

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA Nos. 3019 & 3018/MUM/2023
Assessment Year: 2013-14 & 2014-15

Directi Internet Solutions Pvt. Ltd.,
Directiplex, Acme-1 Tech Park, Old
Nagaradas Road, Andheri East,
Mumbai-400069.

PAN NO. AACCG 4058 M
Appellant

ITO-5(1)(3),
Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. Firoze B. Andhyarujina
Revenue by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 20/02/2024
Date of pronouncement : 01/03/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders both dated 30.06.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2013-14 and 2014-15 respectively. As common issue in dispute is involved in both these appeals, permeating from same set of facts and therefore, these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.



2. Briefly stated facts of the case are the assessee company is engaged in the business of rendering information technology i.e. IT enabled services and business support services. The assessee vide two agreements dated 24/05/2005 and dated 30/10/2010 purchased floors of a building having carpet area of 62,000 sft and 33 car parking in “ Directi Plex Acme Tech Park” at a cost of Rs. 38,35,00,000/-. Out of total premises of the building owned by the assessee, some part was under construction in the year under consideration, which was shown under the head ‘Capital work-in-progress’ and balance area of 51,808.62 sft was in possession of the assessee, out of which 11,808.62 sft area on 5th and 6th floor of ‘B’ wing of office premises was given on leave and license agreement basis to another company namely Media.net Software Services (India) Pvt. Ltd. (licensee) for a period of 15 months commencing from 01.01.2012 and ending on 31.03.2013. As per the agreement, the ‘licensee’ agreed to do alteration in the building including non-removable fixtures at its own cost and the licensor i.e. the assessee agreed not to charge any license or compensation fee for the licensed period in lieu of the condition that the lessee would leave all those non-removable fixture in the building at the time of vacation of building. For the period of 3 months from January, 2012 to March 2012 i.e. falling in assessment year 2012-13, the assessee claimed depreciation on the building treating the same as used for the purpose of the business. Similarly, for the remaining period of 12 months of the licensed period i.e. for assessment year



2013-14, the assessee though did not shown any rental income from the building however claimed the depreciation u/s 32 of the Income-tax Act, 1961 (in short 'the Act') claiming that the building was put to use for business purpose. The Assessing Officer in assessment year 2013-14 rejected the claim of the assessee of depreciation and disallowed the same treating the assessee as liable to be assessed under the head 'income from house property' and computed the Annual Lettable Value (ALV) of the property corresponding to the investment made by the lessee in the non-removable fixtures (Rs. 2,29,00,399/-) and computed the income under the head 'income from house property' amounting to Rs.1,28,24,223/- after allowing deduction u/s 24 of the Act (@ 30% of the ALV). In assessment year 2014-15, the assessee has shown rental income (Rs. 4,95,57,001/-) however treated the same as business income and claimed the depreciation on the building. But the Ld. Assessing Officer however treated the said rental income as liable to be taxed under the head 'income from house property' and accordingly, disallowed the claim of the depreciation of the assessee on the building.

3. On further appeal, the Ld. CIT(A) upheld the finding of the Assessing Officer.

4. Aggrieved the assessee is in appeal before the Tribunal.



5. The grounds raised by the assessee in assessment year 2013-14 are reproduced as under:

1. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the learned Assessing Officer for disallowances amounting to INR 90,50,293/- under section 32 of the Income Tax Act, 1961 ('the Act') on account of depreciation on building.*
2. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the building is an integral part of block of assets and splitting a single asset from a block is not permissible under section 43(6)(c)i(B) of the Act and thus bad in law.*
3. *The learned Commissioner of Income Tax (Appeals) did not consider the fact that depreciation was duly claimed in relation to the business of the Appellant and thus no disallowances were called for in the case of the Appellant.*
4. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the learned Assessing Officer for additions amounting to INR 1,28,24,223/- under section 22 of the Act on account of notional rent.*
5. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has grossly erred in considering the value of non-removable fixed fixtures and attachments for the purpose of determining notional rent under section 22 of the Act.*
6. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that the Appellant has not received any benefit of the interior / renovation of fixed fixtures carried out by the licensee and the same is utilized by the licensee till date.*
7. *The learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer without having regard to the fact that had there been any actual income the same would have been taxed as business income in, lines with the income offered in subsequent years.*
8. *On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the learned Assessing Officer for disallowances amounting to INR 4,80,217/- under section 14A of the Act read with Rule 8D of the Income tax Rules, 1962; on account of expenses pertaining to exempt income.*
9. *The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeals herein or to*



submit such statements documents and papers as may be considered necessary either before or during the hearing of the appeal as they may be admitted to do so.

6. The ground Nos. 1 to 3 of the appeal relate to disallowance of depreciation amounting to Rs.90,50,293/- u/s 32 of the Act. Before us, the Ld. Counsel for the assessee submitted that in the year under consideration, the assessee has not received any rental income. It was submitted that the company Media.net was also engaged in rendering service similar to that assessee and therefore, the assessee shared the various maintenance and administrative expenditure incurred, which benefited the assessee in reducing its liability and thus the building was put to use for the purpose of the business of the assessee. It was further submitted that the building was a part of the block of asset and once it became a part of the block of assets, it was not feasible to compute separate depreciation and disallow the same. The total depreciation claimed on building during the year under consideration was of Rs.3,97,06,857/-. The part of building given on leave and license to M/s Media.net Software Services Pvt. Ltd. was approximately 11800.62 sq. ft. out of total building area of 51808.62 sq. ft. and therefore, the Assessing Officer disallowed the proportionate depreciation amounting to Rs.90,50,293/- as worked out in paragraph 4.3 of the impugned assessment order. It was contended by the assessee that depreciation is not disallowable on premises given on leave and license basis as act of granting the premises on leave and license basis was a temporary phenomena and the licensed compensation



being business it forms part of the business income of the assessee. The assessee further relied on the submission made before the ld CIT(A).

7. The Ld. Departmental Representative (DR) on the other hand, submitted that main object of the assessee company was not letting out of the properties and it was engaged mainly in the services of information technology , therefore the income from letting out of property was liable to be assessed under the head 'income from house property'. The Ld DR relied on the order of lower authorities.

8. We have heard rival submission of the parties and perused the relevant material on record. In the case, the assessee has let out a part of its building on leave and license agreement basis to another company. For the year under consideration, the assessee has agreed not to charge any rental income against the condition of the lease that the lessee should leave all non-removable fixed furniture in building itself in the event of vacating of said license premises. Thus, according to the assessee building has been put to use for the purpose of the business of the assessee and therefore, any rental income from the same would to allowable to be assessed under the head 'business income' and but in view of no rent charged to lessee, no business income was earned in the year under consideration. The assessee also claimed depreciation on the part of building which was let out to lessee.



8.1 We find that the issue of taxability of the rental income from the building in case a company has been decided by the Hon'ble Supreme Court in the case of **Chennai Properties & Investments Ltd. v. CIT [2015] 56 taxmann.com 456 (SC)**. The Hon'ble Supreme Court (supra) held that wherein in terms of memorandum of association, main object of the assessee company is to acquire and hold properties and earn income by letting out, the said income is liable to tax as 'business income' and not as 'income from house property'. The relevant finding of the Hon'ble Supreme Court is reproduced as under:

"7. With this background, we first refer to the judgment of this Court in East India Housing and Land Development Trust Ltd.'s case which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question arose for consideration was: whether the rental income that is received was to be treated as income from the house property or the income from the business. This court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.

8. Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P) Ltd., we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal' [44 ITR 362 (SC)]. That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of



the assessee. The income which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: -

“As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The diving line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned.”

9. *After applying the aforesaid principle to the facts, which were there before the Court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the aforesaid judgment in Karanpura Development Co. Ltd.'s case squarely applies to the facts of the present case.*

10. *No doubt in Sultan Brothers (P) Ltd.'s case, Constitution Bench judgment of this Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at an conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words: -*

“We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to



support the proposition that certain assets are commercial assets in their very nature.”

11. We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs.”

8.2 Thus, in the case of Chennai Properties Ltd. (supra) the Hon'ble Supreme Court referred to the object clause of memorandum of association of the assessee company, and held that if the main object of the 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 under the head 'income from house property'. The Hon'ble Supreme Court pointed out that the deciding factor is not the ownership of property but nature of activity of the assessee and nature of the operations in relation to property i.e. what is relevant is professed object and the manner of activities and nature of dealings with its property. **In other words, main test for assessing rental income under the head business income is that letting out of the properties should, in fact, should be the main business of the assessee.** Further the Hon'ble Supreme Court in the case of **Rayala Corporation (P.) Ltd. v. Assistant Commissioner of Income-tax [2016] 72 taxmann.com 149 (SC)** has affirmed the decision of the



Hon'ble Supreme Court in Chennai Properties & Investments Ltd. (supra).

8.3 We have perused the memorandum of association of Assessee Company filed before us. When we see the facts of the instant case in the light of the decision of the Hon'ble Supreme Court as reproduced above, we find that in the instant case main object of the assessee company is not letting out of properties. For ready reference, the object clause of the assessee provided in Memorandum of association is reproduced as under:

“(a) THE OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE :-

1. To carry on the business/es in India or abroad to Acquire, Act, Advertise, Advice, Aid, Analyze, Assemble, Assign, Assist, Authorize, Buy, Carry on/out, Change, Charge, Circulate, Conduct, Consult, Control, Convert, Co- operate, Construct, Create, Create Charge, Deal in, Derive, Design, Detect, Develop, Dispose, Disseminate, Distribute, Establish, Exchange, Export, Import, Improve, License, Prepare, Engage, Sell, Engineer, and Trade for, Transfer, Use, Vend and Work for all Information Technology (IT) related works including but not Limited to Domain Names; Service Marks & Names; Web Designing; Web Hosting; Web Intelligence; Web Management; Web Page Hosting; Web Server, Web Services and all other branches of Domains Registration and registry and to render IT Enabled Services.

To render Information Technology & IT Enabled Services (IT-ITES), Business support services including but Not limited to administrative, MIS & accounting, sales and business development, human resource management Services, Marketing Support Services, including inter-alia digital marketing, Business Events and Public Relations Support including management of Media relations, advertisements, and IT enabled services including but not limited to Computer Application & System software Development; Data Processing Centers; Data Processing Units; Data Processing & Data Processing Systems; software Consultants; software Development; software services; software Products; website development and maintenance and other web site related support and to sell, lease, rent property and other rights over and in any other manner deal with or dispose of the undertaking, property, assets, rights and effects of the Company, or any part thereof for such consideration the Company may



think fit services to its Group Companies and/or Subsidiaries / Associate Companies or to any Companies.”

8.3 Thus from the Memorandum of Association of the assessee it is evident that the main business of the assessee was rendering information technology and IT enabled services and not letting out the properties. In the profit and loss account filed by the assessee on paper book page 55, the assessee has reported miscellaneous other income of Rs.2,09,26,709/- in assessment year 2013-14 and Rs.8,15,81,450/- in assessment year 2014-15. The details of miscellaneous income are provided on paper book page 64. For ready reference said other income is reproduced as under:

Particulars	31st March' 2014 (Amount in Rs.)	31st March' 2013 (Amount in Rs.)
(i) Miscellaneous Other Income	8,15,81,440	2,09,26,709
- Interest on Loan to Employee	10,586	25,778
- Interest on Fixed Deposit	6,47,825	10,17,810
- Dividend Received	6,11,362	28,78,569
- Interest Received on Income Tax Refund	-	1,05,804
- Interest Others	1,35,000	1,28,84,135
- Other Receipts	18,707	24,89,806
- Rent on Building	4,95,57,001	-
- Reimbursement of Expenses	2,95,03,448	-
-Gain & Loss on sale of Assets/Investments	10,97,511	15,24,808
Total	81,581,440	2,09,26,709

8.4 Thus, the rent on building has been shown as miscellaneous other income in assessment year 2014-15, which shows that it is not the main business of the assessee company. Thus, in the ratio of the Hon'ble Supreme Court (supra), the rental income received or to be received by the assessee from the lessee on the part of the property given on leave and license is liable to be assessed under



the head 'income from house property' and not under the head 'profit and gains or business or profession'. Accordingly, the depreciation on corresponding part of building claimed by the assessee is also liable to be disallowed under the head 'profit and gains of business'. The section 38(2) of the Act provide that where any building, machinery plant or furniture etc was not exclusively used for the purpose of business or profession, the depreciation claimed u/s 32 of the Act shall be restricted to a fair proportionate part thereof which the Assessing Officer may determine having regard to the user of such building machinery, plant or furniture etc for the purpose of business or profession and therefore, the arguments of the Ld. counsel for the assessee that building being part of the block of the asset no disallowance could be made u/s 32 of the Act are accordingly rejected. The case laws referred before the ld CIT(A) pertains to depreciation on building, plant etc though appearing in block of asset but not put to use etc and not where the building, plant etc used for letting out and which being not a main object of the company. As the action of the Assessing Officer and the ld CIT(A) is in accordance with law, therefore, the disallowance of depreciation made by the Assessing Officer and sustained by the Ld. CIT(A) is accordingly upheld.

9. The ground Nos. 4 to 7 of appeal are in respect of determination of annual lettable value of the property. As per the leave and license agreement, the lessee was supposed to incur



expenditure on movable and non-movable furniture and fixture. The non-movable furniture was supposed to be left by the lessee in the event of vacating said license premises. The assessee has provided the detail of the movable and non-movable fixtures installed by the assessee in the building. The movable furniture stated by the assessee was of Rs.2,39,26,956/- whereas non-removable fixture, furniture was Rs.2,29,00,399/-. Since, the assessee did not reported any annual lettable value of said part of building, therefore, the Assessing Officer treated the benefit of non-removable fixture and furniture received by the assessee as the annual lettable value of the property for period of 15 months and accordingly apportioned value for a period of 12 months and made addition of Rs.1,83,20,319/- in para 5.5 of the impugned assessment order. The Id CIT(A) upheld the addition.

9.1 We have heard rival submission of the parties and perused the relevant material on record. It is the contention of the assessee that computation of annual lettable value by the Assessing Officer is not as per the law. According to him the lettable value provided under the Act is the value for which property could be let out from year to year and which could be standard rent or the municipal rental value assessed. In support he relied on the decision of Hon'ble supreme Court in the case of Dewan Daulat Rai Kapoor v. NDMC (1980) 122 ITR 700 (SC), where in it held that when the property is subject to Rent Control Act, its annual value under section 23(1)



cannot exceed the standard rent (fixed or determined) under the Rent Control Act unless it is actually let out for a higher amount. In our opinion, estimating of lettable value on the basis of non removable furniture which would be left by the lessee, is not a proper method under the provisions of law, thus, we reject the estimation of ALV made by the Assessing Officer. Since, the Assessing Officer has not computed the annual lettable value as per the provisions of law, therefore, the arbitrary value adopted by him is liable to be rejected.

9.2 We find that section 23 of the Act has provided for determination of the annual lettable value of house property. The relevant provision reads as under:

“23(1) For the purposes of section 22, the annual value of any property shall be deemed to be-

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable:

Provided that the taxes levied by the local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.



Explanation. - For the purposes of clause (b) or clause (c) of this subsection, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.”

9.3 We find that in the instant case, the assessee has reported rental income of Rs. 4,95,57,001/- in subsequent assessment year 2014-15, which the Assessing Officer has not disputed and therefore, lettable value for the assessment year 2013-14 for the relevant part of property could be estimated for the year under consideration after applying appropriate cost indexation as provided for capital gain index or on the basis of any other appropriate estimation of market value of rent of the area . Since the annual lettable value computed by the Assessing Officer has been rejected by us, we feel it appropriate to restore this issue of determination of the annual lettable value of the property for the assessment year under consideration to the 1d Assessing officer for deciding as directed above. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The ground Nos. 4 to 7 of the appeal of the assessee are accordingly allowed for statistical purposes.

10. The ground No. 8 of the appeal of the assessee relates to disallowance of Rs.4,80,217/- u/s 14A of the Act r.w. Rule 8D of the Income-tax Rules, 1962.

10.1 The facts in brief qua the issue in dispute are the assessee received dividend of Rs.28,78,569/- which was claimed as exempt



income however no *suo-motu* disallowance was made by the assessee for earning such exempted income, therefore, the Assessing Officer after recording dissatisfaction as to the claim of the assessee, invoked Rule 8D of the Income-tax Rules, 1962 (in short the 'Rules') and made disallowance of Rs.4,80,271/-

10.2 We have heard rival submission of the parties and perused the relevant material on record. The assessee has made investment in quoted shares and mutual funds, from which earned exempted income. The average value of the investment including the mutual funds and the quoted shares has been reproduced by the Assessing Officer, which is reproduced for ready reference:

	Investment on 31/03/2012	Investment on 31/03/2013	Average value
Mutual Fund	8,47,15,019	3,18,58,588	
Quoted Shares	3,66,50,232	3,88,63,015	
	12,13,65,251	7,07,21,603	9,60,43,427

10.3 The Ld. counsel for the assessee has submitted that the assessee has not incurred any expenses for earning exempted income. Whereas in our opinion certain expenses of maintaining the investment in the mutual funds or transfer/shifting from one mutual fund to other funds etc. is required either by the Director of the assessee or by the dedicated staff, therefore, corresponding administrative expenses including, salary, rent, welfare expenses etc. cannot be denied and since assessee has not claimed to have incurred any such expenses, therefore, invoking of Rule 8D by the Assessing Officer and corresponding disallowance is justified.



Accordingly, we uphold the disallowance by the Assessing Officer and ground No. 8 of the appeal of the assessee is dismissed.

11. The sole issue in grounds raised in appeal for assessment year 2014-15 is of disallowance of depreciation on part of building given on leave and license, which is identical to the grounds raised in assessment year 2013-14, therefore, following our finding in AY 2013-14, said grounds of appeal of the assessee are dismissed. It is to be noted that the assessee has been given benefit of 30% deduction on ALV by the AO while calculating tax on rental income under the head 'income from house property' instead of depreciation claimed by the assessee while offering rental income under the head 'business income'.

12. In the result, the appeal of the assessee for assessment year 2013-14 is allowed partly for statistical purposes, whereas appeal of the assessee for assessment year 2014-15 is dismissed.

Order pronounced in the open Court on 01/03/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 01/03/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai