses and recitals of rental /leave and license agreement to substantiate that the assessee has offered rental income from shops and spaces under income from house property and simultaneously the other charges towards amenities and other services is disclosed under Income from business and has claimed expenditure incurred wholly and exclusively for the purpose of maintenance. Further, the Ld.AR submitted that the revenue authorities have accepted the facts of offering the rental income under income from house property and allowed the statutory deductions u/sec24 of the Act and relied on the subsequent year assessment orders. The Ld.AR substantiated the submissions with the synopsis, judicial decisions and factual paper book and prayed for allowing the appeal.

7. Per Contra, the Ld.DR submitted that the CIT(A) was correct in sustaining the income taxable under income from house property and sustaining the disallowance of expenditure. Whereas in respect of relief granted by the CIT(A), the revenue has filed a cross appeal.

8. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) has erred in considering the rental income received from the tenants as

income from business though the assessee has made composite rental agreement with these tenants, which consist of rent for the premises and the maintenance charges which has to be treated separately and the assessee is subject to TDS u/sec 194I of the Act in respect of the house property income i.e rental income and whereas in respect of the amenities or services provided, TDS was deducted u/sec 194C of the Act. The Ld. AR explained that this is the first year of receipt of the rental income by the assessee and also there is a capitalization of interest of the preconstruction period claimed in the computation of income as per the provisions of the Act. Whereas from A.Y 2016-17 onwards, the claim of offering of rental income under income from house property was accepted by the revenue and the maintenance amount received from tenants disclosed under income from business.

9. The Ld. AR referred to the Para 6.1 of the assessment order explaining the nature of composite rent received by the assessee from the tenants and the Ld.AR has demonstrated the audited financial statements disclosing the income, in particular at page No.9 Profit & Loss account, Revenue from operations and Note17 at page 19 of

the paper book. Further in respect of the one of the tenant, the Ld.AR has demonstrated the clauses and recitals in the leave and license agreement placed at page 27 to 60 of the paper book. The Ld.AR highlighted on the terms and clauses including the duration period, method of quantification, composite rent, TDS and service tax provisions, amenities, common area maintenance charges, parking lot charges, payment mechanism, services, fit out works charges and other issues in respect of the tenancy rights and duties. Further the Ld. AR referred and demonstrated the FAQ from the Income Tax Department Website on the taxability of the composite rent and implications placed at page 164 of the paper book read as under:

“Title: What is the tax treatment of composite rent when the composite rent pertains to letting out of building along with charges for provision of services?”

Long Title: What is the tax treatment of composite rent when the composite rent pertains to letting out of building along with charges for provision of services?”

Answer

In such a case, composite rent includes rent of building and charges for different services (like lift, watchman, water supply, etc): In this situation, the composite rent is to be bifurcated and the sum attributable to the use of property will be charged to tax under the head "Income from house property" and charges for various services will be charged to tax under the head "Profits

and gains of business and profession" or "Income from other sources" (as the case may be)."

10. The Ld.AR emphasized that, where the rental is received along with the machinery which is inseparable as per the provisions of Sec.56 (ii)&(iii) of the Act, such rental income has to be taxable under "income from house property" or "income from other sources". Further the Ld.AR referred to the facts of rental income chargeable under house property in respect of buildings and the meaning of "composite rent" and the tax treatment of composite rent in respect of letting out of the house property as per "income tax site tutorial for Income from House property" placed at page 165 to 179 of the paper book and in particular at page 166&167, which is read as under:

"Meaning of composite rent"

When apart from recovering rent of the building, in some cases the owner gets rent of other assets (like furniture) or he charges for different services provided in the building (for instance, charges for lifts, security, air conditioning, etc.). The amount so recovered is known as "composite rent".

Tax treatment of composite rent of building let out along with other assets

Composite rent includes rent of building and rent towards other assets or facilities. The tax treatment of composite rent is as follows:-

a) In a case where letting out of building and letting out of other assets are inseparable (i.e., both the lettings are composite and not separable, e.g., letting of equipped theatre), entire rent (i.e. composite rent) will be charged to tax under the head "Profits and gains of business and profession" or "Income from other sources", as the case may be. Nothing is charged to tax under the head "Income from house property".

b) In a case where, letting out of building and letting out of other assets are separable (i.e., both the lettings are separable, e.g., letting out of refrigerator along with residential bungalow), rent of building will be charged to tax under the head "Income from house property" and rent of other assets will be charged to tax under the head "Profits and gains of business and profession" or "Income from other sources", as the case may be. This rule is applicable, even if the owner receives composite rent for both the lettings. In other words, in such a case, the composite rent is to be allocated for letting out of building and for letting of other assets.

Tax treatment of composite rent in a case of letting of building along with provision of services

In a case letting of building along with provision of services, composite rent includes rent of

building and charges for different services (like lift, watchman, water supply, etc.): In this situation, the composite rent is to be bifurcated and the sum attributable to the use of property will be charged to tax under the head "Income from house property" and charges for various services will be charged to tax under the head "Profits and gains of business and profession" or "Income from other sources" (as the case may be).

Computation of income from a let out property

Income chargeable to tax under the head "Income from house property" in the case of a let-out property is computed in the following manner."

<i>Particulars</i>	<i>Amount</i>
<i>Gross Annual Value</i>	<i>XXXX</i>
<i>Less: Municipal Taxes Paid during the year</i>	<i>XXXX</i>
<i>Net Annual Value (NAV)</i>	<i>XXXX</i>
<i>Less Deduction under Section 24</i>	
<i>Deduction u/s 24(a) @ 30% NVA (Standard deduction)</i>	<i>XXXX</i>
<i>Deduction u/s 24(b) on account of interest on borrowed</i>	<i>XXXX</i>
<i>Income from house property</i>	<i>XXXX</i>

11. The Ld.AR explained that the revenue authorities has accepted the method of offering of rental income for the A.Y.2016-17 to A.Y.2021-22, where the assessee has offered rental income under the income from house property and the common area maintenance charges are offered under income from business and referred to the orders of the Assessing officer passed u/sec 143(1) and U/sec143(3) of the Act at page 74 to 163 of the paper book. Further the Ld. AR emphasized that these facts are part of record and the assessee has been following methodical accounting system. The assessee being a company, generating the revenue based on the object clauses of the Memorandum

of Association under the provisions of companies Act. The books of accounts are audited and the financial statements highlight on the revenue reorganization policies as per the Accounting standards of the ICAI applicable. Whereas the assessee has disclosed the license fee & rental income as per the computation of income under the head “income from house property” and referred to the page 1 of the paper book. The Ld. AR submitted that the Ground of appeal No.2 & 3 are only alternative grounds, if the rental income is treated as business income, than the expenditure incurred has to be allowed as deduction. The Ld. AR further emphasized on the submissions filed before the Assessing officer in lieu of show cause notice placed at page 64 to 73 of the paper book. Further, on the other issues, the Ld. AR relied on the assessee’s own case of the Honble Tribunal for the A.Y 2010-11 and A.Y 2011-12, on the setoff of interest income on short term fixed deposits with the Capital Work-in –Progress and there was no rental income was earned during the period placed at page 210 to 225 of the paper book. The assessee has constructed a mall and has letout the shops and spaces to various tenants and the assessee was receiving composite rent, which is bifurcated between rent from the premises

and the maintenance charges. The assessee has offered rental income under income from house property and the balance of composite rent includes amenities charges, maintenance expenses and other charges as per leave and license agreement, which the assessee has offered such receipts to tax and simultaneously claimed the actual expenditure as per the terms of agreement under income from business. The Ld. AR demonstrated a copy of form No. 16A for the A.Y 2012-13 issued by one of the tenant, where the TDS is deducted u/sec 194I of the Act in respect of Rent of the premises and whereas in respect of maintenance and other charges TDS is deducted under the provisions of Sec.194C of the Act. The Ld.DR submitted that the assessee is solely engaged in the leasing out of the properties and the since the tenant is paying rent along with the amenities charges hence the income disclosed under the head income from house property is chargeable to tax under head income from business. We find that the assessee is engaged in the main business of development of commercial, retail and entertainment complex and also engaged in rental and ancillary services. This is the first year of commercial operations of let out of properties and the assessee has offered rental income from

shops and spaces under income from house property and simultaneously the other charges towards amenities, maintenance and related services are disclosed under Income from business and the assessee has claimed expenditure incurred wholly and exclusively for the purpose of maintenance of the properties. Whereas the revenue's contentions are that the rental income being part of composite rent received, hence has to be taxed under the income from business.

12. Prima-facie the assessee has received composite rent, and the payee/tenant has deducted TDS u/sec 194I of the Act in respect of rent of the premises and similarly on maintenance of space and other charges, the tenant has deducted TDS under the provisions of Sec.194C of the Act. The assessee has maintained separate books of accounts and are audited under the provisions of companies Act. In the Audited Profit & Loss Account, in particular disclosure Under Income: "Revenue From Operations"& "Notes 17" the assessee has bifurcated the income (i) Sale of Services less service tax and at Notes 17.1 "License fees and rental income, service charges and events". Similarly the assessee has disclosed at Notes 18 "Other Income" placed at Page 12 of the paper book to substantiate the composite

rent is bifurcated between rental income and maintenance charges. We find that the assessing officer has accepted the method of accounting of offering of rental income under the income from house property and the common area maintenance charges under income from business rental income for the A.Y.2016-17 to A.Y.2021-22 and passed the orders u/sec 143(1) and U/sec143(3) of the Act placed at page 163 of the paper book as under:

<i>Sr. No.</i>	<i>A.Y</i>	<i>Section under which order is passed</i>	<i>Date of order</i>
1	2016-17	143(3)	26.12.2018
2	2017-18	143(3)	21.12.2019
3	2018-19	143(3)	21.06.2021
4	2019-20	143(1)	28.03.2021
5	2020-21	143(3)	22.09.2022
6	2021-22	143(1)	07.03.2023

We considering the facts, circumstances and submissions as discussed in the above paragraphs observe that the CIT(A) has over looked various factual aspects/evidences and sustained the action of the assessing officer. Accordingly, we set aside the order of the CIT(A) on this ground of appeal and direct the Assessing officer to consider the rental income under the income from house property and the common area maintenance charges

under income from business and allow the deductions incurred wholly and exclusively for earning the income. Since we have decided the ground of appeal no.1 in favour of the assessee as discussed above on taxability of rental income under income from house property, therefore the alternative grounds of appeal no.2 & 3 becomes academic and are not adjudicated and the ground of appeal no 4 is not pressed by the assessee. And the appeal filed by the assessee is partly allowed.

ITA No.2352/Mum/2023, A.Y. 2012-13(revenue appeal)

13. The revenue has raised following grounds of appeal as under:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to call for necessary and factual details at the time of giving effect to the order passed by CIT(A) and then re-compute the income of the assessee on the lines stated in the order without giving any clear-cut findings with quantification of deletion or confirmation of additions made by the AO. As such order of CIT(A) qua verification by AO borders on the line of matter being set-aside to file of AO, a power not available with CIT(A).

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing AO to allow depreciation on the building against the income from business which was not claimed by the appellant suo moto as it had considered the rent income as "Income from House Property"; with a direction to call for necessary and factual details at the time of giving effect to the CIT(A) order, as such order of CIT(A)

qua verification by AO borders on the line of matter being set-aside to file of AO, a power not available with CIT(A).

3. Whether on the facts and in circumstance of the case and in law, the Ld. CIT(A) erred in directing AO to allow other expenses against business income which were suo moto disallowed by the appellant as it had considered the rent income as "Income from House Property"; with a direction to call for necessary and factual details at the time of giving effect to the CIT(A) order, as such order of CIT(A) qua verification by AO borders on the line of matter being set-aside to file of AO, a power not available with CIT(A).

4. Whether on the facts and in circumstance of the case and in law, the Ld. CIT(A) erred in directing AO to allow interest expenses against business income which were suo moto disallowed by the appellant as it had considered the rent income as "Income from House Property"; with a direction to call for necessary and factual details at the time of giving effect to the CIT(A) order, as such order of CIT(A) qua verification by AO borders on the line of matter being set-aside to file of AO, a power not available with CIT(A).

5. Whether on the facts and in circumstance of the case and in law, the Ld. CIT(A) erred in directing AO to delete the addition made by the AO u/s 36(1)(iii) on account of excessive claim of interest expenses by holding that as long as interest was borrowed from reliable and noted parties and the interest was duly paid deduction of the same would be allowed and it is not for the assessing officer to decide how to the appellant does its business.

6. Whether on the facts and in circumstance of the case and in law, the Ld. CIT(A) erred in directing AO to delete the addition made by the AO on account of interest income earned by the

assessee from FDR treating the same as income from Other Sources with the direction that interest should be set-off against the project cost however, there is no clear-cut fact finding with quantification by the Ld. CIT(A) / NFAC as to how much interest need be capitalized in the instant case for the current year and how much is to be treated as revenue.

7. The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

08. The appellant craves leave to amend, or alter any grounds or add a new grounds, which may be necessary

14. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in giving directions to the assessing officer to call for necessary details for verification of facts and the CIT(A) does not have powers to issue directions to the Assessing officer and to decide and the matter was set aside to the file. Further the CIT(A) has erred in directing the AO to allow the depreciation on building, other expenses and interest expenses from income from business though the assessee has suo moto disallowed the claims were the rental income was considered under income from house property. The CIT(A) has erred in directing the AO to delete the disallowance of excessive claim of interest payment U/sec36(1)(iii) of the Act overlooking the findings in the assessment order. The CIT(A) has erred in directing

the AO to delete the addition on account of interest income earned by the assessee from fixed deposits and treating as income from other sources and directing the interest income earned should be set off against the WIP/project cost and the Ld.DR prayed for allowing the revenue appeal. Per Contra, the Ld. AR dealt on the fact sheet of computation of income under income from house property and emphasized with the evidences and submissions on the claim of interest paid to sister concerns U/sec 36(1)(iii) of the Act at page 180 to 192 of the paper book. Further The Ld. AR relied on the assessee's own case of the Honble Tribunal for the A.Y 2010-11 and A.Y 2011-12, in respect of the set off of interest income on fixed deposits with the Capital Work-in-Progress/project cost and supported the decision of the CIT(A) on these disputed issues. Whereas in respect of action of Assessing officer in treating the rental income under income from business and disallowance of claim of deduction u/sec24 of the Act by the assessee under income from house property sustained by the CIT(A) , the assessee has filed the appeal and the Ld.AR relied on the submissions and factual paper book.

15. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has issued directions to assessing officer to allow the depreciation on building, other expenses and interest expenses from income from business. Whereas in the assessee appeal, we considering the facts, circumstances and submissions have directed the Assessing officer to consider the rental income under the income from house property and the common area maintenance charges under income from business and allow the deductions incurred wholly and exclusively for earning the income and partly allowed the assessee appeal. Since we have decided the disputed issue of taxing of rental income under income from house property, the ground of appeal No.2,3,4&5 becomes in fructuous and academic. Whereas in the ground of appeal.no.6 in respect of set off of interest income on fixed deposits with the Work-in-Progress/project cost. We find the CIT(A) has relied on the Honble Tribunal decisions in the assessee's own case for the A.Y 2010-11 & 2011-12, where the interest on fixed deposits set off against project cost was allowed. The CIT(A) dealt at Page 39 Para 9.9 to 10 of the order as under:

“9.9 As regards the taxability of interest on fixed deposits for assessment year 12-13 contention of appellant is that this

being interest earned on excess deposits in construction phase should be set off against the project cost and not be treated as income from other sources. Appellant has mentioned that honourable ITAT in appellant's on case for the years 2010-11 and 2011-12 has held that interest should be set off against project cost. Respectfully following the above, the same method should be adopted for the year under appeal. Appeal on this ground is hence allowed.

9.10 It may be noted that for additions made u/s 14A and allowance of revenue expense wrongly considered capital in nature and as regards the issue of TDS claim the relevant grounds have not been pressed by appellant and hence all not taken up. In all the years under appeal the income is to be computed as per method laid down by honourable Supreme Court in the case of Chennai properties as mentioned above.

10. As a result, the appeals are Partly Allowed”s

16. Whereas in the assessee appeal, we have directed the Assessing officer to consider the rental income under the income from house property and the common area maintenance charges under income from business and allow the deductions incurred wholly and exclusively for earning the income and therefore the grounds of appeal raised by the revenue are ineffective and in respect of setoff of interest on fixed deposit with the project cost, were the CIT(A) has relied on the Honble Tribunal decisions in the assessee own case and granted the relief, we follow the judicial precedence and dismiss the this grounds of appeal

of the revenue. And the appeal filed by the revenue is dismissed.

ITA No. 2247/Mum/2023, A.Y 2013-14(Assessee Appeal):

17. As the facts, circumstances and the grounds of appeal no 1,2,3,4&6 in this assessee appeal are identical to grounds of appeal in ITA No 2246/Mum/2023 for A.Y.2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no.8,9,10,11&12 would apply mutatis mutandis for this appeal. The ground of appeal No. 5 raised by assessee as under:

“5.The Ld. CIT(A) erred in confirming the action of the Ld. AO with regard to the issue of disallowing interest expenses of Rs. 22,41,312/- considering the same pertains to expenses not incurred wholly for the purpose of business.”

18. The Ld. AR of the assessee submitted that, the CIT(A) has erred in confirming the action of the AO in disallowance of interest expenditure as it was not incurred for the purpose of business. The contentions of the Ld. AR that the assessee has sufficient funds and the loans have been provided out of the surplus/ own funds and the assessee has substantiated all the facts in the assessment and appellate proceedings.

19. We find that the Ld.AR of the assessee could not be able to substantiate with the information and details of the availability of sufficient own funds but the reconciliation and the factual information has to be examined and we rely on the ratio laid down in the case Hon^{ble} High Court of Bombay in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom) and accordingly we restore this issue to the file of assessing officer for verification and examination of facts and decide on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information.

20. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

ITA No.2353/Mum/2023, A.Y 2013-14(Revenue appeal)

21. As the facts, circumstances and the grounds of appeal no 1, 2, 3, 4 & 5, in this revenue appeal are identical to grounds of appeals in ITA No. 2352/Mum/2023 for A.Y. 2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no. 15&16 would apply mutatis mutandis for this appeal. In the result, the appeal filed by the revenue is dismissed.

ITA No.2248/Mum/2023, A.Y 2014-15(Assessee appeal)

22. As the facts, circumstances and the grounds of appeal no 1, 2, 3, 4 & 7, in this assessee appeal are identical to grounds of appeal in ITA No. 2246/Mum/2023 for A.Y. 2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no.8.9.10.11&12 would apply mutatis mutandis for this appeal. The ground of appeal No. 5 & 6 raised by assessee are as under:

“5. The Ld. CIT(A) erred in not holding that brought forward book losses of Rs. 2,46,41,066 is allowed to be set off against the book profits calculated as per the MAT provisions.

6. The Ld. CIT(A) erred in not holding that interest expenses of Rs. 26,20,481 is incurred wholly for business purposes.”

23. The Ld.AR made submissions on the ground of appeal .no5 that the CIT(A) has erred in not allowing the adjustment of brought forward book loss to be set off against the book profits U/sec115JB of the Act and highlighted on the facts and provisions. Contra, The Ld. DR submitted that these facts submitted were not verified or examined by the Assessing Officer. We find that the Ld.AR of the assessee could able to substantiate with the information and details. Therefore, considering the

principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) on this disputed issue and remit the entire disputed issues to the file of the Assessing officer to examine and verify the facts and adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, we allow this ground of appeal of the assessee for statistical purposes.

24. With respect to ground of appeal No.6, the Ld. AR submitted that the assessee has sufficient own funds and were utilized for the purpose of business and the interest claim cannot be denied. But the CIT(A) has erred in holding that the interest expenses are not incurred wholly and exclusively for the business purpose. Whereas these facts need to be examined and verified. Accordingly, we restore this issue to the file of assessing officer for verification and examination of facts and decide on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information.

25. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

ITA No.2354/Mum/2023, A.Y 2014-15(Revenue appeal)

26. As the facts, circumstances and the grounds of appeal no 1, 2, 3, 4 & 5, in this revenue appeal are identical to grounds of appeals in ITA No.2352/Mum/2023 for A.Y. 2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no. 15&16 would apply mutatis mutandis for this appeal. In the result, the appeal filed by the revenue is dismissed

ITA No.2249/Mum/2023, A.Y 2015-16.(Assessee Appeal)

27. As the facts, circumstances and the grounds of appeal.no1,2&3 in the assessee appeal is identical to grounds of appeal in ITA No. 2246/Mum/2023 for A.Y. 2012-13 (except the variance in figures),the decision rendered in above paragraphs no.8.9.10.11&12 would apply mutatis mutandis for this appeal also. And the appeal filed by the assessee is partly allowed.

ITA No.2355/Mum/2023, A.Y 2015-16(Revenue Appeal)

28. As the facts, circumstances and the grounds of appeal no 1,2,&3, in this revenue appeal are identical to grounds

of appeals in ITA No.2352/Mum/2023 for A.Y. 2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no.15&16 would apply mutatis mutandis for this appeal. In the result, the appeal filed by the revenue is dismissed.

ITA No.2250/Mum/2023, A.Y 2016-17.(Assessee Appeal)

29. The assessee has raised the following grounds of appeal:

1. *The Ld. CIT(A) erred in bringing to tax income from house property of Rs. 50,92,34,250/- under the head "Income from Business/Profession".*
2. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that the sum of Rs.2,30,53,909/- [being 59% of 5,14,70,407-73,13,631] is required to be allowed under the head business income out of the total legal and professional charges. The applicant prays that the issue of disallowance of legal and professional charges of Rs. 2,30,53,909/- may kindly be adjudicated.*
3. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that the sum of Rs. 6,10,60,957/- is required to be allowed under the head business income out of total staff cost and directors remuneration. The applicant prays that the issue of disallowance on account of allocation of staff cost and remuneration directors of Rs. 6,10,60,957/- may kindly be adjudicated.*
4. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that the sum of Rs.1,13,09,367/- is required to be allowed under the head business income out of repairs and maintenance expenditure. The applicant prays that the issue of disallowance of repairs and maintenance expenditure of Rs. 1,13,09,367/- may kindly be adjudicated.*

5. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that the sum of Rs. 6,68,57,628/- is required to be allowed under the head business income out of the total advertisement and sales promotion expenses. The applicant prays that the issue of advertisement and sales promotion expenses of Rs. 6,68,57,628/- may kindly be adjudicated.*
6. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that the sum of Rs. 58,97,170/- is required to be allowed under the head business income out of the total Miscellaneous expenditure. The applicant prays that the issue of disallowance of miscellaneous expenditure of Rs. 58,97,170/- may kindly be adjudicated.*
7. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that the sum of Rs. 1,49,85,206/- is required to be allowed under the head business income out of total Security Charges. The applicant prays that the issue of disallowance of security charges of Rs. 1,49,85,206/- may kindly be adjudicated.*
8. *The Ld. CIT(A) erred in not holding that the claim of write off of Rs. 11,32,217/- is required to be allowed under the head "Income from House Property" as unrealized rent. The appellant prays that the disallowance of Rebate and Settlement expenses of Rs. 11,32,217/- under "income from house property" may kindly be adjudicated.*
9. *Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that Bad Debt expenses of Rs. 4,42,48,993/- is required to be allowed under the head "Income from House Property" unrealized rent. The appellant prays that the disallowance of Bad Debt expenses of Rs. 4,42,48,993/- under "income from house property" may kindly be adjudicated.*
10. *Without prejudice to the above grounds, the Ld. CIT(A) erred in not following the procedure laid down by the Ministry of Finance vide Faceless Appeal Scheme, 2021 notification no. 139/2021 dated 28.12.2021 and accordingly not provided an appropriate opportunity to the appellant. Thus, the order passed by the Ld. CIT(A) is bad in law and void ab initio.*

30. As the facts, circumstances and the ground of appeal no 1 in this appeal is identical to grounds of appeal in ITA No 2246/Mum/2023 for A.Y.2012-13 (except the variance in

figures). Therefore, the decision rendered in above paragraphs no.8,9,10,11&12 would apply mutatis mutandis for this appeal also. Accordingly, we set aside the order of the CIT(A) on ground of appeal no.1 and direct the Assessing officer to consider the rental income under the income from house property and the common area maintenance charges under income from business and allow the deductions incurred wholly and exclusively for earning the income. We have decided the ground of appeal no.1 in favour of the assessee as discussed above on taxability of rental income under income from house property. Whereas grounds of appeal no.2,3,4,5,6,7,8&9 are in respect of allocating of expenses and we find the Ld.AR of the assessee could not be able to substantiate with the information and details on the basis of allocation between Income from House property and Income from business. We find there is no finding on these aspects on the submissions of the assessee by the CIT(A). Therefore, we considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) on these disputed issues and restore the entire disputed issues to

the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and whereas the ground of appeal no 10 is not pressed by the assessee. Accordingly, the appeal filed by the assessee is partly allowed for statistical purpose.

ITA No.2356/Mum/2023, A.Y 2016-17(Revenue Appeal)

31. As the facts, circumstances and the grounds of appeal no 1, 2, 3 & 4, in this revenue appeal are identical to grounds of appeals in ITA No.2352/Mum/2023 for A.Y. 2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no. 15&16 would apply mutatis mutandis for this appeal. In the result, the appeal filed by the revenue is dismissed.

ITA No.2251/Mum/2023, A.Y 2017-18.(Assessee Appeal)

32. As the facts, circumstances and the ground of appeal no 1 in this assessee appeal is identical to grounds of appeal in ITA No 2246/Mum/2023 for A.Y.2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no.8,9,10,11&12 would apply mutatis mutandis for this appeal also. Accordingly, we set aside the order of the CIT(A) on ground of appeal no.1 and direct the

assessing officer to consider the rental income under the income from house property and the common area maintenance charges under income from business and allow the deductions incurred wholly and exclusively for earning the income. Since we have decided the ground of appeal no.1 in favour of the assessee as discussed above on taxability of rental income under income from house property. Whereas grounds of appeal no.2,3,4,5,6,7 are in respect of allocating of expenses and we find the Ld.AR of the assessee could able to substantiate with the information and details on the basis of allocation between Income from House property and Income from Business. We find there is no finding on these aspects on the submissions of the assessee by the CIT(A). Therefore, we considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) on these disputed issues and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and the ground of appeal no 10

is not pressed by the assessee. The ground of appeal No.8&9 raised by the assessee are as under:

“8.The Ld. CIT(A) erred in not holding that the claim of write off of Rs. 65,60,08,078 is allowable as business loss. The Ld CIT(A) ought to have been held that loss of Rs 65,60,08,078 is allowable as business loss”

9.Without prejudice to ground No. 1, the Ld. CIT(A) erred in not holding that deduction from house property of Rs.1,55,70,984 claimed as unrealized rent is required to be allowed. The applicant prays that the claim of unrealized rent may kindly be adjudicated.”

The Ld.AR made submissions on the ground of appeal.no8&9 that the CIT(A) has erred in not allowing the claim of write off / waiver of loans being business loss and also non allow ability of claim of unrealized rent and the Ld.AR highlighted on the facts and provisions of the Act. We find there is no finding on these aspects on the submissions of the assessee by the CIT(A). Accordingly, set aside the order of the CIT(A) on these disputed issues and remit the entire disputed issues to the file of the Assessing officer to examine and verify the facts and adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information Accordingly, we allow this grounds of appeal of the assessee for statistical purposes.

33. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

ITA No.2357/Mum/2023, A.Y 2017-18(Revenue Appeal)

34. As the facts, circumstances and the grounds of appeal no 1, 2, 3, & 4, in this revenue appeal are identical to grounds of appeals in ITA No.2352/Mum/2023 for A.Y. 2012-13 (except the variance in figures). Therefore, the decision rendered in above paragraphs no. 15&16 would apply mutatis mutandis for this appeal. In the result, the appeal filed by the revenue is dismissed

35. In the result, the appeals filed by the assessee are partly allowed for statistical purposes and the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 27.02.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 27.02.2024

KRK, PS

Copy of the Order forwarded to :

*ITA Nos. 2246 to 2251 & 2352 to 2357 /Mum/2023
M/s Island Star Mall Developers Pvt Ltd, Mumbai.*

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1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai