

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1616/Mum/2020 (A.Y. 2013-14)

Balaji Infrastructure & Development

Company Limited,

6th floor, New Excelsior Building,

A. K. Nayak Marg, Fort,

Mumbai-400 001

PAN: AAACB8155C

..... Appellant

Vs.

ITO-2(1) (1),

R. No. 561, 5th floor,

Aayakar Bhavan, M. K. Road,

Mumbai- 400 020

..... Respondent

Appellant by : Shri Sujay Waikul, Ld. AR

Respondent by : Shri S. Srinivas, Ld. DR

Date of hearing : 13/12/2023

Date of pronouncement : 11/03/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. CIT (A)-4, Mumbai dated 29.01.2020 passed u/s. 250 of the Income Tax Act, 1961 (in short

'the Act') for A.Y. 2013-14. The assessee has raised the following grounds of appeal:-

The grounds of appeal set out below are without prejudice to each other:

1.(a) On the facts and in the circumstances of the case and in the law, the learned Assessing Officer erred in adding twice a sum of Rs. 1,20,00,000/- by not reducing the income under the head "Income from Business and profession" the items considered separately/under other head of incomes of the Income Tax Act, 1961 which is wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and Rules made there under.

1. (b) On the facts and in the circumstances of the case and in laws, the Learned Assessing Officer erred in charging income of Rs. 1, 20, 00,000/- under the head "Income from Other Sources" as against under the head "Income from House Property" as claimed by the appellant, and the reason assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and the Rules made thereunder.

1. (c) On the facts and in the circumstances of the case and in laws, the learned Assessing officer ought to have allowed standard deduction of Rs. 36, 00,000/- U/s. 24 on "Income from House Property", and the reasons assigned for not doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961, and the rules made thereunder.

1. (d) Without Prejudice to the above, the learned AO having treated income of Rs. 1, 20, 00,000/- charged under the head Income from Other Sources ought to have allowed the expenses of Rs. 23, 21,192/- under section 57 and not doing so is wrong and contrary to the facts of the case and the provisions of the income Tax Act, 1961 and rules made thereunder.

2. On the facts and in the circumstances of the case and in laws, the learned Assessing officer erred in not allowing deduction of Rs. 10, 05, 96,468/- being interest and upfront fees expense and the reasons for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the income Tax Act, 1961 and rules made thereunder.

3. On the facts and in the circumstances of the case and in laws, the learned Assessing officer erred in not allowing deduction of Rs. 39, 99,402/- being depreciation allowable under section 32(1) of the Income Tax Act, 1961, and the reasons for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the income Tax Act, 1961 and rules made thereunder.

4. On the facts and in the circumstances of the case and in laws, the learned Assessing officer erred in charging interest u/s. 234B of Rs. 18, 14,400/- which is wrong and contrary to the facts and circumstances of the case, provisions of the Act and rules made thereunder.

5. On the facts and in the circumstances of the case and in laws, the learned Assessing officer erred in charging Surcharge of Rs. 3,06,853/- which is wrong and contrary to the facts and circumstances of the case, provisions of the Act and rules made thereunder.

6. On the facts and in the circumstances of the case and in laws, the learned Assessing officer erred in initiating penalty proceedings u/s. 271(1) (c) of the Income Tax Act, 1961 in respect of disallowances/additions made thereon and reasons assigned by him are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and rules made thereunder.

The Appellant Craves leave to add, Amend, alter, Modify and/or delete any of the above grounds of appeal on or before the date of hearing.

2. The brief facts of the case are that the assessee company is involved in the business of Infrastructure development and consultancy, and filed its return of income on 30-09-2013 declaring a total loss at Rs.(-)89,93,192/-. The case of the assessee was selected for scrutiny under CASS and notice u/s. 143(2) of the Act was issued on 04-09-2014. The assessee filed a revised computation of income on 07-01-2016 claiming enhanced loss at Rs. (-) 10, 27, 34,909/-. The case of the assessee was assessed at Rs. 2,04,56,860/- against the loss claimed of Rs. (-) 10,27,34,909/-.The assessee being aggrieved with this order of the AO, preferred an appeal before the Ld. CIT(A), who in turn partly allowed the appeal and for the rest of the issues confirmed the order of the AO. The Assessee being further aggrieved preferred the present appeal before us.

3. We have gone through the order of the AO, the order of the Ld. CIT (A) and submissions of the assessee along with grounds raised before us. Ground No. 1 with its sub grounds pertains to the income of Rs. 1.2 Crore declared by the assessee under the head 'House Property' and consequent claim of standard

deduction of Rs. 36 lakhs u/s. 24 of the Act. On this issue, AO and Ld. CIT (A) observed that the value of this property as shown in the balance sheet was Rs. 60 lakhs and as per them, any property with value of Rs. 60 lakhs only cannot fetch and annual rent of Rs. 1.2 crore which is 200% return on the investment of the property. Usually as a standard benchmark, properties may be commercial or residential can fetch only upto maximum 6-8%. Apparently such exorbitant return looks to be doubtful. In view of this, AO treated the said income under the head 'Income from other sources'. It is also observed that there was no TDS u/s. 194I of the Act was deducted by the tenant. Any rent payment exceeding Rs. 1.2 lakhs per annum is liable for TDS by the tenant.

4. Assessee, substantiate its claim by relying on the following judicial pronouncements as under:-

i) S. G. Mercantile Corpn. (P) Ltd. vs. CIT (1972) 83 ITR 700 (SC)

ii) Bihar State Co-Op. Bank Ltd. vs. CIT (1960) 39 ITR 114 (SC)

iii) CIT vs. Basant Rai Takhat Singh (1933) ITR 197 (PC)

5. In addition to above, assessee furnished details of the property under consideration as under:-

"A building known more as "Sea Green" with RCC Structure of Ground plus one floor (i.e. G + 1L covering a total area of 0-09-1 Hect. of land and consisting of the following facilities/ fixtures & fittings situated in the Municipal limits of Murud, Taluka Murud, District Raigad, Maharashtra, bearing Survey No. 103, Hissa No.1 (in whole referred to as the "Demised Premised")

(1) Eight (08) fully furnished rooms alongwith Furniture & fixtures provided,

(ii) A conference Room,

(iii) A Kitchen,

(iv) Terrace,

(v) A servants quarter,

(vi) An open space for car parking,

(vii) A garden/fruit trees/plants." In view of the above, it will be appreciated that premises have been exploited for renting of house property purpose. For such residential use the appellant has earned rent/usage charges from DPL. Hence the income from such usage has been rightly offered under the head 'Income from House Property'.

Thus from above, it is a proven fact that the said property is a House Property and not a mere plot of land given on rent for earning rental income. The learned assessing officer failed to appreciate the above facts and erred in treating the said income of Rs. 1, 20, 00,000/- under Income from Other Sources. Further, the reasons stated by the Ld. AO after considering the said agreement are as under.-

(i) That the demised property is located at about 7 to 8 Kms. from main business location of the lessee i.e. M/s. Dighi Port Ltd. The Google Map shows that his distance is a crow fly distance and the port of Dighi and Murud are separated by a creek. Thus, this is not a viable proposition for the lessee to occupy such a business premises due to distance. (ii) It is also noticed that the assessee has only one property in the Balance sheet shown at the value of Rs. 60 lacs. The other property is that the office address at Mumbai. The assessee has also confirmed that the rent is only for Murud property. Thus, the rent receipt of Rs.1, 20, 00,000/- as compared to cost of Rs.60, 00, 000/- is obviously disproportionate. Considering the overall facts, the rent received from M/s. Dighi Port is considered under the head // Income from Other Sources". The claim of deduction u/s. 24 at Rs.36, 00,000/- is accordingly disallowed.

The said observations of the Ld. Assessing Officer are irrelevant and frivolous. The learned Assessing Officer has made arbitrary charging of Income from House Property under the head Income from Other Sources without any contrary material/evidence on the record and therefore, the Ld A.O. has erred in treating rent receipts of Rs 1, 20, 00,000/- under the head Income from Other Sources instead of Income from House Property based on above facts of the appellant.

1.3 Consequent to his action of treating the rental income as chargeable under the head Income from Other Sources, the Ld. AO has disallowed the appellant's claim for standard deduction u/s.24 on "Income from House Property" of Rs. 36, 00,000/- on rented premises. Therefore the appellant is eligible for standard deduction u/s.24 of Rs. 36, 00,000/-.

6. Ostensibly, the observations of the authorities below look to be reasonable, if we ignore the submissions and facts submitted by the assessee (supra). But we have not found any specific finding by the authorities below on the factual submissions of the assessee. Keeping in view the submissions of the assessee, AO and Ld. CIT (A) are ought to have detailed field survey report from their inspector before changing the head of the income declared by the assessee. In the given circumstances, we are not inclined with the view taken by the authorities below as the same lack proper investigation and analysis of the facts. In view of this, we restore the matter back to the file of AO with a direction to conduct a field survey of the property to confirm the substance of the matter. **In view of this, ground no. 1(b) raised by the assessee is allowed for statistical purposes. On ground no. 1(a), assessee argued that income of Rs. 1.2 crore taxed twice by not reducing the same from the head income from business and profession. On this issue also, we direct the AO to examine the contentions of the assessee with reference to the profit and loss account and computation of income as shown by the assessee after giving a reasonable opportunity of being heard. In view of this, ground no. 1(a) is also allowed for statistical purposes. Ground no. 1 (c) and 1 (d) are consequential in nature requires no separate adjudication in view of our above findings on ground no. 1 (b).**

7. Ground no. 2 pertains to disallowance of Rs. 9, 30, 96,468/- claimed as interest charges and Rs. 75 lakhs as finance cost. On this issue, there is a concurrent finding by the AO and Ld. CIT (A) that the above disallowances should be sustained. It is observed that assessee has share capital of Rs. 3.45 Crore alongwith negative balance of reserve and surplus amounting to Rs. 6.61 crore. So effectively assessee's leverage ratio is not favourable and operations

/investments of the assessee are being funded by borrowed money only. It is also observed that interest liability of the assessee has substantially increased from 77.83 lakhs in the previous year as compared to 9.30 Crores in the current year. Now being a final fact finding authority, we need to examine whether this enhanced interest liability is fastened to the loans which are deployed for business purpose or not. The details of fund deployment are as under:-

Particulars	31.03.2013	31.03.2012	Reason
<u>Investment in Property</u>	60,00,000	60,00,000	It cannot yield any income (either exempt or taxable)
<u>Unquoted Investments</u>			
(i) In Subsidiary Company			
(a) Anyuser Telecom (India) Limited	1,48,93,000	4,93,000	Strategic Investment in Subsidiary
(b) Share Application pending allotment	-	1,44,00,000	It cannot yield any income (either exempt or taxable)
(ii) In Others			
(a) Dighi Port Limited	24,53,60,000	24,53,60,000	Strategic Investment in associate company
(b) Balaji Infra Projects Limited	33,04,84,600	33,04,84,600	Strategic Investment in associate company
(c) Dighi Project Development Company Limited	25,000	25,000	Strategic Investment in associate company
(d) MKM Credit Capital Private Limited	20,000	-	Strategic Investment in associate company
Total	59,67,82,600	59,67,62,600	

8. We have gone through the entire issue and analysed the perspective of revenue and contentions of the assessee. It is observed that primarily assessee earning revenue from rent and certain outsourcing services. Assessee is own funds are negligible and all investments in share and advances to its subsidiary companies are found not to be connected with its business. While going through

the matter under consideration, we find a finding of Ld. CIT (A) quite relevant and reproduced as under:-

6.2. *I have considered the rival submissions as above. As per the provision of Sec 36(1) (iii) an assessee can claim deduction on account of interest paid in respect to capital borrowed for the purposes of business or the profession. In this case, it is seen that the Appellant has borrowed an amount of 75, 00,000/- from IL & FS Maritime Infrastructure Co. Ltd. The Appellant has stated that this borrowing was made for commercial purposes. On the other hand, the A.O has stated in the assessment order that the Appellant has received revenue from operations and rent amounting to Rs. 88, 11,901/- and Rs. 1, 20, 00,000/- respectively. There is merit in the arguments of the A.O that such receipts do not require huge loan because the receipt from operation is coming from maintenance and by providing manpower, transport and utility services whereas the receipt from rent is coming from the property owned by the Appellant. Furthermore, from a perusal of the Balance Sheet of the Appellant as reproduced in the assessment order, it can be seen that the own capital of the Appellant in forms of share capital is only Rs. 3,45,00,000/-. Further, there is share application money amounting to Rs. 2, 95, 00,000/- while the reserves and surplus as on 31.03.2013 is showing a negative balance of Rs. 6.61 Crores. On the other hand, the unsecured loans of the assessee as on 31.03.2013 are Rs. 74.66 Crores. It is further seen from the balance sheet that the deployment of fund has been made mainly on shares which is 59.67 Crores and loans and advances which is 51.66 Crores. It is also discussed in the assessment order that the finance cost debited to the P & L A/c has increased from 77.83 lakhs in the immediately preceding year to 9.30 Crores in the impugned A.Y. 2013-14. Prima facie it is obvious that the interest bearing funds is being diverted to non- income generating investments in the form of shares and loans and advances. As per assessment order, the loans and advances have been given without charging any interest whereas as per Appellant's own submission made in the context of ground of appeal No. 2, there is no income from investment in shares. Thus, it is obvious that the interest bearing fund has been used for the purposes which is not giving any financial benefit to the Appellant. On this issue in the leading judgement given by the Hon'ble Supreme Court in the case of S.A. Builders 158 Taxman 74 it has been stated that disallowance of interest on borrowed loan has to depend on the facts and circumstances of the respective case. In this case, it is clear that the borrowed fund has not been utilized for the purposes of business.*

6.3 The concept of thin capitalization applies to the case of the Appellant. As per the concept of thin capitalization, if the ratio between debt and equity is more than 3:1 i.e. when the value of debt is more than 3 times that of the equity, the expenditure on interest becomes doubtful. In this case, the value of debt is more than 12 times of the equity of the Appellant. On the basis of above discussion, I have come to a conclusion that the A.O has rightly disallowed the interest expenditure amounting to Rs. approx 9, 30,96,468/- as well as the upfront fees paid to IL&FS Maritime Infrastructure Co. Ltd amounting to 75,00,000/-. Ground of Appeal No. 3, is therefore, dismissed.

9. It is also observed that assessee itself conveyed that investments in the subsidiary company M/s. Dighi Port Ltd. have been acquired by Adani Port and Special Economic Zone Limited through IBC (Insolvency and bankruptcy code proceedings and the new management taken over by the company. This statement of assessee contradicts it's all submissions made earlier that investments made have a nexus with its revenue stream and made to enhance its existing business. It is not found to be correct as the existing revenue have no connection with the investment and advances made. Rather these investments are in the nature of new venture totally isolate d and consequential interest and other cost should be capitalized instead of routing thorough P & L a/c.

10. In view of above discussions, we do not find any substance in the arguments of the assessee, hence not inclined to interfere in the orders of authorities below. **In the result, ground no. 2 raised by the assessee is dismissed in above terms.**

11. Ground no. 3 pertains to not allowing deduction of Rs. 39, 99,402/- being depreciation under section 32(1) of the Income Tax Act, 1961. On this issue, we observed while going through the assessment order, no specific disallowance on this count has been made by the AO, hence there cannot be any grievance to the assessee. Further, we are reproducing finding of Ld. CIT (A) is as under:-

*7.1 I have carefully gone through the assessment order as well as submission of the Appellant. In the assessment order, there is no discussion on computation of allowable depreciation. **During the course of appeal proceedings, despite getting numerous opportunities, the Appellant has not submitted any details like statement of computation of income which can show that in the assessment of income, the A.O has not allowed depreciation as admissible under the provisions of the I.T. Act.** In view of this, the Ground of Appeal No. 4 is, dismissed.*

12. Even the submissions before us, there is no reference or any argument raised by the assessee on this issue. Apparently it looks like that this ground has been raised inadvertently without any basis. **In the result, this ground of appeal found to be infructuous, hence dismissed.**

13. Ground no. 4 & 5 are consequential in nature, therefore not required specific adjudication. Ground no. 6 is premature, hence not required any adjudication.

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

Order pronounced in the open court on 11th of March 2024.

Sd/-

(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai, दिनांक/Dated: 11/03/2024
Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai