

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 131/MUM/2024 : A.Y. : 2014-15

Shreya Enterprises Vs. Assistant Commissioner of
15, Prince Towers, L.B.S. Marg, Income Tax -27(3), Mumbai.
Ghatkopar (West), Mumbai 400 086. (Respondent)
PAN : AARFS7909M (Appellant)

**Appellant by : Shri Bhupendra Shah
Respondent by : Shri Suresh D. Gaikwad**

**Date of Hearing : 16/05/2024
Date of Pronouncement : 19/06/2024**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 10-11-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of claim of service tax payment of Rs.31,52,520/- as business expenditure.

2. The facts relating to the above said issue are discussed in brief. The assessee is a builder and real estate developer. The assessee has got business income and also rental income. The assessee, being builder and developer, had constructed apartments and some of them remained unsold. The assessee had

rented out its unsold apartments and earned rental income. In the earlier years, the assessee had declared rental income as part of its business receipts. However, during the year under consideration, the assessee declared rental income under the head 'Income from house property'. The original assessment for this year was completed by the AO u/s 143(3) of the Act. Later it was noticed that the assessee has claimed Service tax payment of Rs.31,52,520/- relating to rental income as business expenditure. It was further noticed that the above said service tax was related to the rental income of the earlier years. Since the service tax payment referred above did not relate to the business income declared by the assessee during the current year, the AO came to the conclusion that the claim for deduction of service tax payment was wrongly allowed and it has resulted in escapement of income of AY 2014-15. Accordingly, he reopened the assessment by issuing notice u/s 148 of the Act.

3. During the reassessment proceedings, it was noticed that the demand for payment of Service tax was raised upon the assessee by the Service tax department in respect of the rental income earned by it in the earlier years. It was noticed that the assessee has settled the above said liability under VCE scheme (voluntary settlement scheme) introduced by the Government of India by paying a sum of Rs.31,52,520/-. As noticed earlier, the assessee had offered rental income under the head "Income from Business" in the prior years and it is the case of the assessee the AO had accepted the same. We also noticed that, during the year under consideration, the assessee has offered the rental income under the head "Income from House Property".

4. The assessee contended before the AO that the service tax paid by the assessee was related to the rental income of the earlier years, which were

offered under the head 'Income from Business'. Hence it should be allowed as deduction as a business expenditure, even though the rental income was offered under the head 'Income from House Property' during the year under consideration.

5. The AO did not accept the above said contentions of the assessee. He drew support of the following legal principles:-

(a) When a receipt is taxable under a particular head of income under the Income tax Act, then the deductions that are statutorily prescribed under the Act can only be allowed. In this regard, the AO took support of the decision rendered by ITAT in the case of Township Real Estate Developers (India) P Ltd vs, ACIT (2012)(21 taxmann.com 63)(Mum).

(b) The assessee has offered rental income of the year under the head 'Income from House Property' and the provisions of sec.23 and 24 of the Act govern the deductions allowable under this head. Service tax is not an item of deduction prescribed under these sections. In any case, the impugned service tax liability also does not relate to the rental income earned during the year under consideration.

(c) The assessee has claimed the aforesaid service tax amount of Rs.31,52,520/- as a business expenditure u/s 37 of the Act. However, corresponding income was not offered under the head business in order to allow such a claim. When the assessee is offering income under the head 'Income from House Property', then the assessee could not claim deduction relating to rental income as business expenditure.

Accordingly, the AO disallowed the claim of the assessee. The Ld CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal.

6. The Ld A.R submitted that the assessee had earned rental income from unsold stock of apartments build by the assessee and the same was offered as its 'business income' in the earlier years, which was also accepted by the AO. The impugned Service tax liability pertained to those rental income only. However, the assessee had disputed the demand raised by the Service tax department. Subsequently, the assessee chose to settle the liability under VCE scheme announced by the Government of India. Hence, on the date of filing of forms under VCE scheme, the said service tax liability got crystallized and hence the same should be treated as current year's expenses. Accordingly, he submitted that the claim of the assessee is allowable as business expenditure. Alternatively, he submitted that, as per the provisions of sec.43B of the Act, the service tax should be allowed as deduction in the year of payment only. He submitted that for the purpose of allowing deduction u/s 43B of the Act, there is no requirement that the corresponding income should have been declared in the year of payment. Accordingly, he contended that the tax authorities are not justified in disallowing the claim of the assessee.

7. The Ld D.R submitted the impugned service tax payment is related to rental income of the assessee and during the year under consideration, the assessee has declared the rental income under the head 'Income from House Property'. The impugned service tax payment is not an item of expenditure statutorily prescribed under the Act as an item of deduction against property income. Further, it is also not related to the rental income earned by the assessee during the current year. He also submitted that the claim of the

assessee is not allowable as business expenditure, since under the Matching Principle, the expenditure is allowable only if the corresponding income is offered during the current year.

8. We heard rival contentions and perused the record. The admitted fact is that the impugned service tax liability paid by the assessee is related to the rental income earned by the assessee in the earlier years, i.e., it does not relate to the rental income declared by the assessee during the year under consideration. We notice that the business of the assessee is that of developing and construction of buildings. It is not the case of the assessee that its main business activity is that of construction of building and renting them out. As a builder, the assessee has exploited the unsold properties by renting it out.

9. When the business of the assessee is not that of construction and renting out of the properties, the rental income earned by it has to be statutory assessed under the head 'Income from House Property' only. Even though the assessee had offered rental income under the head 'Income from business' in the earlier years, yet the assessee, realizing its mistake, has offered the current year's rental income under the head 'Income from Houser property'.

10. We notice that the income under the head Income from House Property is computed as per the provisions of sec.23 to 27 of the Act. The deductions allowable against the rental income have been prescribed in sec.24 of the Act. There should not be any dispute that an assessee is not entitled to claim deduction of any other expenditure, if it is not prescribed in sec.24 of the Act. Admittedly, the service tax liability is not an item of expenditure prescribed in

sec.24 of the Act. Hence, the assessee could not claim the service tax amount paid by it u/s 24 of the Act.

11. The contention of the assessee is that the said claim should be allowed as business expenditure, since it had declared rental income of the earlier years under the head Income from business. With regard to the “matching principle”, it is contended that the service tax paid by it is allowable as deduction u/s 43B of the Act, even if the corresponding income was not offered as income. We are unable to agree with these contentions. Under the Income tax Act, rental income is required to be offered under the head “Income from House Property”. In the facts of the present case also, the assessee should have offered its rental income under the head “Income from House Property” in the earlier years also. In fact, upon realization of the error committed by it, the assessee itself has correctly offered the rental income under the head “Income from House Property” during the year under consideration.

12. It is well settled proposition of law that the Income tax Act would prevail over the accounting treatment given by the assessee in its books of account. Accordingly, merely because the assessee had offered the rental income under the head ‘Income from Business’ in the earlier years, it cannot change the statutory requirement of offering the rental income under the head ‘Income from House Property’. Hence the impugned service tax liability cannot be treated as relating to business income and in that view of the matter, we are of the view that the assessee cannot take support of the provisions of sec.43B of the Act also, as the said section is related to the computation of business income.

13. Accordingly, we are of the view that the tax authorities are justified in disallowing the claim for deduction of Rs.31,52,520/- relating to service tax liability paid by the assessee. Accordingly, we uphold the order passed by Ld CIT(A) on this issue.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 19th June, 2024.

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 19th June, 2024

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai