

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 765/JPR/2023
निर्धारणवर्ष/Assessment Year : 2018-19

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| Assistant Commissioner of Income Tax, Jaipur. | बनाम Vs. | U R Investments 80/82, Madayam Marg, Mansarovar, Jaipur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADFU0728Q | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओरसे/ Assessee by : Shri R.K. Bhatra (C.A.)
राजस्व की ओरसे/ Revenue by: Shri Anoop Singh (Addl. CIT) (V.H.)

सुनवाई की तारीख/Date of Hearing : 25/04/2024
उदघोषणा की तारीख/Date of Pronouncement : 25/04/2024

आदेश/ORDER

PER: NARINDER KUMAR, J.M.

This appeal is by the Income Tax Department. The Department is feeling aggrieved by order dated 19.10.2023 passed by Learned ADDL/JCIT(A)-1, Ahmedabad. Thereby the appeal filed by U R Investment- assessee, pertaining to assessment year 2018-19 stands allowed. Learned CIT(A) observed that adjustment made by CPC, Bangluru vide order dated 03.09.2019 to the tune of Rs. 1,93,52,505/- was not required. Accordingly,

Learned CIT(A) directed the Assessing Officer to reduce the income of Rs. 1,93,52,505/-, and further that interest be charged u/s 234B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), after deleting addition of the said amount.

2. As available from the record, the facts, in brief are that the assessee-respondent herein, a partnership firm, filed return of income for the assessment year 2018-19 showing income of Rs. 93,49,585/-. The designated authorities of CPC, Bangluru adjusted the above said amount of Rs. 1,93,52,505/- while observing that the said amount was income of the assessee from business or profession.

The assessee claims itself to be a partnership firm engaged in investment in house properties, and that, as such, it has been deriving rental income from, and income on sale of, house property. As per return of income for the year under consideration, the assessee declared total income of Rs. 3,49,585/- considering income of Rs. 1,01,63,030/- as income from house properties, and a sum of Rs. 6,083/- by way of interest on IT refund. From the income from house properties, the assessee claimed set off brought forward loss to the tune of Rs. 8,19,528/-.

Grievance of the assessee before Learned CIT(A) was that CPC, Bangluru while processing return of income, vide order dated 03.09.2019

accepted the declared income, but, at the same time, made an addition of Rs. 1,93,52,505/- as income from business or profession, by depicting the total receipt amount of Rs. Rs. 1,93,58,588/-, even though a sum of Rs. 6,083/- was deducted was there from towards interest on IT refund.

In brief, the assessee challenged the assessment order whereby its total income was determined at Rs. 2,87,02,090/- as against declared income of Rs. 93,49,585/-

3. As noticed above, Learned CIT(A) accepted the claim of the assessee, in the manner indicated above, and as such, the Department is in appeal.

4. Arguments heard. File perused.

5. It may be mentioned here, in the course of arguments, Ld. AR for the assessee presented copies of certain documents, firstly, on 18.04.2024 and then on 25.04.2024, in support of submissions put forth by him during hearing on merits.

6. The first contention raised by Id. AR for the assessee is that having regard to the instructions pertaining to mandatory limits as regards "tax effect", this appeal is not maintainable.

On the other hand, Id. DR representing the department has submitted that instructions issued by CBDT circular as regards filing of appeal and tax

effect, are internal instructions, and as such, it cannot be said that the appeal is not maintainable. He has further submitted that the appeal should be decided on merits, and not only on this technical point raised on behalf of the assessee.

7. At this stage, the relevant instructions as contained in CBDT Circular No. 17 of 2019 dated 08.08.2019 need to be reproduced for ready reference. Same read as under:-

“Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation.

Circular No. 3/2018 dated 11th July 2018 has been replaced by Circular No. 17/2019 dated 8th August 2019 to enhance Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court for reducing litigation.

| <i>Appeals/SLPs in Income-tax matters</i> | <i>Monetary Limit (Rs.) (previous limit)</i> | <i>Monetary Limit (Rs.) (Revised Limit)</i> |
|---|--|---|
| <i>Before Appellate Tribunal</i> | <i>20,00,000</i> | <i>50,00,000</i> |
| <i>Before High Court</i> | <i>50,00,000</i> | <i>1,00,00,000</i> |
| <i>Before Supreme Court</i> | <i>1,00,00,000</i> | <i>2,00,00,000</i> |

- The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more*

*than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit. **No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit.***

- *Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit.*
- *In case where a composite order/ judgment involves more than one assessee, each assessee shall be dealt with separately."*

8. In view of the specific instructions issued by CBDT, we find merit in the contention raised by Id. AR for the assessee that having regard to the monetary limits, this appeal on behalf of the Department feeling aggrieved by the impugned order passed by Learned CIT(A) in favour of the assessee, should not have been filed.

On merits

9. As noticed above, the claim of the assessee from the very beginning is that said firm is engaged in the business in house properties and deriving rental income therefrom. While challenging the addition of Rs. 1,93,52,505/- to the income, the assessee claimed before Learned CIT(A) that the said income being from house properties, it was entitled to claim of deduction u/s 24(a) of the Act i.e. to the tune of Rs. 58,06,576/-. In addition

to the said deduction, deduction to the tune of Rs. 33,85,647/- was also claimed by the assessee towards interest paid.

In this manner, the assessee had computed its income from house properties at Rs. 1,01,63,030/-. However, the assessee offered income to the tune of Rs. 93,43,502/- for taxation while claiming the set off as regards a sum of Rs. 8,19,528/- due to brought forward loss.

10. Learned CIT(A) found that designated authorities of CPC added the income of Rs. 1,93,52,505/- to the business income of the assessee, even though the assessee had already considered the said income as income from house properties. In this satiation, Learned CIT(A) was of the view that there was no need for addition of Rs. 1,93,52,505/- again to the income of the assessee.

The Ld. CIT(A) clearly observed that material available on record revealed that no business was done by the assessee, and further that the assessee had prepared only profit and loss Account.

11. The only submission put forth by Id. DR is that the Assessing Officer, by making the above said addition, did not change the head of the income.

12. Having regard to the return of income furnished by the assessee, we find that Ld. CIT(A) rightly observed that the assessee having shown its income as income from house properties, there was no need for addition of

Rs. 1,93,52,505/- again to the income of the assessee. The table available at page 2 of the written submission furnished on behalf of the assessee depicts the computation of income, details of the house property, the gross annual rent received in respect of each immovable property, the amount of deduction claimed u/s 24(a) of the Act and the amount of interest paid but claimed as deduction, and thereby specifying that net income assessable under the said head income i.e. income from house properties as Rs. 1,01.63,030/-.

13. Taxability of income as house property provides deduction of 30% of the income along with a deduction on interest paid on borrowed capital for the purposes of acquisition, construction, repair, reconstruction, etc.

When the income is taxed as profit or gains from Business or profession, any expenditure laid out or expended wholly and exclusively for the business of leasing shall be allowed as a deduction for tax purposes.

At times, leasing it out may be done by an assessee, apart from being its owner, as a business or part of a "business. Significant aspect to decide this issue would be the nature of the activity of the assessee and the nature of the operations in relation to the same.

For describing certain income as "business income," the activity or activities which are actually carried out by the an assessee need to be in

consonance with its main object. And, main object can be gathered from the constitution documents like Memorandum of Association or Articles of Association, in case of a company, or from the partnership deed, in case of a firm.

In this regard, reference may be made to decisions in Chennai Properties & Investments Limited v. CIT, [2015] 373 ITR 673 (SC) ; Karanpura Development Co. Limited [1962] 44 ITR 362 (SC) and Rayala Corporation (P.) Limited v. ACIT, 2016] 386 ITR 500 (SC).

Even, in the case of Raj Dadarkar & Associates v. ACIT, Civil Appeal Nos 6455-6460 of 2017, Hon'ble Apex Court has held that apart from relying on the object clause, the assessee-taxpayer would be required to produce or refer any other material to show the conduct of activities as per its constitution documents.

In its circular no. 16/ 2017 dated 25 April, 2017, CBDT clarified that the income from letting out of premises/ developed space along with other facilities in an industrial park/ SEZ is to be charged to tax under the head PGBP and accordingly guided the department in not filing any appeals on this issue and to withdraw/ not press upon appeals already filed.

Herein, the assessee has submitted copy of partnership deed and we have gone through its contents.

14. In absence of any material from the side of the Department, there is no merit in its claim to support the addition of Rs. 1,93,52,505/- as “ income from business or profession”, as well as against the material made available by the assessee which includes copy of deed of partnership revealing the object of the partnership firm, and also copy of previous return in the assessment year i.e. 2017-18 as well as copies of returns for the subsequent assessment years 2022-23 & 2023-24. The Department has also not brought on record of any material to suggest that the return of income furnished previously for the assessment year 2017-18 under the same head i.e. income from house property, was not accepted.

Result

15. In view of the above discussion, finding no illegality or irregularity in the impugned order, present appeal by the Department challenging the impugned order deserves to be dismissed. Accordingly, same is hereby dismissed.

Order pronounced in the open court on 25/04/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 25/04/2024

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

***Santosh**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- ACIT, Jaipur.
2. प्रत्यर्थी / The Respondent- UR Investments, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 765/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar