

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI**  
**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.445/MUM/2024**  
**Assessment Year: 2011-12**

The Manjri Stud Farm Pvt. Ltd., 42/44, Shapoorji Pallonji Centre, Minoo Desai Marg, Colaba, Mumbai - 400 005 (PAN : AAAC1947J)	Vs.	Deputy Commissioner of Income Tax, Circle 2(2)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Ketan Ved, CA  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 11.06.2024  
Date of Pronouncement : 21.06.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058433458(1), dated 04.12.2023 passed against the assessment order by Additional Commissioner of Income Tax, Range-2(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 24.03.2014 for Assessment Year 2011-12.

2. Grounds taken by the assessee are reproduced as under:

***"1:0 Re.: Disallowance of amortized portion of brokerage fees:***

*1:1 The Commissioner of Income-tax (Appeals) National Faceless Appeal Centre ["CIT(A) - NFAC"] has erred in disallowing the amortized portion / instalment of brokerage fees disallowed in the earlier years.*

1:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the Appellant is entitled to a deduction of the amortized portion of brokerage fees disallowed in the earlier years and the CIT(A) NFAC ought to have held as such.*

1:3 *The Appellant submits that the Assessing Officer be directed to allow the amortized portion of the brokerage fees and to re-compute its total income accordingly.*

**2:0 Re.: Non- granting of depreciation on service apartments - Rs. 33,74,767/-:**

2:1 *The CIT(A) NFAC has erred in confirming the disallowance of the depreciation claimed by the Appellant on the service apartments which were ready and available for use during the year under consideration.*

2:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, depreciation on the service apartments ready and available for use during the year is deductible while computing its total income and the CIT(A)-NFAC ought to have held as such.*

2:3 *The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income accordingly.*

3. There are two grounds of appeal raised by the assessee. First ground relates to disallowance of amortized portion of brokerage fees. In this respect, Ld. counsel for the assessee at the outset submitted that an order u/s. 154 of the Act has been passed on 22.12.2014, whereby contention of the assessee has been accepted by the Ld. Assessing Officer to allow the amount of amortized brokerage fees claimed by the assessee. This being an undisputed fact, the ground raised by the assessee has become infructuous. Nothing objectionable was raised by the Ld. Sr.DR in this respect. Accordingly, ground No. 1 raised by the assessee is dismissed as infructuous.

4. In respect of ground No. 2 relating to non-granting of depreciation on service apartments amounting to ₹ 33,74,767/-, Ld. Assessing Officer observed that the assessee owns a building which is being used as service apartment. Rental income from such service apartments has been offered under the head 'Income from house property'. Therefore, according to him no depreciation is allowable on the building

used as service apartment since depreciation u/s.32 can only be claimed for the business asset being used for the purpose of business. Aggrieved, assessee went in appeal before Ld. CIT(A).

5. From para 4 of the order of Ld. CIT(A), Ld. counsel pointed out certain mistaken facts noted therein relating to certain TDS deduction details which did not relate to the assessee. Ld. CIT(A) has mentioned several dates of hearing fixed in the case most of which fell during the course of pandemic of COVID-19. Ld. counsel submitted that adjournment applications were filed before the Ld. CIT(A) wherein it was stated that this is a recurring issue and is connected to the ground of appeal raised by the assessee in its appeal for Assessment Year 2010-11 which is pending for adjudication for want of remand report owing to certain additional evidences filed by the assessee. Under these circumstances it was requested by the assessee to adjourn the hearing in the present case until the disposal of appeal for Assessment Year 2010-11. Ld. counsel also stated that submission made by the assessee vide letter dated 07.02.2017 has also not been considered while disposing the appeal of the assessee. Thus, disregarding the request made by the assessee, Ld. CIT(A) disposed of the appeal *ex parte*.

6. Ld. counsel thus submitted that for the purpose of meritorious adjudication of this ground No. 2 the matter may go back to the file of Ld. CIT(A). He also stated that similar issue for subsequent years is pending before the Ld. CIT(A) and therefore this issue may be taken up simultaneously with those appeals. On this prayer, Ld. Sr.DR had no objections.

7. We have heard both the parties and perused the material placed before us. We note that assessee had made request before the Ld. CIT(A) by filing an adjournment application dated 15.09.2022 explaining its case that recurring issue on similar grounds is pending

for adjudication in Assessment Year 2010-11 for want of remand report from the Assessing Officer. Also, assessee had made its submissions vide letter dated 07.02.2017 which has not been considered by the Ld. CIT(A) while dismissing the appeal *ex parte*. Considering these facts on record and the material before us we are inclined to accept the prayer made by the Ld. counsel to remit the matter back to the file of Ld. CIT(A) for *de novo* meritorious adjudication of ground No. 2 raised before us after taking into consideration submissions made by the assessee. Needless to say, that assessee be given reasonable opportunity of being heard to make any further submission in support of its claim. We also direct the assessee to be diligent in attending the hearings fixed by the Ld. CIT(A) for meritorious and expeditious disposal of the issue before him. Accordingly, ground No. 2 raised before us is allowed for statistical purposes. Accordingly, appeal of the assessee is partly allowed for statistical purposes.

8. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 21 June, 2024

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 21 June, 2024***

MP, Sr.P.S.

**Copy to :**

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai