

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.197/Bang/2024
Assessment Years : 2018-19

Sri Venkateswara Developers, 51, Le Parc Richmonde, Richmond Road, Richmond Town, Bangalore-560 025.  <b>PAN – AAFFS 1671 N</b>	Vs.	DCIT Circle -7(1)(1) Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri S.Annamalai - Advocate
Revenue by	:	Ms Neha Sahay- JCIT DR

Date of hearing	:	27.06.2024
Date of Pronouncement	:	01.07.2024

**ORDER**

**PER SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER :**

The present appeal of the assessee is arising from the order passed by the NFAC, Delhi dated 08/12/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1058596316(1) for the assessment year 2018-19.

2. The assessee is a partnership firm, earning income from 'house property and other sources with regard to maintenance charges received from tenants and expenditure incurred for such maintenance. The assessee is assed to income tax with NFAC, Delhi. The assessee for

the assessment year 2018-19 filed return of income on 5/7/2018, admitting total income of Rs.23,25,75,820/-, which included Rs.14,18,58,808/- under "income from house property", Rs.6,30,38,931/- under "income from capital gains" and Rs.2,76,78,077/- under "income from other sources" including interest received on bank deposits. The notice u/s 143(2) & 142(1) of the Act were issued to the assessee calling for certain details. In response to the said notice, the assessee submitted all the required details and statements vide submissions vide dated 27/2/2020, 31/12/2020 and 17/2/2021.

2.1 Further, the AO issued show notice cause notice on 23/4/2021 proposing to make an addition of Rs.2,24,28,827/- by disallowing the expenditure claimed against income from other sources. The assessee filed objection on 25/4/2021 against proposed disallowance with clarifications with regard to expenditure incurred and claimed u/s 57 of the Act against income from other sources".

2.2 The AO without considering the explanations and clarifications furnished on the basis of audited financial statements and the computation of total income, has concluded the assessment by making the addition of Rs.2,24,28,927/- to the admitted income by disallowing portion of expenditure claimed in relation to income from other sources( Maintenance Charges), thereby assessing the income at Rs.25,50,04,647/- and subjecting the assessee to excess tax and interest of Rs.1,09,44,628/-.

3. At the time of hearing the Id. Counsel for the assessee took the Bench towards the additional grounds filed by assessee vide its application dated 5/2/2024. Ld Counsel fairly conceded that he would

not press these grounds and argue the merits of the case. Ld Counsel has also acknowledged the averment of not pressing the additional grounds by putting his signature on the application dated 05.02.2024.

4. In rest of the grounds, the solitary issue involved is the taxability of the amount of Rs.6,07,97,039/- being maintenance charges under the "Income from other sources"(IOS) or "Income from House Property(IHP). It is the cases of the Revenue this 6.07 Cr is to be taxed under the head IHP, as held by the Id. CIT(A) and assessee deserves only 30% of deduction on this amount. On the other hand counsel for the assessee mainly contended that, considering the past history and the subsequent history of the assessee's case this amount is to be taxed under the head IOS and accordingly, expenses attributable to this amount may kindly be allowed in terms of the provision of sec. 57 of the Income-tax Act. Ld Counsel has relied on the following judgments for the proposition that Maintenance charges to be taxed under the head IOS and not IHP.

a) **Rayla Corporation Vs ACIT 142 taxman.com 581(Mad)**. Copy of the judgment is at Pg No- 19-21 of case law compilation.

b) **Tarapore & Com- 125 Taxman 446(Mad)**- Copy of the judgment is at Pg No- 17-19 of case law compilation

c) **DC Shah Vs CIT 1 Taxman 545(Kar)**

5 The Id.DR relied upon the orders of the authorities below.

6. After considering the rival submissions, we observe amount of Rs.6,07,97,039/-, claim to be maintenance charges, charged from the tenants for maintaining the lift, air conditioning, power back-up etc. We have perused the relevant clauses of the lease agreement and observed that these charges were for maintaining lift, air conditioning, power back-up etc. Which means they were not derived from any house rather the

same were linked to some amenities, mentioned herein above, in respect of leased premises. It is settled position of the law that whether an income to be taxed under the head of IHP or IOS or Business income it depends upon the facts of each case. There are so many aspects which would decide the head of taxability of an income under particular head. Here in this case, providing amenities to the lessee is not the main business of the assessee firm rather it is ancillary to its main business of assessee. It is also pertinent to note that assessee is not only providing services to his tenants rather providing services to those persons who are tenants of some other land lords. Perusal of **Page Number 294 of the Paper Book** would show that assessee has charged from such other persons who were not the tenants of assessee. Therefore in view of the facts and in the light of various decisions as referred above we are of the firm view that these maintenance charges are to be assessed under the head IOS( Income from other sources).

7. We observe that Id. CIT(A) while finalizing the appellate order, in para **6 of page no. 23** of the order, after referring to some of the clauses of the lease agreement has held that the maintenance charges are to be taxed under the head "income from house property". This observation of the CIT(A) in our view is not tenable and as he has wrongly interpreted the lease agreement clauses.

8. We further observe that in the past also the assessee has offered this amount for taxation under the head **IOS** and the AO, while framing the present assessment, has also assessed this amount under the head IOS. However, after taking average of expense incurred in last 2 years, the AO has estimated the quantum of expenses without any prudent basis. Findings are of the AO at page No.3 and 4 of the assessment

order. The AO has disallowed 10.44% of the total expenses claimed by the assessee.

9. In view of the above deliberations. We are of the view that the Id. CIT(A) has erred in changing the head of the maintenance charges from IOS to IHP. However, for considering the quantum of expenses to be allowed to the assessee, we restore the matter to the file of AO for examining afresh, in view of the fact that the AO has not granted enough time to the assessee for representing his case.

10. In view of the above, the appeal of the assessee is allowed in above terms, for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in court on 1<sup>st</sup> day of July, 2024

Sd/-

**(CHANDRA POOJARI)**  
Accountant Member

Sd/-

**(SHRI PRAKASH CHAND YADAV)**  
Judicial Member

Bangalore,  
Dated, 1<sup>st</sup> July, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore