

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

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

**ITA Nos.2018 & 2019/Mum/2023
Assessment Year: 2015-16 & 2016-17**

DCIT-8(2)(1), Mumbai	Vs.	Piramal Estates Private Limited 8 th Floor, Piramal Tower, Ganpatrao Kadam Marg, Lower Parel (W), Mumbai- 400013. PAN: AACCA 7777 K
(Appellant)		(Respondent)

Present for:

Assessee by : Mr. Ronak Doshi a/w Priyank Gandhi
Revenue by : Smt. Madhumalti Ghosh, CIT/DR

Date of Hearing : 30.05.2024
Date of Pronouncement : 31.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

Both these appeals filed by the revenue are directed against different orders of Id. CIT(A), NFAC pertaining to A.Y. 2015-16 & 2016-17 respectively. Since common issue on identical facts are involved in these appeals therefore both these appeals are adjudicated together by taking ITA No. 2018/Mum/2023 as lead case and its finding will be applied to the other appeal mutatis mutandis wherever it is applicable.

2. Grounds taken by the revenue are as under:

(i) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in reclassifying income from service centre business as income from business as against income from house property and thereby erred in not appreciating the fact that the assessee's facts are identical to the facts of the case of Shambhu Investments Pvt. Ltd. v. CIT (kolkatta) HC 116 Taxman 795) which was later affirmed by the Hon'ble Supreme Court.

(ii) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that the Assessee does not fulfill all the three tests laid down by *Shambhu Investments Pvt. Ltd. v. CIT (kolkatta) HC 116 Taxman 795*) and accordingly the decision cannot be applied to facts of the case for treating the service centre income as income from house property.

(iii) The Ld. CIT(A) further erred in holding that where the assessee has entered into two separate agreements for letting of premises and for providing services and that income from providing services are to be taxed as business income

(iv) On the facts and circumstances of the case and in Law, Ld. (CITA) erred in appreciating the fact that the A.O. has treated income from service center income and car parking as income from house property and depreciation is not allowable under the head income from house property.

(v) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in allowing the claim for interest expense u/s 24(b) disregarding the fact that interest expenses depends on the actual utilization of funds and not on mere mathematical calculation of basis of area allocated for portion of property used for letting purpose.

(vi) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the disallowance u/s 14A in the absence of exempt income during the year.

(vii) The Ld. CIT (A) erred in relying on the earlier years tribunal order in the assessee's own case wherein it was held that there cannot be any disallowance u/s 14A including the suo moto disallowance in the absence of exempt income during the year.

(viii) The Ld. CIT (A) erred in not appreciating the decision of Guwahati Bench decision in the case of *Williamson Financial Services Ltd.* delivered on 6/7/2022 wherein it was held that the amendment by way of clarification inserted in section 14A by Finance Act 2022 is retrospective.

(ix) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in allowing the sales promotion expenses incurred for Thane Project as revenue expenses allowable u/s 37 of the Act. The CIT(A) further erred in not treating the sales promotion expenses as part of the construction WIP as inventory cost.

3. Fact in brief is that return of income declaring total income of Rs. 39,34,17,190/- was filed on 30.09.2015. The case was subject to

scrutiny assessment and notice u/s 143(2) of the Act was issued on 04.10.2017. The assessee company is engaged in the business of service centre business, leasing of premises and real estate development and incidental services. The assessment u/s 143(3) of the Act was finalized on 28.12.2017 after making various disallowances, the total income was assessed at Rs. 52,30,11,060/-. Further fact of the case are discussed while adjudicating the ground of appeal filed by the revenue as follows:

4. Ground No. 1 to 3 relating to rental income treated as income from house property. During the course of assessment, the assessing officer found that assessee has shown income from house property of Rs. 32.74 crores and business income of Rs. 5.91 crores. In the profit and loss account, assessee has shown income from operations at Rs. 66.51 crore which consisted of income from license fees and amenities fees at Rs. 53.77 crore, income from service centre of Rs. 12.72 crore and income from gymnasium at Rs. 2.02 lakhs. Out of the aforesaid receipts, the assessee had offered income from service centre and gymnasium business under the head profits and gains from business or profession. While the assessee has offered the income from licence fees and amenities fees along with car parking charges under the head income from house property. During the course of assessment, the assessing officer has asked the assessee to explain as to why the income from service centre offered as income by the assessee should not be treated as income from house property considering the nature of income. The assessee explained that the aforesaid income was rightly taxed under the head business income and it has also claimed depreciation on that portion of the building which has been used for the purpose of business. It was also explained that the intention of the assessee was purely to profit business service centre and accordingly many more additional services required for conducting business.

However, the assessing officer has not agreed with the submission of the assessee. The AO stated that assessee owned the building named Peninsula Tower at Ganpatrao Kadam Marg, Lower Parel, Mumbai consisting of 10 floors out of which 9 floors have been rented out to various parties. However, the assessee claimed that 10th floor has been leased out to its related parties and that income has been shown by the assessee as a business income. The assessing officer has also stated that prime object of the assessee under the agreement on record was to let out portion of said property by giving them additional right of using other facilities and the income derived from the said property was a income from the house property. The assessing officer has also referred the rulings of the various courts in the assessment order on the proposition of treating such income as income from house property. Accordingly, income from service centre was assessed under the head income from house property and claim of depreciation was also disallowed and added to the total income of the assessee.

5. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee and held that income from service centre is to be taxed under the head business income. The relevant extract of the decision of ld. CIT(A) is reproduced as under:

3.4.1 I have perused the Assessment Order, the arguments made, along with submissions and evidence filed by the appellant. The Assessing Officer (AO) relied on the decision of Shambhu Investments Pvt. Ltd. rendered by the Hon'ble Calcutta High Court, and which was affirmed by the Hon'ble Supreme Court in 2003. The AO has quoted the three tests laid down by the Hon'ble Supreme Court while rendering the decision in the Sultan Bros. Pvt. Ltd. (1964), The AO has, based on his assumptions and understanding, reached a conclusion that in the case of the appellant, the answer to the first two tests is negative and the third test is positive and based on this he has recomputed the service centre income as house property income after granting standard deduction ü/s 24. @30%. The AO has also stated that in the case of the appellant, the security deposit received from Piramal Health Care Ltd. (earlier Nicholas

Piramal India Ltd.) covers the entire cost of the property, but no specific basis has been given, regarding this belief.

3.4.2 It is relevant to mention here that the three tests laid down by the Hon'ble Supreme Court in the case of Sultan Bros. Pvt. Ltd. were in the context of letting of furniture and equipment along with property on which assets were fixed. The question raised in the case was regarding the head of income to tax such proceeds under. The three tests laid down deal with the intention of the parties at the time of entering into an agreement. The Hon'ble Supreme Court in the case of Sultan Bros. has held that the income from such letting cannot be taxed under the house property but under the head income from other sources. The analysis of these judgments has been well carried out in the decision of Shanaya Enterprises Limited (ITA No. 3648/MI2010) by the jurisdictional tribunal and is reproduced by the appellant, hence requires no repeating.

3.4.3 In the instant case, from the perusal of the Service Centre documents and the relationship of the appellant with the service user, the appellant is seen to be rendering complex services rendered along with facilities and high-end infrastructure in addition to mere letting of the premises. The intention of the parties is emanating from the service agreement, and it is seen that the relationship between the parties is of service provider and service user and not landlord and tenant. The reliance of the appellant on the decision of Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. Vs. CIT (2015) 373 ITR 673 is agreed with.

3.4.4 The Appellant has been consistently providing Service Centre facility to Piramal Healthcare Ltd (earlier known as Nicholas Piramal India Ltd.) since 01.01.2005 when the leasing business was acquired under the scheme of arrangement from Piramal Holdings Ltd. Prior to its acquisition, the service centre business was carried on by Piramal Holdings Ltd. and they continued to provide the same service and facilities along with premises to Nicholas Piramal India Ltd. In all the earlier assessment years, scrutiny assessment was carried out and the AO, after examining the relevant details called for, has passed the order accepting the service centre as business income. Thus, the assumption of the AO that no business exists during the year is not acceptable. Moreover, there is no change in facts regarding the nature of service and facility provided by the appellant. The AO has not come to any finding which shows that the services rendered /facilities provided in this year are different from those in the earlier assessment years. The AO has not given any reason as to why he is differing with the findings of the earlier assessment orders.

3.4.5 The decisions of the Hon'ble Supreme Court in the cases relied upon by the AO, were passed in the year 2003 and 1964. There is no change in law during the year under appeal. The above decisions were available in public domain even in the earlier assessment years when scrutiny assessment was done for the earlier assessment years. Despite this, the AO in the earlier years, has accepted the service Center income as business income. The reliance of the appellant on the decision of the Hon'ble Supreme Court in *Radhasoami Satsang vs. CIT (193 TR 321)* is accepted.

3.4.6 Based on the above facts and submissions, I find force in the contention of the appellant. The income from service income is to be taxed under the head business income and consequential deduction be granted for expenses claimed against business income. The AO is directed to reclassify the service centre income as business income and compute business income as shown in return of income. The ground is allowed.”

6. During the course of appellate proceedings before us, the ld. DR has supported the order of assessing officer that income from service centre should be taxed under the head income from house property as against income from business held by the ld. CIT(A). On the other hand, ld. Counsel submitted that similar issue on identical fact in the case of the assessee itself has been adjudicated by the ITAT Mumbai in favour of the assessee from A.Y. 2010-11 to A.Y. 2014-15. The ld. Counsel has also filed the copies of decisions of ITAT in the paper book filed before us.

7. Heard both the sides and perused the material on record. The assessee has earned income from service centre to the amount of Rs. 12,72,52,601/- during the year under consideration from the following parties:

<i>Service Centre Fees</i>	<i>Premises</i>	<i>Amount in (Rs.)</i>
<i>Piramal Enterprises Limited</i>	<i>Piramal Tower (owned)</i>	<i>93647486</i>
<i>Piramal Glass Limited</i>	<i>Piramal Tower Annex (not owned)</i>	<i>7703040</i>
<i>Piramal Fund Management Private Limited</i>	<i>Piramal Tower Annex (not owned)</i>	<i>509103</i>
<i>SRL Diagnostocs Pvt. Ltd.</i>	<i>Piramal Tower Annex</i>	<i>25391972</i>

	<i>(not owned)</i>	
<i>Total</i>		<i>127251601</i>

8. The assessee has given premises on 9 floor of a 10th floor tower to various parties on leave and license basis. The assessee has offered income from lease for the 9th floors under the head income from house property. The assessee also explained that in case of first 9 floors, the intention of the assessee was to rent out space and earned rental income the assessee has only provided basic necessary i.e. like toilets, use of elevators, common facilities etc. However, in the case of 10th floor for business service centre the assessee has provided amenities like central air conditioner, furniture and fitting, water coolers, ball room, lawn, housekeeping services etc. alongwith various additional amenities which were provided on pay by use basis:

- 1. High Speed Video Conferencing*
- 2. Copy Machine*
- 3. Courier Service and Pickup Service*
- 4. Secretarial Service, Restaurant Sendee and Conference Room*
- 5. Recreational activities like table tennis, carom, billiard, gym, spa, Jacuzzi, sauna, steam with professional guidance*
- 6. Legal/Tax Law Library, Club House, Bank with ATM etc.”*

9. We find that this issue is recurring issue which has been earlier adjudicated by the ITAT in the case of the assessee pertaining to A.Y. 2010-11 to 2014-15 by holding that income from service centre is to be assessed under the head business income. With the assistance of Id. Representative, we have perused the decision of ITAT in the case of the assessee itself vide ITA No. 2015/Mum/2023 (A.Y. 2010-11), ITA No. 1936/Mum/2023 (A.Y. 2011-12), ITA No. 1937/Mum/2023 (A.Y. 2012-13), ITA No. 2016/Mum/2023 (A.Y. 2013-14) & ITA No. 2017/Mum/2023 (A.Y. 2014-15). The relevant extract of the decision of ITAT is as under:

“Considering the factual matrix of the case and even the position of the assessee prior to demerger the holding company i.e. primal holdings Ltd. (PHL) was also showing the income under the head business and the same was accepted by the revenue consistently. In addition to this fact, PHL was the owner of the property under consideration whereas in this case, the assessee was owner up to 9th floor only and under the scheme of demerger, assessee got ownership up to 9th floor only and 10th floor and annexe of Piramal Tower was not owned by the assessee. Despite the fact, that in substance transaction of the assessee falls under the head income from house property still as assessee is not the owner of 9th floor and annexe, same cannot be taxed under the head house property. In view of this, we confirmed the decision of Ld. CIT (A) treating the same as income from business. In these terms, ground no. I, II & III raised by the revenue are dismissed.”

9.1. Since this is a recurring issue there is no change in the fact of the case during the year under consideration. Therefore, following the decision of the ITAT as referred above we do not find any infirmity in the decision of Ld. CIT(A) accordingly ground no. 1 to 3 of the appeal of the revenue are dismissed.

9.2. Ground No. 4 regarding treating income from car parking as business income. Since the assessee has already offered the income from car parking under the head income from house property which is already discussed at para 3.1 of the assessment order by the assessing officer therefore this ground of appeal filed by the revenue become infructuous and the same is dismissed. Therefore, the same is dismissed.

9.3 Ground No. 5 relates to allowing claim of interest expenses u/s 24(b) on the basis of area allocation for portion of property used for letting purpose. During the course of assessment, the assessing officer notice that assessee has apportioned interest expenses between the let out area and the area occupied for commercial purpose. The assessee claimed that during the year under consideration it had incurred interest expenses amounting to Rs. 2,92,46,438/- on loan borrowed by

it for the construction of Nicholas Piramal Tower. The assessee has apportioned the interest expenses on the basis of area leased out to the total area of Nicholas Piramal Tower. The assessee claimed an amount of Rs. 2,92,46,438/- being interest expenses apportioned to the leased out property as a deduction u/s 24(b) of the Act. However, the AO has disallowed the aforesaid claim of the assessee of deduction u/s 24(b) of the Act stating that similar additions has already been made on this account in A.Y. 2012-13 and 2013-14.

10. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee holding that AO has not pointed out any major deficiency in allocation of interest expenditure between the area used for commercial purposes and the area let out.

11. Heard both the sides and perused the material on record. During the course of appellate proceedings before us, at the outset, the ld. Counsel submitted that similar issue on identical facts in the case of the assessee itself has been decided in favour of the assessee by the ITAT vide ITA No. 519/Mum/2014 for A.Y. 2009-10 and vide ITA No. 2015/Mum/2023 for A.Y. 2010-11 to 2014-15. We have perused the decision of ITAT for the A.Y. 2009-10 vide ITA No. 519/Mum/2014. The relevant extract of the decision is reproduced as under:

“22. We have considered rival submissions and perused material on record. The factual matrix of the issue reveals that the loan sanctioned by HDFC Bank for constructing a 10 story building named Piramal Towers by Piramal Holdings Pvt. Ltd. Subsequently, the building and the loan sanctioned was transferred to the assessee. A part of the building was utilized by the assessee and its group Companies for commercial purpose and the rest of the building was leased out by the assessee. It is evident, the area leased out for rental purpose depends on the occupancy of the property for commercial purpose. Therefore, the area let out changes from time to time. It is also evident, from the past years the assessee had been allocating the interest on loan on the basis of area let out and the aforesaid basis of allocation of interest commensurate with the area let

out was accepted by the Department from the assessment year 2004-05 onwards, except, the impugned assessment year. As could be seen, the Assessing Officer has disallowed the deduction claimed under section 24(b) of the Act, basically for two reasons viz. (i) the assessee has not proved utilization of fund for construction of property; and (ii) the deduction under section 24(b) of the Act cannot be allowed on the basis OT area let out. In our view, the reasons on the basis of which the Assessing Officer disallowed deduction under section 24(b) of the Act, are unacceptable. Undisputedly, the loan was sanctioned for construction of the entire building. When a part of the building is used for commercial purpose and the rest of it is let out, the interest expenditure on the loan availed for construction of building has to be apportioned between the area let out and area used for commercial purpose, as this is the most scientific basis on which the interest can be allocated. It is also very much clear that the Assessing Officer has not pointed out any major deficiency in allocation of interest expenditure between the area used for commercial purpose and area let out. The allegation of the Assessing Officer that the assessee at its own will changes the area let out is on a mere presumption. We do not find any material on record to indicate that the Assessing Officer had carried out any specific enquiry to disprove assessee's claim regarding the area let out. Moreover, when the allocation of interest expenditure in identical manner has been accepted by the Assessing Officer in past assessment years, there is no valid reason for not accepting it in the impugned assessment year when the facts are identical. In any case of the matter, the expenditure incurred by the assessee would be allowable either u/s 24(b) or u/s 36(1)(iii) of the Act. That being the case, it will make no difference to the Revenue."

12. We find that this is a recurring issue and in the earlier year it has been decided by the ITAT in favour of the assessee as referred supra in this order. Since there is no change in the fact of the case during the year under consideration therefore following the decision of ITAT as referred above we do not find any reason to interfere in the decision of Id. CIT(A) therefore this ground of the revenue is also dismissed.

13. Ground no. 6 to 8 relating to deleting disallowance u/s 14A of the Act in pursuance of exempt income earned during the year. The assessee has made suo moto disallowance amounting to Rs. 1,05,92,53,242/- u/s 14A of the Act being the interest expenses

incurred for borrowings made for making investment. However, the assessing officer has made an additional disallowance of Rs. 4,96,83,988/- towards indirect expenses as per Rule 8D of the Income-tax Rules, 1962.

14. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following the decision of ITAT in the case of the assessee itself for the A.Y. 2009-10. holding that during the year under consideration the assessee had not earned any exempt income from investment.

15. Heard both the sides on this issue and perused the material on record. At the outset, the ld. Counsel submitted that assessee has not earned any exempt income during the year under consideration therefore following the decision of ITAT Mumbai for A.Y. 2009-10 there is no merit in the ground of the revenue. It is undisputed fact that assessee has not earned any exempt income from the investment made during the year under consideration. We find that on similar issue on the identical fact in the case of the assessee itself for A.Y. 2009-10 vide ITA No. 779/Mum/2014, the ITAT Mumbai has decided the issue in favour of the assessee on the proposition that no disallowance u/s 14A r.w.r. 8D can be made in absence of any exempt income earned during the year.

16. We further find that the Hon'ble Delhi High Court in the case of Pr. CIT vs Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 Delhi High Court held that amendment inserted by Finance Act, 2022 is prospective in nature and that cannot be applied retrospectively u/s 14A in case the assessee has not earned any exempt income. Since this issue is recurring issue which has been adjudicated in favour of the assessee by the ITAT in the earlier years as discussed supra in this order. Therefore, following the decision of the ITAT, we do not find any

reason to interfere in the decision of Id. CIT(A) accordingly this ground of the appeal of the revenue is also dismissed.

17. Ground No. 9 regarding sale promotion expenses allowed u/s 37 of the Act. During the course of assessment, the assessing officer noticed that assessee has debited sale promotion expenses of Rs. 1,27,79,647/- in the profit and loss account relating to the project of building constructed in Thane. The assessing officer asked the assessee to explain as to why these expenses were not taken to work in progress. The assessee explained that these expenses were in the nature of selling cost therefore the same cannot form part of the construction cost. The assessing officer has not agreed with the submission of the assessee and stated that all the advertisements were carried out exclusively for the purpose of Thane project which was under construction at that time. The assessing officer has also referred Accounting Standard 7 of ICAI that if the finance cost and other costs were contract specific, then such cost are required to be included as a part of the project cost. The assessing officer has treated the sale promotion expenses of Rs. 1,27,79,647/- related to Thane project as work in progress and disallowed the same in the profit and loss account.

18. The assessee filed appeal before the Id. CIT(A). The Id. CIT(A) allowed the appeal of the assessee holding that the advertisement expenses were incurred for branding / advertising the Thane project and same was not incurred for the purpose of construction contract. The relevant extract on the decision of Id. CIT(A) is reproduced as under:

“7.4.1 | have perused the relevant documents and submissions made by the appellant and the observations made by the AO. There is no dispute that the above expenses are incurred for branding/advertising the Thane Project. The appellant's stand that is not a construction contractor, has been considered and it is quite clear that since it does not carry out

construction contracts vis-a vis "contractor -contractee" relationship as mentioned in the judgement of ACIT Vs. Layer Exports (P.) Ltd. (2017) 88 taxmann 620 (Mumbai- Trib), AS-7 would not be applicable. The appellant is in the business of real estate development and dealing.

7.4.2 The "Guidance Note on Accounting for Real Estate Transactions" (Revised 2012) of ICAI issued in February, 2012, has been perused and is seen to be reproduced by the appellant in point 15 of its submission above. The appellant has relied on the Guidance Note in absence of any express provision in the Act and the treatment is in accordance with the said guidance note. The said expenses are not incurred for construction or development of project and hence the same cannot be capitalized.

7.4.3 The AO's observations that in the absence of income generated from construction contract during the year under consideration, the expenses are not allowable u/s 37 and hence not allowable is also not tenable. In the case of DCIT V. HMS Real Estate Pvt. Ltd (ITA no.3289/DELI2018) (Delhi Trib.), a part of the order is reproduced, "6.10 In the case of CIT Vs Hughes Escorts Communication [2009] 311 ITR 253, it has been held that the expenses incurred in the previous year, prior to the commencement of the business but after the setting up of its business, which two dates need not be the same, would be deductible as revenue expenses. In this case, while making distinction between the setting up and commencement of a business the Hon'ble Court has relied upon the Bombay High Court in Western India Vegetables Products Ltd. In this case, the Bombay High Court, which was in this case dealing with the corresponding provision of the Indian Income-tax Act, 1922, then explained the distinction between the concepts of 'commencement' and 'setting up' of a business

It seems to us, that the expression 'setting up' means, as is defined in the Oxford English Dictionary, to place on foot' or to establish, and in contradistinction to 'commence' The distinction is that when a business is established and is ready to Commence business then it can be said of that business that it is set up. But before it is ready to commence business it is not set up. But there may be an interregnum, there may be an interval between a business which is set up and a business which is commenced and all expenses incurred after the setting up of the business and before the commencement of the business, all expenses during the interregnum would be permissible deductions under section 10(2)... "Thus, so long as the expenses are revenue in nature, the same must be allowed irrespective of whether there is turnover/revenue once the business is set up. The AO is directed to allow the claim for expenses u/s 37 while computing the business income. This ground is allowed."

19. Before us, ld. DR has supported the order of assessing officer.

20. The ld. Counsel submitted that Accounting Standard AS-7 does not apply to the case of the assessee and it only apply to the contractor not in the case of real estate developer. The ld. Counsel also referred the decision of Hon'ble Delhi High Court in the case of CIT vs Somnath Buildtech (P) Ltd. 146 taxmann.com 472 (Del) and decision of ITAT, Mumbai in the case of DCIT vs Macrotech Developer Ltd. (2022) 192 ITD 438 (Mum. Trib) on the proposition that where assessee engaged in real estate business advertisement expenses claimed for promotion of the business of the assessee are allowable as revenue expenditure u/s 37(1) of the Act.

21. Heard both the sides and perused the material on record. During the course of assessment, the AO has disallowed the claim of sale promotion expenses debited to the profit and loss account stating that as per Accounting Standard-7 such expenses are required to be included as a part of the project cost and should be shown as work in progress. After perusal of the material on record, we find that assessee has incurred such advertisement expenses as a real estate developer for promotion of its Thane project. The assessing officer has not disproved the fact that assessee has not carried out construction work in pursuance of any contract with the contractee but it has carried out the construction of Pune project on ownership basis.

22. Looking to the above fact, we consider that the observation of the assessee to apply Accounting Standard AS-7 to the case of the assessee is not justified.

23. In view of the above fact and judicial finding as referred supra in this order, we do not find any infirmity in the decision of ld. CIT(A) in allowing the claim of advertisement expenditure incurred by the

assessee towards promotion of its Thane project carried out during the year under consideration. Therefore, we do not find any merit in the ground of appeal of the revenue and the same is dismissed.

ITA No. 2019/Mum/2023

“i. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in reclassifying income from service centre business as income from business as against Income from house property and thereby erred in not appreciating the fact that the assessee's facts are identical to the facts of the case of Shambhu Investments Pvt. Ltd. v. CIT (kolkatta HC 116 Taxman 795) which was later affirmed by the Hon'ble Supreme Court.

ii. On the facts and in the circumstances of the case and in law Ld. CIT(A) erred in holding that the Assessee does not fulfill all the three tests laid down by Shambhu Investments Pvt. Ltd. v CIT (kolkatta HC 116 Taxman 795) and accordingly the decision cannot be applied to facts of the case for treating the service centre income as income from house property.

(iii) The Ld. CIT(A) further erred in holding that where the assessee has entered into two separate agreements for letting of premises and for providing services and that income from providing services are to be taxed as business income .

(iv) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in allowing the claim for interest expense u/s 24(b) disregarding the fact that interest expenses depends on the actual utilization of funds and not on mere mathematical calculation of basis of area allocated for portion of property used for letting purpose.

(v) On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the disallowance u/s 14A in the absence of exempt income during the year

(vi) The Ld. CIT (A) erred in relying on the earlier years tribunal order in the assessee's own case wherein it was held that there cannot be any disallowance u/s 14A including the suo moto disallowance in the absence of exempt income during the year.

(vii) The Ld. CIT (A) erred in not appreciating the decision of Guwahati Bench decision in the case of William son Financial Services Ltd. delivered on 6/7/2022 wherein it was held that the amendment by way

of clarification inserted in section 14A by Finance Act 2022 is retrospective.

(viii) On the facts and in the circumstances of the cases and in law, Ld. CIT(A) erred in allowing the sales promotion expenses incurred for Thane project as revenue expenses allowable u/s 37 of the ct. The CIT(A) further erred in not treating the sales promotion expenses as part of the construction WIP as inventory cost.”

24. Similar ground of appeal on identical facts, we have adjudicated vide ITA 2018/Mum/2023 as supra in this order wherein all these grounds of appeal filed by the revenue are dismissed. Applying the findings mutatis mutandis of the ITA 2018/Mum/2023 all the grounds of appeal of the revenue filed vide ITA 2019/Mum/2023 stand dismissed.

25. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 31.07.2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 31.07.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai