

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA
BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 28/PAT/2021
Assessment Year: 2017-18

DCIT, Circle-1, Muzaffarpur	vs	M/s. R.P. Rai Estate Pvt. Ltd. 19, Goharua, Patliputra Colony, Patliputra, Patna- 800013. PAN: AACCR 4972 P
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sushil Kumar Mishra, JCIT, DR
Respondent by : Shri Devesh Poddar, Advocate

Date of Hearing : 19.03.2024

Date of Pronouncement : 03.04.2024

ORDER

PER SONJOY SARMA, JM:

This appeal of the revenue for the assessment year 2017-18 is directed against the order dated 29.06.2020 passed by the ld. Commissioner of Income-tax (Appeal), Patna [hereinafter referred to as 'the ld. CIT(A)'].

2. Brief facts of the case are that the assessee has filed its return of income declaring income of Rs. 50,15,861/- for A.Y. 2017-18. The case of the assessee was selected for scrutiny under CASS due to reason of "Low receipt from house property in ITR as compared to rental receipts in 26AS" and "High ratio of refund to TDS" followed by notices issued u/s 143(2) & 142(1) of the Act. In response to notices, the assessee has appeared time to time before the AO and furnished copy of audit report of business activities, bank statements, books of account, details of sundry creditors and payment certificate and a copy of 26AS statement. On examination of the various documents,

the ld. AO was found that assessee has received an amount of Rs. 2,62,25,868/- as rental receipt during the year under consideration and asked the assessee to explain the reason for not showing the receipt under the head of income from house property. In response to notices, assessee submitted that it is a company and the building from which rent has been received is a business asset of the company. Therefore, the alleged receipt was shown in the profit and loss account under the head of business receipt. However, submission of the assessee was not accepted by the AO. Accordingly, the ld. AO made an addition of Rs. 1,83,58,108/- as income from house property. Further, estimated the income of the assessee applying net profit of 8% on the gross contract receipts of Rs. 2,39,81,246/- which works out to be Rs. 19,18,500/-. The ld. AO therefore assessed the income of the assessee to Rs. 2,07,82,680/- is against declared total income of Rs. 50,15,861/-.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was allowed observing as under:

"I have considered the facts of the case and also gone through the Assessment Order and submission made by the A.R.

The contention of the A.R is that the building is acquired for the purposes of the business and the depreciation has been charged on it as it has been shown as fixed assets in the schedule of fixed assets of the balance sheet as at 31.03.2009. The said building has been considered as a commercial building by Patna Municipal Corporation.

The A.R. has further submitted that the assessee company has exploited commercial asset i.e. office building for the purposes of business and hence income derived from letting out is business income.

Reliance has been drawn on the decision of Hon. Supreme Court in the case of CIT vs Vikram Cotton mills Ltd. (S.C) 169 ITR 397 wherein it has been held that when the intention of the company in letting out its assets was to exploit the commercial assets for the purpose of its business. The Income Tax Officer was directed to treat the income arising out of the letting out of the assets as business income.

Reliance has also been drawn towards the judgment of Hon. Calcutta High Court in the case of CIT vs Ajmera Industries Pvt. Ltd. 103ITR 245 where it has been held that "On the facts of the instant case, we do not think it necessary to consider all these decisions at any length. It is well settled that if an assessee derives any income by exploitation of its commercial assets whether by itself or through other agencies such income should normally be considered to be the business income of the assessee.

Similar View has been taken by Hon, Supreme Court in the case of M/s Rayala Co. Pvt. Ltd. vs ACIT dated 11 august 2016 wherein the income of the assessee was directed to be taxed as Income under the head Profit & Gain of business and profession. Here Hon. Supreme Court has relied upon its own judgment in the case of Chennai Properties and investment Ltd vs. CIT 373 ITR 673 (S.C) wherein it was held that if the property is on rent and the same is covered as his business income, it has to be assessed as Business Income of the assessee.

Hence, I do not agree with the contention of the A.O and keeping in the view the fact of the case, judicial pronouncements of various courts including Hon'ble Supreme Court, I delete the addition of Rs. 1,83,58,108/- made by the A.O.

The A.O made another addition and has estimated profit at rate of 8% on the trading receipts as bills and vouchers of expenses were not produced. Total addition on this head is Rs. 19,18,500/-.

The A.R. has argued before me and filed the written submission that audited books of accounts, Bank Statement, Details of sundry creditors, payment certificate, copy of 26AS were produced before the A.O.

It has been further agreed that no defects were pointed out by the A.O. Reliance has been drawn towards the judgment of Hon. Supreme Court in the case of Dhakeshwari Cotton Mills vs. CIT 26 ITR 775 (S.C) where in Apex Court has held that AO cannot make any addition on the account of his guess work without having any material evidence on record. The relevant extracts of the said judgment is reproduced as under:

"that in making the assessment under sub-section 3 of section 23 of the Income Tax Act 1922 [corresponding to the section 143(3) of the Income tax Act, 1961], the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3)"

That the same view has been expressed by the various court which are as follows:-Action Electricals v. Deputy CIT [2002] 258 ITR 188 (Delhi) and Kamal Kumar Saharia v. CIT [1995] 216 ITR 217 (Gauhati).

The A.R has further relied upon the judgment of Hon. ITAT, Patna bench, in the case of assessee itself in A.Y. 2007-08, where Hon. ITAT as regards application of net profit and depreciation held as under:-

"we direct the assessing officer to apply the net profit rate of 6% on the gross receipts and allow depreciation thereafter in view of our decision in the case of M/s. Pioneer Construction Co. (supra) subject to the income declared in the return of income."

Hence, 6% on the gross receipt i.e. Rs. 5,02,07,135/- will come to Rs. 30,12,408/-. Since the returned income of the assessee is Rs. 50,15,581/- which is more than 6%. It is taken in view of the judgment of Hon'ble ITAT, Patna is assessee's own case.

Hence, the same is taken as the returned income and the addition of Rs. 19,18,500/- is deleted.

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

4. Aggrieved by the above order, revenue is in appeal before this Tribunal raising multiple grounds of appeal. Ground no. 1 is in relation with deleting the addition of Rs. 1,83,58,108/- which was made by the AO on account of treating it as income from house property instead of business income ignoring the fact that the assessee failed to establish that the rent received from letting out the building would fall under the head "profit and gains of business or profession". The ld. DR stated that the view taken by ld. CIT(A) is not

correct setting aside the order of ld. AO when the income earned by assessee from rent of the property to be shown under the head of income from house property.

5. On the other hand ld. AR stated that the building has acquired by the assessee for the purpose of business and the depreciation has been charged on it as it has been shown as fixed assets in the schedule of fixed assets of the balance sheet as on 31.03.2009. The said building has been considered as a commercial building by Patna Municipal Corporation for the purpose of charging municipal tax. Therefore, he prayed before the bench that the assessee has used the building for the purpose of business derived income from y letting out of the property is business income of the assessee. The ld. AR in order to substantiate its claim as relied on the decision of Hon'ble Supreme Court in the case of CIT vs Vikram Cotton Mills Ltd. (SC) 169 ITR 397 wherein it has been held that when the intention of the company in letting out its assets was to exploit the commercial asset for the purpose of its business. The Income Tax Officer was directed to treat the income arising out of the letting out of the assets as business income. The ld. AR also placed reliance on the judgment of the Hon'ble Calcutta High Court in the case of CIT vs Ajmera Industries Pvt. Ltd. 103 ITR 245 where the Hon'ble High Court has taken similar view if assessee derives any income by exploitation of its commercial assets whether by itself or through other agencies such income should be considered as business income of the assessee. Therefore, he prayed before the bench that the ld. CIT(A) has rightly passed a proper order following the judgment of the Hon'ble Supreme Court on this issue involved by deleting the

addition made by the AO. Accordingly, the order is challenged before the Tribunal may be sustained by dismissing the appeal of the revenue.

6. We after hearing the rival submission of the parties and perused the material available on record find that the instant issue is covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Vikram Cotton Mills Ltd. (supra) and following the judgment of Hon'ble Supreme Court, the ld. CIT(A) has allowed the appeal of the assessee by holding that the intention of the assessee in letting out its assets was to exploit the commercial assets for the purpose of its business. The Income Tax Officer was directed to treat the income arising out of the letting out of the assets as business income. In the present case, the building of the assessee also considered as commercial building by the competent authority i.e. Patna Municipal Corporation which is clearly reflected in the order of ld. CIT(A). Therefore, we do not find any infirmity in the order passed by ld. CIT(A) deleting the alleged addition made by AO allowing the appeal of the assessee. Accordingly, instant ground taken by the revenue is hereby dismissed.

7. Similarly ground no. 2 is in relation with deleting the addition of Rs. 19,18,500/- made by the AO on account of estimating the profit @ 8% of the trading receipts by ignoring the fact that the assessee has failed to produce the bills and vouchers in respect of expenses claimed under different heads against contractual income during the course of assessment proceedings.

8. The ld. DR stated that the view taken by ld. CIT(A) is not correct when the assessee failed to produce the bills and vouchers before the AO at the time of framing of assessment order. On the other hand, ld. AR stated that assessee has submitted that audited books of accounts, bank statements, details of sundry creditors, payment certificate, copy of 26AS were produced before the AO. Further, ld. AO has failed to point out any defects in the document furnished by the assessee. Therefore, the alleged addition made by AO on his guess work without having any material evidence on record. Therefore, the ld. CIT(A) rightly given relief to the assessee by deleting the addition in the hands of assessee. The ld. AR also stated that in earlier year ITAT Patna bench in the case of assessee for A.Y. 2007-08 directed the assessing officer to apply net profit @ 6% on gross receipt subject to the income declared in the return of income. Hence, he prayed that in present case of assessee returned income is Rs. 50,15,861/- which is much more higher than the 6% of the gross receipt as made by the assessee itself. Therefore, the ld. CIT(A) rightly deleted the alleged addition made by the AO in the hands of assessee.

9. We after hearing the rival submissions of the parties and perused the material available on record find that while passing the assessment order, the ld. AO estimated the profit @ 8% on the trading receipt of the assessee which is without having any material evidence on record. The ld. CIT(A) also while allowing appeal of the assessee has stated that relying on the judgment of ITAT Patna Bench as in the case of assessee for the A.Y. 2007-08 where Tribunal directed the assessing officer to apply net profit @ 6% on gross receipt subject to the income declared in the return of income by the

assessee. As in the present case, assessee has declared returned income is Rs. 50,15,861/- which is much more higher than 6% of gross receipt and ld. CIT(A) correctly deleted the alleged addition made by the AO. We, therefore, do not find any infirmity in the order passed by the ld. CIT(A) deleting addition of Rs. 19,18,500/- made in the hands of assessee. In terms of our above findings, ground taken by revenue is hereby dismissed.

10. Ground no. 3 is general and consequential in nature need not required to be adjudicated.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 03.04.2024

Sd/-

Sd/-

(Dr. MANISH BORAD)
ACCOUNTANT MEMBER

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 03.04.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: DCIT, Circle-1, Muzaffarpur.
2. The Respondent: M/s. R.P. Rai Estate Pvt. Ltd.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata