

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.410/Ahd/2023
(Assessment Year: 2018-19)

Effective Teleservices Pvt. Ltd., 101-103, 1 st Floor Info Tower 4, Info City Complex, Airport Road, Gujarat-382009	Vs.	Principal Commissioner of Income Tax-3, Ahmedabad Gujarat-380015
[PAN No.AAAACE9318E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Malay Kalavadia & Shri Shalibhadra Shah, A.Rs.
Respondent by:	Shri Sanjay Kumar, Sr. D.R.

Date of Hearing	05.02.2024
Date of Pronouncement	08.03.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax-3, (in short “Ld. PCIT”), Ahmedabad in DIN & Order No. ITBA/REV/M/REV5/2022-23/1051348478(1) vide order dated 26.03.2023 passed for Assessment Year 2018-19.

2. The assessee has taken the following grounds of appeal:-

“Grounds of appeal before Hon'ble Income Tax Appellate Tribunal, Ahmedabad

Based on the facts and circumstances of the case and in law, the Appellant respectfully craves leave to prefer an appeal against the order passed by the learned Principal Commissioner of Income tax - 3 ("PCIT"), Ahmedabad under section 263 of Income tax Act, 1961 ('the Act') on the following grounds:

1. Ground No. 1 - General

1.1 *On facts and circumstance of the case and in law, the order passed by the learned PCIT under Section 263 of the Income Tax Act is arbitrary, capricious and contrary to the settled principles of law.*

The learned PCIT has erred in not verifying that twin conditions for initiating proceedings under section 263 of the Act

2. Ground No. 2 - Order passed by Assessing Officer is not erroneous and prejudicial to the interest of revenue

2.1 *On facts and circumstances of the case, the learned PCIT erred in concluding that order passed by the learned AO is erroneous and prejudicial to the interests of the revenue without appreciating that:*

- *The assessing officer has applied the correct legal principles and has arrived at a reasonable and valid conclusion based on the facts of the case.*
- *The mere fact that another view is possible does not render the order passed by the assessing officer erroneous.*
- *The order passed by the assessing officer is based on a proper appreciation of the facts. The learned PCIT cannot substitute his own view for that of the assessing officer, if the view taken by the assessing officer is a reasonable view.*
- *Thus, revisionary order tantamount to change of opinion which is not permissible.*

Therefore, the order passed by the assessing officer is not erroneous and does not warrant revision under Section 263 of the Income Tax Act.

3. Ground No. 3 - Disallowance of Standard Deduction u/s 24 of the Act amounting to INR 3,74,74,320

3.1 *On the facts and in the circumstances of the case and in law, the learned PCIT has erred in directing the learned AO to disallow standard deduction under Section 24(a) of the Act amounting to INR 3,74,74,320 by treating the rental income as business income instead of house property income.*

4. Ground No. 4 - Depreciation has not been claimed by the Appellant in Return of Income.

4.1 *On the facts and circumstances of the case and in law, the learned PCIT has failed to appreciate the fact that the Appellant has not claimed any depreciation for the Investment Property held at Thane in the Return of Income on which the rental income received has been considered as income from house property.*

5. Ground No. 5 - Initiation of penalty proceedings

5.1 The learned PCIT has erred in directing the learned AO to initiate the penalty proceedings under the provisions of the Act.

Aggrieved by the aforementioned order, the Appellant has filed this Appeal before your Honour's in the interest of justice. The Appellant craves leave to add, alter, amend, modify, delete, rectify, substitute or withdraw all or any of the aforementioned grounds of appeal and to submit such statements of facts, documents, evidence and papers as may be considered necessary at any time before or at the time of hearing the appeal."

3. The brief facts of the case are that the assessee is engaged in providing BPO services, IT enabled services and software consultancy service. The assessee had filed a return of income for A.Y. 2018-19 on 30.11.2018 declaring total income at Rs. 13,96,44,410/-. The case was selected for scrutiny and assessment was finalized under Section 143(3) of the Act on 01.03.2023 by accepting the income at Rs. 13,96,44,410/- filed by the assessee.

4. Subsequently, on examination of records, the PCIT observed that the assessee has treated rental income of Rs. 12,49,14,400/- as "income from house property" for the purpose of income tax and claimed standard deduction @ 30% under Section 24 of the Act of Rs. 3,74,74,320/-. Therefore, on one hand, the assessee has treated rental income as business income and claimed depreciation on such house property under the Companies Act, but on the other hand the assessee has treated the rental income as "income from house property" for income tax purposes, which is irregular. The PCIT was of the view that by availing standard deduction on "other non-operating income" by treating it as house property has resulted in under assessment of Rs. 3,74,74,320/- and consequent short levy of tax of Rs. 1,76,37,993/-. The PCIT issued notice under Section 263 of the Act dated 17.02.2023, in response to which the assessee filed reply dated 06.03.2023. After taking the submissions, of the assessee on record, the PCIT observed that the property on which rental income has been earned by the assessee has been classified as non-current investments in Schedule 11 of the Audited Annual Accounts. The PCIT was

of the view that while passing the assessment order Assessing Officer has not made any inquiries as to why such rental income should not be classified as “income from business” and failed to make detailed inquiries on certain aspects like why the property was classified as investment, whether the assessee has claimed depreciation on such property for income tax purposes and once Assessing Officer has already held such income as income from business in earlier years, such treatment ought to have been followed. Accordingly, the Ld. PCIT set-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue with the following observations:-

“4. I have carefully considered facts and submission of the case. It is found that assessee has shown rental income of Rs. 12,49,14,400/- as Income from house property. It is observed that while passing the assessment order u/s 143(3) r.w.s 147 of the Act for A.Y. 2016-17 on 26th March 2022, AO, NEAC has treated similar rent income as Income from business or profession and denied deduction u/s 24(a) claimed in return of income. It is observed that assessee is having property at Thane which is given on rent and assessee is earning substantial rent income. The rent income earned during the year is Rs 12,49,14,400/- against investments shown in audited annual accounts for Rs 18,64,62,058/- The above referred property has been classified as Non-current Investments in Schedule 11 of Audited Annual accounts as under:

Note 11
Non-Current Investments

Particulars	As at 31 Mar 2018			As at 31 Mar 2017		
	Quoted	Unquoted	Total	Quoted	Unquoted	Total
A. Other Investments						
Investment property- Thane (net off accumulated depreciation and impairment, if any)		186,462,058	186,462,058		186,462,058	186,462,058

It can be seen from above referred balance sheet that though particulars mentioned in Audited Annual accounts is “Investment Property, Thane (net off of accumulated depreciation), assessee has not claimed any depreciation in current year but such depreciation must have been claimed in earlier years hence such investments value is “net off of accumulated depreciation” in audited annual accounts. While passing the assessment order, AO has not made inquiries as to why such rental income should not be classified as “Income from business” and failed to make detailed inquires considering following issues.

(i) Whether property at Thane was classified as Investment since it was purchased or constructed? If such property was not classified as investment in earlier years or since

inception and later on reclassified, claim of assessee to treat such income from house property cannot be accepted,

(ii) Whether assessee has claimed depreciation on such assets in books of account as well as in income tax since inception or not? If deprecation is claimed on such property at any of earlier period, nomenclature of income would change. These facts need to be ascertained. Whether property related maintenance and other expenditure are disallowed or not while computing taxable income needs to be verified.

(iii) Once the AO has already held such income as Income from business or profession in earlier years, such treatment ought to have been followed.

While passing the assessment order, AO has failed to make proper inquires relating to claim of assessee for treating such income as "income from house property" which makes present assessment order to be erroneous and prejudicial to interest of revenue.

4.1 So far as claim of assessee that treatment in books of account is not relevant to determining nature of income is concerned and assessee is not in business of letting out of property, it is observed that while passing the assessment order, AO has not ascertained above referred issues which are material for treating such income as "Income from house property" which clearly proves that AO has not made conscious attempt on his part in assessment proceedings."

5. The assessee is in appeal before us against the aforesaid order passed by the Ld. PCIT.

6. Before us, the Counsel for the assessee submitted that the assessee is a private limited company engaged in providing Call Center Services and Business Process Outsourcing Services i.e. IT Enabled Services. Further, earning of monthly rental income is not the business income of the assessee since the property on which the rental income has been earned by the assessee is an investment made by the assessee company and not a fixed asset of the assessee company. The assessee submitted that it had made investment in the above mentioned house property which is not related to the main business activity of the assessee, which is that of providing IT and IT Enabled Services. The assessee has disclosed the house property under the head "non-current investment" and not "fixed assets". The Counsel for the assessee drew our attention to Page 32 of the Paper Book (non-financial statements) and

submitted that the income from house property was reflected as “other non-operating income rental income from investment properties” in the financial statements. Therefore, it was submitted that the assessee has not treated the immovable property as business asset but as non-current investment and has not claimed any depreciation under the Income Tax Act on such property. Accordingly, the assessee has correctly offered the rental income from immovable property under the head income from house property and claimed standard deduction as per the provisions of the Income Tax Act. Further, regarding the contention of the PCIT that while the assessee has claimed depreciation on such property under the Companies Act but for tax purposes the assessee has treated the rental income as income from house property, the Counsel for the assessee submitted that the treatment of expenses in books of accounts are governed by the principles of accounting standards and the methodology of treatment of expenses may be different in the books of accounts and under the Income Tax Act. Hence, the claim of the assessee cannot be disallowed only on the basis of difference in treatment in books of accounts and under the Income Tax Act. The Counsel for the assessee placed reliance on several decisions which have held that the accounting treatment given by the assessee in its books of accounts is not relevant to examine the claim put forth by the assessee for income tax purposes. Further, the Counsel for the assessee submitted that while filing the return of income, the assessee company had disallowed depreciation as per Companies Act pertaining to investment property on which rental income has been received. Accordingly, it was submitted that the assessee has not claimed any depreciation under Section 32 of the Act in relation to the aforesaid house property, which was held as investment by the assessee company.

7. Accordingly, it was submitted that there is no infirmity in the order of Ld. AO looking into the instant facts so as to call for any interference.

8. In response, Ld. D.R. relied upon the observations made by the Ld. PCIT in the 263 order.

9. We have heard the rival contentions and perused the material on record.

10. In the instant facts, we observe that the assessee is engaged in the business of providing BPO and software consultancy services i.e. it is in the line of providing IT related services. The assessee was in possession of one property in Thane, which was disclosed by the assessee under the head “non-current investment” in its financial statements. Further, we also observe that the assessee was not holding the aforesaid property of its business asset and had not claimed any depreciation thereon under Section 32 of the Income Tax Act. This, coupled with the fact that the assessee is not engaged in the business of earning rental income, but is engaged in providing IT Services, it cannot be inferred that the rental income earned by the assessee on such house property held as “non-current investment”, would qualify as its business income. Further, it is also seen from the financial statements of the assessee that the aforesaid rental income has been reflected as “non-operational income” and not as the “business income” of the assessee. Accordingly, from the instant facts, in our considered view, the assessee has not taken an incorrect position by offering the rental income earned by the assessee on aforesaid property “income from house property”. Further, we observe that in various judicial precedents, a distinction has been drawn as to when the rental income earned by an assessee can be classified as its business income and under what circumstances, such rental income would qualify as “income from house

property”. The Courts have held that whether the income earned from property would qualify as business income or income from house property would primarily depend upon the objects / main business of the assessee company. If the assessee company is primarily engaged in the business of real estate / construction of which letting out properties on rent, alongwith facilities part of its regular business, then the income from letting out would qualify as “business income”, however, in case the assessee is engaged at other business activities and the rental income has been earned by the assessee, not on it’s business assets but on other investments, then such rental income should normally qualify as income from house property.

11. Let us look at a few discussions to have better clarity on this issue. In the case of **Raj Dadarkar & Associates 81 taxmann.com 193 (SC)**, the Hon’ble Supreme Court held that where assessee having obtained a property on lease, constructed various shops and stalls on it and gave the same to various persons on sub-licencing basis, since assessee was not engaged in systematic or organized activity of providing service to occupiers of shops/stalls, income from sub-licensing was to be taxed as “income from house property” and not as “business income”. In the case of **Chennai Properties & Investments Ltd. 56 taxmann.com 456 (SC)**, the Hon'ble Supreme Court held that where in terms of memorandum of association, main object of assessee-company was to acquire properties and earn income by letting out same, said income was to be brought to tax as business income and not as income from house property. In the case of **Meeraj Estate & Developers 113 taxmann.com 231 (Allahabad)**, the High Court held that where assessee entered into an agreement to let out a premises with various amenities, as also for maintenance and upkeeping of said premises, since

assessee did not indulge in any kind of recurring, systematic and organized business activity and, moreover, in respect of maintenance and upkeeping of let out premises, it appointed only one person, Assessing Officer was justified in treating rental income assessable as “income from house property”.

12. Accordingly, looking into the instant facts, we find no infirmity in the assessment order, wherein the claim of the assessee that such rental income qualifies as “income from house property” has been accepted, looking into the instant facts.

13. In the result, the order passed under Section 263 of the Act is directed to be set-aside.

14. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	08/03/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 08/03/2024

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad