

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'G' NEW DELHI)**

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 2105/Del/2019, (A.Y. 2015-16)

Sterling Associates, Plot No. 32, Sector-18, Gurgaon PAN: ABIFS6373H	Vs.	ACIT Circle 4(1) Gurgaon, Haryana
Appellant		Respondent

Assessee by	Shri Salil Kapoor, Adv & Sh. Tarun Chanana, Adv
Revenue by	Shri Anuj Garg, Sr. Dr

Date of Hearing	12/03/2024
Date of Pronouncement	10/04/2024

ORDER

PER YOGESH KUMAR, U.S. JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals) Delhi ["Ld. CIT(A)", for short], dated 10/01/2019 for the Assessment Year 2015-16.

2. Grounds of the Assessee are as under:-

"1. That on the facts, the Ld. CIT (A) has erred in confirming the Ld. AO 's action of treating income from house property, amounting to Rs.4,12,77,280/-, as business income without any reasonable ground.

2. *That on the facts and circumstances of the case and in law, the CIT (A) has erred in enhancing the income of the assessee by disallowing interest expenditure of Rs. 1,06,28,970/-on housing loan without affording any opportunity to the assessee.*
3. *That the order of the CIT(A) is bad in law and on the facts of the case.*
4. *That we be allowed to alter, amend or add fresh grounds of appeal at the time of hearing.*
5. *The appellant prays that the additions made be deleted.”*

3. Brief facts of the case are that the Assessee is a partnership firm established in the year 2006 with an objective of carrying business of providing infrastructural facilities, renting, job work etc. The Assessee owned a constructed building at Plot 32, Sector-18, Gurgaon and has let out the same to different industrial units and had income from rental and maintenance charges. The return declaring income of Rs. 1,84,90,550/- was filed on 21.03.2016, income shown by the Assessee under various heads in the return filed by the assessee are as under:-

	<i>Amount (in INR)</i>	<i>Shown in the ITR under the head</i>
<i>Rental Income</i>	<i>4,12,77,280</i>	<i>Income from House Property</i>
<i>Maintenance charges</i>	<i>47,147</i>	<i>Business Income</i>
<i>Balance written back</i>	<i>2,25,425</i>	<i>Business Income</i>
<i>Interest Income</i>	<i>79,79,995</i>	<i>Income from other sources</i>

3.1 The A.O noted that all the parties to whom the properties had been rented were related parties and pointed out that as per the partnership deed, the Assessee is engaged in the business of providing infrastructure facilities and renting, therefore, the A.O asked the Assessee to explain why the income shown by the Assessee under the head House Property may not be taxed as business income. The Assessee replied by way of written reply. After considering the Assessee's submission, the A.O held that the income of the Assessee was taxable as 'business income' and accordingly recomputed the income shown by the Assessee as under:-

Income

Total Receipts	: Rs. 4,12,77,280/-
Maintenance Plus other income	: Rs. 2,25,425/-
Total Income	: <u>Rs. 4,15,02,705/-</u>

Expenditure (allowable)

Insurance	: Rs. 8,07,727/-
Professional fee	: Rs. 2,25,000/-
Conveyance	: Rs. 28,650/-
Audit fee	: Rs. 20,000
Other expenses	: Rs. 54,765/-
Interest	: Rs. 1,06,28,970/-
Depreciation	: Rs. 75,70,961/-
Total Expenses	: Rs. 1,94,16,694/-
Net Profit	: Rs. 2,20,86,014/-

3.2 Aggrieved by the assessment order dated 23/12/2017, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 10/01/2019, dismissed the Appeal filed by the assessee and also enhanced the income of the assessee by disallowing interest expenditure of Rs. 1,06,28,970/- on the claim of housing loan. Aggrieved by the order of the Ld. CIT(A) the assessee preferred the present appeal on the grounds mentioned above.

4. The Ground No.1 is regarding the addition of Rs. 4,12,77,280/- treating the same as 'business income'. During the year under consideration, the assessee declared rental income of Rs. 4,12,77,280/- under the head 'income from house property'. The Ld. A.O. made addition by treating the rent receipt as business

receipt and taxed the same under the head of 'income from business and profession' instead of 'income from house property'.

5. The Ld. AR submitted that the assessee owns building that has been let out to various Companies for the past many years and the assessee earned rental income of Rs. 4,12,77,280/-in the year under consideration. The assessee shown the said income from 'income from house property' and the same has been accepted by the Department for A.Y. 2009-10 to 2014-15 and the very same issue has been dealt by the Assessing Officer for A.Y. 2013-14 and completed the assessment u/s. 143 (3) of the Act accepting the contentions of the assessee.

6. It is the case of the Revenue/ Ld. DR that in the object clause of the partnership deed, it is mentioned that the main object is to engage in business of providing infrastructure facilities and renting. It is also mentioned the fact that the assessee receives the maintenance charges apart from the agreed lease/ rent from the tenants. Further the Assessee is recovery the maintenance charges in addition to the monthly rent according treated the said income

as 'income from Business and Profession'. Therefore, relying on the orders of the lower authorities, sought for dismissal of the ground No.1.

7. We have heard the parties perused the material available on record.

8. It can be seen from the record that right from Assessment Year 2009-10 to 2014-15, the assessee had been showing the rental income as 'income from house property' and the same has been accepted by the Department. To substantiate the said claim, the assessee produced the copy of the acknowledgement of return of income and computation of income for the Assessment Year 2009-10 to 2014-15. Apart from the same, even in the Assessment Year 2013-14 the case of the assessee has been completed scrutiny vide order dated 15/04/2015 passed u/s 143(3) of the Act, there has been no change in the circumstances during the year.

9. It is also found that a specific query in regard to the issue of 'income from house property' has been raised by the A.O. in

Question No. 3 in the notice dated 15/04/2015 issued u/s 142(1) of the Act for Assessment Year 2013-14 and the assessee filed a reply dated 29/02/2016 which has been duly accepted by the A.O., and the returned income of the assessee for Assessment Year 2013-14 has been accepted. It is the case of the assessee that the assessee has never provided any kind of maintenance service to the tenant during the year as well as in the past years, further, even the maintenance was received in lieu of rent and the maintenance has always been offered under the head 'income from house property' and no systemic or organic activity of maintenance is being undertaken by the assessee. Further, contended that the Department has always accepted the maintenance income as income from house property as the assessee has never provided any service to the tenant and of the maintenance cost was borne by tenant only. The Ld. Assessee's Representative has also provided details of maintenance recorded from the tenant in form of a chart to contend that the assessee had made expense of Rs. 54,760/- for lift maintenance and same has been recovered from the tenant and the TDS has been deducted by the tenants on the rental income of the assessee including the maintenance charges. Considering the

above facts and circumstances, we find error in the approach of the Lower Authorities in treating the said income under the head of 'income from business and profession'. It is well settled law that if the assessee is not engaged in providing systematic or organized activity of providing services to the occupiers of shops/stalls, then it will not constitute the receipt from them as 'business income'. For the said proposition we rely on the Judgment of Hon'ble Apex Court in the case of Raj Dadarkar and Associates Vs. ACIT, Central Circle, 46, (2017) 394 ITR 592(S.C.) By considering the above factual matrix and relying on the judgment of the Hon'ble Supreme Court in the case of Raj Dadakar and Associates (supra) we will allow the Ground No. 1 of the assessee and delete the addition.

10. Ground No. 2 is regarding enhancement of the income of the assessee by disallowing interest expenditure of Rs. 1,06,28,970/- on housing loan. During the course of the assessment proceedings, the A.O. observed that the assessee had given loans and advance which were showing outstanding to the tune of Rs. 20,92,49,867/-. The A.O. noted that the assessee debited incurred interest expense of Rs. 2,12,57,942/- to the Profit and Loss Account on account of

borrowing from India Bulls Finance Ltd. and out of the same, interest expenditure of Rs. 1,06,28,971/- had been allocated to interest on housing loans and claimed as expenditure against rental income. The A.O. noted that out of the loan and advance the interest income was shown only from M/s ISA Estate Pvt. Ltd. amounting to Rs. 79,79,995/- against which interest expenses of the same amount was also claimed. The Assessing Officer after examining the issue of interest expenses of Rs.1,06,28,970/- not made any addition.

11. In the first Appeal, it is observed by the Ld. CIT(A) that while computing the total income of the assessee no addition was made by the A.O, therefore, the Ld. CIT(A) vide office letter dated 25/10/2018 called for certain details. On 10/12/2018, the Ld. CIT(A) issued notice of enhancement and further the Ld. CIT (A) held that in spite of repeated opportunities there was no compliance by the assessee and was of the opinion that the assessee has failed to justify the claim of interest expenditure of Rs. 1,06,28,971/- against income from rental and maintenance

charges. The relevant portion of the order of the Ld. CIT(A) are as under:-

“3.14 In spite of repeated opportunity there was no compliance. It is evident from the facts of the case and the details discussed above, that the appellant has failed to justify the claim of interest expenditure of Rs. 1,06,28,971/- against income from rental and maintenance charges. It is therefore evident that the secured loans of Rs. 22,70,97,447/- Taken by the appellant on which interest expenditure of Rs. 2,20,00,870/- has been claimed have been used by the appellant for giving interest free advances as per details in Kara my letter dated 10/12/2018 as reproduced on page 8. These interest free advances are not related to earning of rental income and maintenance charges. The interest expenditure claimed of Rs. 1,06,28,971/- claimed against rental income is therefore not allowable. This amount is accordingly disallowed and the income of the assessee is enhanced accordingly. Penalty proceedings u/s 271(1)© are also initiated for furnished inaccurate particulars of income in this regard.

12. It is the case of the Assessee that during the assessment proceedings A.O. accepted the contentions of the Assessee and did not draw any adverse inference on the above issue. The Ld. Assessee's Representative has also drawn our attention to the letter dated 22/12/2017 produced at Page No. 51 to 53 of the Paper Book and letter dated 20/11/2017 produced at page No. 73 to 75 of the PB (ii). Thus, submitted that the Ld. CIT(A) has committed

error in observing that no explanation has been given by the Assessee on the issue when the issue forms part of the Assessment order, therefore, sought for allowing ground No.2 of the assessee.

13. The Ld. DR relying on the order of the Ld. CIT(A) submitted that as the Assessing Officer has not made any addition though the assessee have not submitted any details and the documents, therefore, Ld. CIT(A) rightly made the enhancement which requires no interference by the Tribunal.

14. We have heard the parties and perused the material. During the assessment proceedings the Assessing Officer issued notice u/s. 142(1) of the Act to the assessee on the issue of interest expenses. The assessee filed reply to the said notice vide letters dated 21.12.2017 and 20.11.2017, which are produced at page No.51-53 of the paper book 1 and 73-75 of paper book 2 respectively. The Ld. CIT(A) made enhancement on the ground that the assessee has failed to justify the claim of interest expenses. The said observation of the Ld. CIT(A) is contrary to the material placed before us. The Ld. Assessing Officer has specifically rise the

issue of interest expenditure and the assessee had produced several documents along with the submission which has been considered by the Assessing Officer and accepted the contention of the assessee. The Ld. Assessing Officer has reproduced the contentions of the assessee at page No.3 of the Assessing Order and has not drawn any adverse inference, therefore, the findings of the Ld. CIT(A) is erroneous. The Hon'ble High Court of Karnataka in the case of CIT Vs. Sridev Enterprises reported in 192 ITR 165 (Kar.) observed that outstanding due on the first day of the accounting year is the amount that stood outstanding on the last day of the previous accounting year, therefore, its nature and status cannot be different on the 1st day of the current accounting year, from its nature and status as on the last day of the previous accounting year. Considering the above facts and circumstances of the case, we are of the opinion that the Ld. CIT(A) has committed error in making enhancement income of the assessee by disallowing interest expenditure of Rs.1,06,28,970/- on housing loan. Accordingly, we allow ground No.2 of the assessee and delete the enhancement made by the Ld. CIT(A).

15. In the result, the Appeal of the Assessee is allowed.

Order pronounced in the open court on 10th April, 2024

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:- 10.04.2024

*R.N, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI