

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA Nos. 118 & 125/Mum/2024
(A.Ys. 2016-17 & 2017-18)**

ACIT, Circle 4(3)(1) Aayakar Bhavan, M.K. Road, Churchgate Maharashtra – 400020	Vs.	Magnus Properties Private Limited Uniphos House, Madhu Park, 11 th Road, Khar(W) Maharashtra – 400052
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AADCM7520M		
Appellant	..	Respondent

**C.O. No. 49/Mum/2024
(A.Y. 2017-18)**

Magnus Properties Private Limited Uniphos House, Madhu Park, 11 th Road, Khar(W) Maharashtra – 400052	Vs.	ACIT, Circle 4(3)(1) Aayakar Bhavan, M.K. Road, Churchgate Maharashtra – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AADCM7520M		
Appellant	..	Respondent

Appellant by :	Mr. Nitesh Joshi
Respondent by :	H.M. Bhatt

Date of Hearing	16.05.2024
Date of Pronouncement	10.07.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

Both these 2 appeals filed by the revenue and cross objection filed by the assessee pertaining to assessment years 2016-17 & 2017-18 are adjudicated together by this common order.

ITA No. 118/Mum/2024

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the additions, without appreciating the fact that since the assessee has shown the property i.e. leased building as inventory in its books, the same is to be treated as stock in trade and any income derived there from has to be treated as income from business as not as income from house property?
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the additions, without appreciating the law as laid down in the case of *Neha Builders Pvt. Ltd. (2007)-164 Taxman 342 (Guj)*?
3. The appellant craves leave to amend or alter any ground or add new ground which may be necessary.”

2. Fact in brief is that return of income declaring total income of Rs.1,13,470/- was filed on 17.10.2016. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 18.07.2017. During the course of assessment the AO noticed that assessee has offered income from house property at Rs.2,03,76,210/- after claiming standard deduction of Rs.61,12,863/- and interest payable on borrowed capital of Rs.78,97,417/-. The assessing officer was of the view that since the lease property was shown as an inventory, therefore, rental income earned should have been shown as income from business and profession. The AO passed the order u/s 143(3) of the Act on 20.12.2018 and treated the rent income of Rs. 2,03,76,210/- as income from business and profession.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) following the decision of ITAT, Mumbai vide ITA No. 7011/Mum/2014 and ITA No. 836/Mum/2015 dated 30.10.2018 in the case of the assessee itself directed the AO to treat the income as income from house property.

4. During the course of appellate proceedings before us the ld. D.R supported the order of assessing officer.

5. On the other hand, the Id. Counsel submitted that similar issue on identical fact have been consistently decided in favour of the assessee by the ITAT in the earlier years, therefore, he has supported the order of CIT(A).

6. Heard both the sides and perused the material on record. The assessing officer has completed the assessment u/s 143(3) of the Act by treating the rental income shown by the assessee from the leasing of property as income under the head profit and gain of business and profession on the ground that assessee has shown the lease property as inventory in the balance sheet from which the rental income was earned. On perusal of the material placed in the paper book and finding of the Id. CIT(A) we notice that this issue is recurring in nature and in the earlier years the ITAT, Mumbai has decided the same issue in favour of the assessee by treating the rental income from the lease property as income under the head income from house property. The Id. CIT(A) has referred the decision of ITAT of earlier years in his finding. The relevant extract of the decision of CIT(A) is reproduced as under:

“5. FINDINGS & DECISOIN

5.1 I have considered the facts of the case and submissions made by the assessee It is seen form the facts available on record that the assessee is private limited company and is engaged in the business of real estate development and renting of immovable property The assessee filed its return of income on 17/10/2016 declaring total income of Rs.1,13,470/ the said return was processed by CPC u/s 143(1) of Income-tax Act, 1961. Subsequently, the case was selected for scrutiny through CASS During the course of assessment proceedings, the AO observed that the assessee has shown the leased property as an inventory in the Balance sheet from which rental income is earned and at the same time the income is offered for taxation under the head income from house property claiming standard deduction u/s 24(a) of the Act. After analysing the facts the case, the AO concluded the assessment proceedings u/s 143(3) of the Act on 20/12/2018 treating the income of Rs 2.03.76,210/- as business income and adding the same to the total income Aggrieved by the addition, the appellant filed appeal against the addition relying on various judgements.

5.2 From the material on record it is observed that the issue is recurring in nature from earlier A.Ys 2007-08 to 2011-12 and the matter has been decided in favour of the appellant on the basis of plethora of judgments the earlier first

appellate authorities while disposing off the appeals deleted the additions made and directed the AO to treat the rental income under the head "Income from House Property Subsequently, on further appeal by the department Hon'ble Tribunal Bench B vide ITA No.7011/Mum/2014 and ITA No 836/Mum/2015 dated 30/10/2018 dismissed the appeals raised by the department and decided the issue in favour of the assessee. The relevant portion of the decision is as under:-

"We have considered rival contention and perused the material on record from the facts on record it is understood that initially vide letter dated 25/03/2004 the HDFC bank has sanctioned a loan of Rs.15 Crores for construction of building Subsequently, the assessee has availed further loan of Rs. 7 Crores from HDFC Bank towards construction purpose. It is also a fact on record that the assessee had repaid the loan of Rs.6 Crores during the Financial Year 2005-06. Thus as on 31/03/2006 the assessee entered into a loan agreement with HDFC Bank for availing loan of Rs. 15,00,00,000/- was to be disbursed to the assessee in one lump sum and has to be acknowledged by the loan agreement itself. It is very much clear that the receipts of fresh loan of Rs.16,00,00,000/ was by way of adjustment of the earlier loan account Thus it is a clearly established fact that vide sanction letter dated 20/04/2006 the HDFC bank did not disburse any fresh loan to the assessee but the outstanding account out of the loan granted earlier to the assessee for construction of the building was converted into a fresh loan. That being the case there cannot be any doubt that the loan availed by the assessee was for the purpose of construction of building Hence, interest paid on such loan is allowable under section 24(b) of the Act. It is further relevant to observe. The AO has observed that the fresh loan sanctioned to the assessee vide letter dated 20/04/2006 was for working capital such fact is not forthcoming either from the sanction letter or from the agreement between the assessee and the Bank. Therefore, the conclusion reached by the AO is purely on conjectures and surmises. As regards the pre-payment charge are connected/attached to the loan availed by the assessee construction purposes Therefore, has to be considered as part of the cost of loan. Hence it is allowable as deduction under section 24(b) of the Act. In view of the aforesaid we do not find any reason to interfere with the decision of the learned CIT(A) on the issue Accordingly, the ground raised is dismissed."

6.0 Respectfully, following the judgment of Hon'ble ITAT, Mumbai in the appellants own case for A.Y 2007-08 and 2011-12. The AO is directed to treat the income as income from house property. Therefore, the grounds raised in appeal are allowed

7.0. Accordingly, the appeal of the Appellant for the AY 2016-17 is allowed."

7. It is evident from the decision of Id. CIT(A) as reproduced supra that the similar issue on identical fact has been consistently decided by the ITAT in favour of the assessee from assessment year 2007-08 to 2011-12. Following the decision of ITAT as elaborated in the finding of Id. CIT(A) as reproduced above we don't find any merit in the appeal of the revenue, therefore, the same stand dismissed.

ITA No.125/Mum/2024

8. As the facts and issue involved in this appeal of the revenue is similar to the ITA No.118/Mum/2024 as discussed supra in this order, therefore, applying the finding of ITA No. 118/Mum/2024 as mutatis mutandis this appeal of the revenue is also dismissed.

Cross Objection No. 49/Mum/2024

- “1. *The learned Commissioner of Income tax (Appeals), NFAC (CIT-A) erred in not adjudicating on ground of appeal relating to disallowance made by the Assessing Officer amounting to Rs.5,62,84,669/- on the ground that the said expenses are in nature of addition to fixed assets.*
2. *The CIT(A) erred in not adjudicating the ground of appeal relating to disallowance of deduction under section 80G of the Act amounting to Rs.5,00,000/-.”*

9. Fact in brief is that during the course of assessment proceedings u/s 143(3) of the Act for A.Y. 2017-18 from the profit and loss account the assessing officer noticed that assessee debited amount of Rs.5,62,84,699/- as repair and maintenance expenditure. On query, the assessee submitted that out of the total repair expenses an amount of Rs.4,65,72,195/- has already added back while computing the business income. However, the AO has not agreed with the submission of the assessee and disallowed the entire amount of Rs.5,62,84,669/- and added to the total income of the assessee.

10. The assessee filed the cross objection before the ld. CIT(A). However, the ld. CIT(A) has not given any finding on this issue contested by the assessee.

11. During the course of appellate proceedings before us the ld. Counsel referred the assessment order wherein AO mentioned the submission of the assessee that it had already added back a sum of Rs.4,65,72,195/-. However, without bringing on record any contrary material the AO has added the whole amount of repair and

maintenance. The Id. Counsel also referred the copy of statement of computation of total income filed in the paper book wherein the assessee has already added Rs.4,65,72,195/- pertaining to repair of building to the total income of the assessee. The Id. Counsel further submitted that remaining amount of Rs.97,12,504/- of repair and maintenance has been shown by the assessee as its income in the profit and loss account after recovering these expenses from the tenants. In support of his contention he referred copies of documents placed in the paper book.

12. On the other hand, the Id. D.R relied on the order of lower authorities.

13. Heard both the sides and perused the material on record. During the course of assessment the assessing officer noticed from schedule of other expenses that assessee has debited an amount of Rs.5,62,84,699/- as expenditure relating to repair and maintenance to building and disallowed the same by treating such expenditure as capital expenses without considering the submission of the assessee that it had already added back in the computation of income such expenses to the extent of Rs.4,65,72,195/-. We have perused the copy of computation of total income for previous year ended March 31st 2017, placed at page no. 1 of the paper book filed by the assessee demonstrating that assessee has already added an amount of Rs.4,65,72,195/- to its total income. Further we have noticed that remaining amount of Rs.97,12,504/- [5,62,84,699 (-) 4,65,72,195] pertaining to the repair and maintenance expenses has been shown as income under the head maintenance income in the profit and loss account for the year ended 31.03.2017 after receiving the same from the tenants. Considering the above facts and circumstances we find that action of the assessing officer for making the aforesaid disallowances is

unjustified, therefore, this ground of cross objection of the assessee is allowed.

Ground No. 2. Disallowance of deduction u/s 80G amounting to Rs.5 lac:

14. During the course of assessment the AO stated that assessee failed to explain the detail of donation of Rs. 10,00,000/- debited to the profit and loss account, therefore, the same was disallowed. In this regard the assessee has filed copies of detail of donations made to Socio Cultural Charitable Trust along with detail of registration no. given by the CIT(E) regarding u/s 80G donation. The assessee has also given detail of cheque no. and amount of donation paid to the aforesaid charitable trust as placed at page no. 37 of the paper book. The assessee has also filed copy of receipt dated 20.03.2017 received from the aforesaid charitable trust showing that a sum of Rs.10,00,000/- has been received from the assessee company and the same is eligible for deduction u/s 80G of the Act. The ld. Counsel also referred the decision of ITAT, Delhi in the case of Ericsson India Global Services (P) Ltd. Vs. DCIT, Circle 7(1) (2024) 160 taxman.com 599 (Delhi – Trib) wherein in respect of expenditure incurred towards C.S.R (Corporate Social Responsibility), it is held that donor is entitled for deduction u/s 80G in respect of donation made to the donee institution which are registered u/s 80G of the Act. The assessing officer has disallowed the claim of deduction u/s 80G of the Income Tax Act to the assessee without disproving the relevant supporting material submitted by the assessee as placed in the paper book. In the light of the above fact and findings, we direct the AO to allow the claim of deduction u/s 80G of the Act. The cross objection of the assessee is also allowed.

15. In the result, both the appeals of the revenue are dismissed and Cross Objection filed by the assessee is allowed.

Order pronounced in the open court on 10.07.2024

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 10.07.2024
Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.