IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “F” MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)

ITA No. 1583/MUM/2024
Assessment Year: 2009-10

M/s Mahalaxmi Engineering Company Pvt. Ltd., Mahalaxmi Engineering Estate Lady Jamshedji Cross Road No. 1, Mahim, Mumbai-400016. **PAN NO. AAACM 3986 C** **Appellant**	**Vs.**	ACIT Circle 7(2)(1), Room No. 126A, 1st Floor, Aayakar Bhavan, Mahirshi Karve Road, Mumbai-400020. **Respondent**

Assessee by	:	Mr. K Shivram
Revenue by	:	Ms. Rajeshwari Menon, Sr. DR

Date of Hearing	:	08/07/2024
Date of pronouncement	:	11/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 12.02.2024 passed by the Ld. Additional Commissioner of Income-tax (Appeals)-1, Coimbatore [in short ‘the Ld. CIT(A)’] for assessment year 2009-10, raising following grounds:

1. Under the facts and circumstances of the case and in law, the learned Assessing Officer erred by issuing an order that contradicts the facts and violates principles of equity and natural justice, demonstrating a lack of due diligence, rendering the order unsustainable and meriting abashment.

2. Under the facts and circumstances of the case and in law, the learned Assessing Officer failed to adhere to the directive issued by the Hon'ble ITAT B Bench Mumbai in order reference I.T.A. 5670/Mum/ 2014 dated 28/11/2017 for a re-examination, unjustifiably upholding the original assessment made under section 143(3) on 27.12.11.

3. Under the facts and circumstances of the case and in law, the learned Assessing Officer neglected the precedential facts established by the Hon'ble ITAT in prior years, impacting the integrity of the current assessment.

4. Under the facts and circumstances of the case and in law, the learned Assessing Officer erroneously classified Maintenance Charges totalling Rs. 1,10,04,000 as 'Income from House Property,' based solely on the comparison with the rental income of Rs. 44,29,855, which misinterprets the nature of such receipts.

5. Under the facts and circumstances of the case and in law, the learned Assessing Officer incorrectly deemed the amenities provided by the assessee to its tenants as integral to rental services, overlooking the distinct and specialised nature of these services beyond basic rental provisions.

6. The appellant contends that the omission to furnish separate agreements and detailed service provisions was inadvertent, and the belated submission of letters to confirm service agreements substantiates the claim for distinguishing the services rendered from routine rental agreements.

7. The appellant argues that the disallowed expenses are intrinsically linked to the delivery of specific services rather than general property maintenance, advocating for their full recognition as legitimate business expenditures, not confined to a proportion of rental income.

8. Under the facts and circumstances of the case and in law, the learned Assessing Officer improperly imposed interest under sections 234C and 234D of the Income Tax Act, overlooking the appellant's compliance circumstances.

2. Before us, the assessee filed following additional ground as under:

- *No Video Conference Hearing provided*

9. On the facts and circumstances of the case, the Appellant during the appellate proceeding vide letter dt. 12/09/2023 requested a video conference, however, NFAC (A) without considering the same passed the order on 12/02/2024. Therefore, the appellant was prevented from submitting a claim for the income earned from the rental income and expenditure claimed against the said income.

- *Not considering the documentary evidence*

10.On the facts and circumstances of the case, the Appellant during the assessment proceedings vide letter dt.28/11/2019 as Annexure B and in appellate proceeding vide letter dt. 12/09/2023 as Annexure D has submitted documentary evidence as separate agreement letters with each tenant, however, NFAC (A) without looking into these documents passed the order. Hence, the order passed by the NFAC is contrary to the facts mentioned in the order.

- *Not allowing normal business expenditure*

11.The Learned NFAC (A) erred in not allowing normal business expenditures like Audit Fees, Director's remuneration, and ROC filing fees without appreciating that the said expenditure incurred for the appellant for business activities. Hence, the same may be allowed as a deduction as business expenditure u/s.37 of the Income Tax Act, 1961.

3. Briefly stated, facts of the case are that the assessee company is owner of 'Mahalaxmi Industrial Estate' located at Mahim, Mumbai, and said building premises have been let out to various concerns on leave and license basis. The assessee company has also let out a portion of terrace of building to mobile service provider companies for installing antennas. During the year under consideration, the assessee company filed return of income, where in rental income of Rs.44.29 lakhs earned from the activity of letting out of the property was shown under the head 'income from house property' and income from providing services, maintenance and amenity to the let out property occupants amounting to Rs.1,10,04,000/- was shown under the head 'income from other

sources '. The receipt pertaining to antenna charges amounting to Rs.7,82,852/- was also shown under the head 'income from other sources'. The present appeal of the assessee is in second round of proceedings before us. In first round of proceedings, the Assessing Officer was of the view that expenses claimed under the head 'maintenance charges were actually relating to activity of letting out the property and therefore he clubbed the maintenance charges amounting to Rs.1,10,04,000/- under the head 'income from house property'.

4. On further appeal, the Ld. CIT(A) however, restricted the claim of the expenses claimed against maintenance charges receipts under the head 'income from other sources' and only allowed part relief to the assessee.

5. On further appeal by the assessee, the Income-tax Appellate Tribunal (In short the ITAT) restored the matter to the file of the Assessing Officer to be decided in view of the finding of the ITAT in the case of the assessee for assessment year 2006-07 and 2007-08. In compliance to the direction of the Tribunal in order in ITA No. 5670/Mum/2014 dated 28.02.2017, the Assessing Officer called for separate agreement in relation to letting out as well as maintenance charges. However, according to the Assessing Officer except copy of the assessment orders and order of the Hon'ble ITAT for AY 2006-07 and 2007-08 and 2003-04, no written submission had been filed

by the assessee before the Assessing Officer, therefore, he treated the entire income from maintenance charges under the head 'income from house property' as was done by the AO in first round of proceeding. In second round of proceedings, on further appeal , the Ld. CIT(A) apportioned the expenses claimed under the head 'maintenance charges' observing as under:

> *5.2 The AO in the order dated 24/12/2019 has given the following finding*
>
> > *i. In response, the assessee has filed itssubmission consisting of copies of Assessment orders for A.Y. 2006-07 & 2007 -08 and Hon'ble ITAT orders for A. Y.2006-07, 2007-08 & 2003-04. No writtensubmission has been filed in this regard.*
> >
> > *ii. As per the claim of the assessee, the Ld. CIT(A) had reversed the order ofthe Assessing Officer for A.Y. 2006-07, however, on perusal of the Ld. CIT(A)'s Order vide ref No. Appeal No. CIT(A)-12/ACIT.6 (3)/337/08-09 dated 12.03.2010, it has been observed that Ld. CIT(A) has restricted thedisallowance of expenditure made u/s 57(iii) of the Act to some extent on thebasis of services provided by the assessee company to its tenants. The assesseehas also not provided the two separate agreements as mentioned in the Hon'blelTAT's Order to this office.*
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> *5.3 Before the ITAT the Department has stated that the appellant has not filed copy of separate agreements and did not provide the details of services provided. The appellant did not file this before the AO in the set aside assessment proceedings and hence the AO repeated the addition in the original order as no fresh evidence is filed. He submitted that the Ld. CIT(A) has pointed out in this year that the assessee has failed to furnish separate agreement. The appellant has now filed certain letters issued by the appellant to the tenants requesting them to sign the letter as confirmation of the service agreements. These cannot be considered as an agreement.*
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> *5.4 The CIT(A) and ITAT for A.Y. 2006-07 & 2007 -08 has accepted the fact that the appellant is providing certain services and that the only question is whether there is duplication of expenses claimed, the notional expenses claimed under house property and the actual expenses debited to service charges accounted. The addition for the year is Rs 14,40,835/- (76,48,540-62,07,705) which is almost equal to 30% of rent accounted of Rs 44.29 lakhs(44.29*30%=13.29 lakhs). The*

AO has limited the expenses to 30% of Rs 1,10,04,000 at Rs 33,01,200/-. The major expenses are

> *Professional Fees 1,76,662 These expenses have been incurred against representation services in case of Income Tax purposes.*
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> *Repairs & Maintenance 14,86,385*
>
> *Salary (including directors' salary) 14,82,000*

*5.5 The CIT(A) and ITAT for A.Y. 2006-07 & 2007 -08 has accepted the AOs stand that the expenses claimed under the head other sources includes expenses incurred for rented property and the disallowance made by the AO is in order. The issue has reached a finality and the AO and appellate authority are bound to follow the decision of the ITAT. The finding of the AO that as no agreements are filed no services is rendered is also not correct and is against the finding of ITAT for earlier years. The disallowance of 100% expenses claimed and limiting it to the notional 30% by the AO is not correct. The finding of the AO that the rent is less than service charges and this is done intentionally to claim expenses and reduce income is correct. But any estimation of rent and reducing the service charges will have no effect on income if the expenses claimed under other sources is fully allowed. Hence the issue whether the rent decreased and service charges are increased intentionally to claim expenses and reduce income is not answered. The finding of the ITAT is that expenses claimed under the head other sources includes expenses incurred expenses for rented property and the disallowance made by the AO is in order has to be followed. The total notional expenses claimed is 30% of rent accounted of Rs 44.29 lakhs (44.29*30%=13.29 lakhs) only. The disallowance has to be figure less than this. The finding of the ITAT is that 50% of repairs, salary and security charges must be disallowed. The expenses under theses heads are*

> *Repairs & Maintenance 14,86,385*
>
> *Salary (including directors salary) 14,82,000*
>
> *Security Charges 7,06,291*

*5.6 The total disallowance in the order is less than 50% of this. But it is not clear that whether the disallowance in earlier years was higher or lesser than the notional expenses under House Property claimed. The disallowance cannot be more than the notional expenses under House Property claimed. Hence the addition is limited to 30% of rent offered as income accounted of Rs 44.29 lakhs (44.29*30%=13.29 lakhs) only. The AO may opt the correct figure as the working is approximate only. The appellant gets a partial relief.*

5.7. The appellant has requested for video hearing. The order of the ITAT is implemented as such and the appellate authority is bound to do

this. Hence there will be no change in situation even if video hearing is given. Hence video hearing is not granted and the order is passed."

6. Before us, the Ld. counsel for the assessee first addressed on the additional ground raised by the assessee and submitted that during the course of first appellate proceedings, the assessee sought for video conferencing, but, same has been denied by the Ld. CIT(A). He further submitted that separate agreement for letting out and maintenance charges with tenants was also filed before the Ld. CIT(A) as Annexure D along with letter dated 12.09.2023. However, same has not been considered by the Ld. CIT(A). The Ld. counsel for the assessee relied on the order of the Co-ordinate Bench of the Tribunal in the case of **Bank of India v. ACIT (2022) 196 ITD 1 (Mumbai-Tribunal)** and submitted that issue in dispute may be restored back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee and after providing adequate opportunity of being heard.

7. On the contrary, the Ld. Departmental Representative (DR) submitted that the Ld. CIT(A) has already decided the issue on merit and no such valid ground has been pointed out by the Ld. counsel for the assessee for seeking video conferencing before the Ld. CIT(A).

8. We have heard rival submission of the parties and perused the relevant material on record. We find that before the Ld. CIT(A), the

assessee sought hearing through video conferencing vide letter dated 12.09.2023. The relevant part which is reproduced as under:

> *"--*
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> *These were either 1) net considered or 2) not adequately weighed by the learned: AO.*
>
> ***E-proceedings & Video Conferencing:*** *Acknowledging the social distancing measures in place due to COVID-19, as mentioned in your notice, we kindly request that the hearing be conducted via video conferencing to expedite the resolution and obviate unnecessary delay. This method of proceeding will align with the e-appeal scheme and the broader e-governance policy of the department."*

8.1 Before us, the Ld. counsel for the assessee has relied on the decision of the Co-ordinate Bench of the Tribunal in the case of **Bank of India (supra)** where the Tribunal has held that opportunity of presenting the case through video conferencing in faceless appeal proceedings should have been granted by the Ld. CIT(A) if demanded by the assessee and in absence of which , matter has been restored back. The relevant finding of the Tribunal(supra) is reproduced as under:

> *"8. In view of the above discussions, perhaps the right course of action for us would* prima facie *seem that the matter may be sent back to the NFAC stage for taking a call on whether or not to permit the assessee to make submissions through the video conferencing- as was done by Hon'ble Madras High Court in the case of Ramco Cement* (supra). *However, in view of the subsequent development by way of a notification of the Faceless Appeals Scheme 2021, which has come into effect from 28th December 2021 in supersession of the Faceless Appeals Scheme 2020, even a specific call on the request for video conferencing hearing may is not really necessary.*
>
> *9. Taking the sting out of criticism of the then faceless appeals procedures, and as a part of the ongoing and pragmatic reforms- which are now truly a hallmark of the contemporary tax policies anyway, the grant of personal hearing through video conferencing is now virtually on-demand. While rule 12(2) of the Faceless Appeals Scheme 2021*

*(hereinafter referred to as "*the new rules'*) provides that "*(t)***he appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the Commissioner (Appeals), through the National Faceless Appeal Centre, under this Scheme***", rule 12(3) ensures that such a personal hearing will invariably be granted, on-demand, through video conferencing by providing that* ***"(3) The concerned Commissioner (Appeals) shall allow the request for personal hearing and communicate the date and time of hearing to the appellant through the National Faceless Appeal Centre"*** *and* ***"(4) Such hearing shall be conducted through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board"****. As a result of these provisions in the new rules, the opportunity of a personal hearing, through video conferencing, is to be granted in all such cases in which the request for a personal hearing is made. There is no question of any discretion about allowing or not allowing the opportunity of a personal hearing, as upon a request being made by the assessee for a personal hearing, such an opportunity is required to be afforded to him. In any event, it is an amendment in the faceless appeal rules which is meant to obviate the undue hardships of the assessee in presenting their cases to the first appellate authority, and when such an amendment is made to cure the shortcomings of the scheme, and thus obviate the unintended hardships to the taxpayers, the amendment is to be treated as retrospective in effect. It is for the reason of the well-settled legal position that a curative amendment in the law is to be treated as retrospective in nature even though it may not state so specifically. In the Hon'ble Supreme Court's five-judge constitutional bench's landmark judgment, in the case of* ***CIT v. Vatika Townships Pvt Ltd. [(2014) 367 ITR 466 (SC)],*** *the legal position in this regard has been very succinctly summed up by observing that "***if a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect***" Hon'ble Supreme Court has observed that "***This*** (the foregoing analysis) ***exactly is the justification to treat procedural provisions as retrospective***", that, "***In Government of India & Ors. v. Indian Tobacco Association (2005) 7 SCC 396 the doctrine of fairness was held to be a relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation***" and that "***The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors. (2006) 6 SCC 286. It was held that where a law is enacted for the benefit of the community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature***". Their Lordships*

also noted that this retrospectively being attached to benefit the persons, is in sharp contrast with the provision imposing some burden or liability where the presumption attaches towards prospectivity. What logically follows from the law so settled by a constitutional bench of the Hon'ble Supreme Court, is that when an opportunity of presenting the case, through the video conferring in the faceless appeal proceedings, is now available to every taxpayer, on-demand, the same must also be held to be admissible in the proceedings, if so demanded by the assessee, in the old rules as well.

10. In view of these discussions, as also bearing in mind the entirety of the case, we deem it fit and proper to remit the matter to the first appellate authority after giving an opportunity for a personal hearing, in terms of rule 12 of the Faceless Appeals Rules 2021, for adjudication de novo *in accordance with the law and by way of a speaking order. Ordered, accordingly. As the matter stands restored to the file of the first appellate authority for adjudication all other issues raised in the cross-appeals are rendered academic and infructuous, and these issues do not call for any adjudication as of now."*

8.2 The Tribunal (supra) has observed that following the enactment of the Faceless Appeal Scheme in 2021, it was not necessary for the Chief Commissioner or Director General of Income-tax to decide whether the ld CIT(A) should grant video conferencing to the assessee. Consequently, the ld CIT(A) should have acceded to the assessee's request for video conferencing. However, it is apparent that the ld CIT(A) denied the assessee's request. Moreover, the ld CIT(A) failed to take into account the individual agreements with each tenant regarding property rental and maintenance charges submitted by the assessee, which according to the Assessing Officer were not presented before him. Therefore, the ld CIT(A) should have followed the procedure outlined in Rule 46A of the Income-tax Rules, 1962, for the admission of those agreements and sought remand reports from the Assessing Officer. Since the ld CIT(A) issued the challenged order without

considering the assessee's submissions and without facilitating video conferencing, it is deemed appropriate to refer the matter in dispute back to the ld CIT(A) for fresh consideration.

8.3 Furthermore, we note that the ld CIT(A) referred the matter back to the Assessing Officer to ascertain the correct allocation of various expenses against maintenance charges. In our view, the ld CIT(A) lacks the authority to return the issue to the Assessing Officer, as this exceeds the scope of his legal mandate.

8.4 In light of the foregoing, we set-aside the decision of the ld CIT(A) and restore the disputed matter to his jurisdiction for reconsideration, taking into account the assessee's submissions and ensuring a fair opportunity for the assessee to be heard. We allow the assessee's additional ground Nos1 and 2. As the matter has been referred back to the ld CIT(A), we abstain from ruling on the other additional ground raised on merit. The regular grounds pertain solely to the Assessing Officer's order, thus necessitating no further adjudication from our end.

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

Order pronounced in the open Court on 11/07/2024.

Sd/- **(SUNIL KUMAR SINGH)** **JUDICIAL MEMBER**	Sd/- **(OM PRAKASH KANT)** **ACCOUNTANT MEMBER**

Mumbai;
Dated: 11/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai