

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1060/KOL/2024  
Assessment Year: 2019-20**

Window Technologies Private Limited, Y9, Block EP & GP, Sector-V, Bidhan Nagar, Salt Lake, Kolkata - 700091 (PAN: AAACW2609Q)	Vs	PCIT (Central)-2, Kolkata, Aayakar Bhawan, P-7, Kolkata - 700069
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Akkal Dudhewala, A.R.  
Respondent by : Subhendu Datta, CIT-DR

Date of Hearing : 01.07.2024  
Date of Pronouncement : 25.09.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Principal Commissioner of Income Tax (Central), Kolkata-2 (hereinafter referred to as "the Ld. PCIT") passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2019-20, dated 12.03.2024, which is passed against the assessment order u/s 143(3) of the Act, 1961 dated 26.09.2021.

2. The grounds of appeal raised by the assessee are reproduced as under:

*"1 (a) For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT was unjustified in law and on facts in revising the assessment order u/s 143(3) of the Act dated 26.09.2021 even though the said order was neither erroneous nor prejudicial to the interest of the Revenue.*

*(b) For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT proceeded on the mistaken assumption of fact that the assessee had claimed depreciation on the let-out property and thereby erroneously proposed to disallow the same.*

*(c) For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT failed to appreciate that the let out property from which rental income was derived was disclosed as 'Non-current Investments' in the audited financials and no depreciation was claimed thereon, and in that view of the matter the Ld. Pr. CIT's direction to the AO to re-verify and disallow the depreciation claimed on the block of building u/s 32 of the Act was unjustified.*

*(d) For that on the facts and in the circumstances of the case and in law, the assessee had duly demonstrated before the Ld. Pr. CIT that depreciation claimed on the building block disclosed under the head 'Property, Plant & Equipment' in the audited financials was used for the purposes of business and no portion thereof had been let out and in that view of the matter, the depreciation claimed thereon u/s 32 of the Act did not warrant any interference.*

*(e) For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT was unjustified in setting aside the assessment order and directing the AO to re-verify the issue, without objectively dealing with the submissions put forth by the assessee which clearly showed that the assessment order was neither erroneous nor prejudicial to the interest of the Revenue.*

*(f) For that on the facts and in the circumstances of the case and in law, the Ld. Pr. CIT failed to appreciate that the issue raised in the SCN had already been examined, verified and enquired into by the Assessing Officer in the original assessment u/s 143(3) of the Act and thus the order of the AO could not be held to be erroneous and prejudicial to the interests of the Revenue for alleged non-enquiry.*

*(g) For that on the facts and in the circumstances of the case and in law, the order dated 12.03.2024 passed u/s 263 of the Act passed by the Ld. Pr. CIT being untenable on facts and in law deserves to be quashed.*

2. *For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."*

3. Brief facts of the case are that the assessee-company had e-filed its return of income declaring total income of Rs. 38,89,350/- on 03.12.2019. The case was selected manually for scrutiny in view of the survey operation u/s 133A of the Act

conducted at the office premise of the assessee on 17.01.2019 in "Dhanuka Group" of cases. In response to the notices the assessee-company submitted/furnished all the relevant details online electronically. The assessment u/s 143(3) the Act was made at the returned income of Rs. 38,89,350/-. Subsequently, the Ld. PCIT noted that the assessee had made excess claim of expenses of Rs.38,07,409/- and after considering the submission of the assessee, set aside the assessment order of the Ld. AO passed under section 143(3) of the Act as the assessment order was erroneous insofar as it was prejudicial to the interests of the revenue. Aggrieved with the order of the Ld. PCIT, the assessee has filed this appeal before the Tribunal.

4. Rival contentions were heard and the record and the written submissions filed have been examined.

5. Brief facts of the case are that the Ld. PCIT observed from the assessment records and computation of income that the assessee had received rent and after standard deduction had computed the income under house property. He also found that assessee company had also claimed depreciation as per the ITR under Building Schedule @10% for the year in the computation of income and since no other deduction was allowable after the claim of 30% of standard deduction, the assessee had made excess claim of expenses of Rs.38,07,409/- under the head of depreciation. Since there was under assessment on the particular issue which had never been enquired, verified and investigated by the Assessing Officer during the course of the assessment proceeding and no enquiry or verification was conducted into the correctness of the claim made on the above issue, the order of the Ld. AO was considered to be erroneous

insofar as it was prejudicial to the interests of the revenue within the meaning of section 263 of the Act. The Ld. PCIT observed as under:

*4. I have considered the facts of the case and the submissions made by the A/R of the assessee company. In this case, assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 26.09.2021. It was observed from the assessment records and computation of income, it was observed that the assessee company has received rent of Rs. 1,52,70,873/- After standard deduction [@30%] of Rs.45,81,261/- u/s 24 of the Act, the assessee company has computed the income under house property of Rs. 1,06,89,611/-. However, it was found that the assessee company has also claimed depreciation of Rs. 38,07,409/- (as per ITR under Building Schedule) on Building @10% for the year in the computation of income. It is pertinent to mention that no other deduction is allowable after 30% standard deduction claimed by the assessee company for House Property Income. Thus, the assessee has made excess claim of expenses of Rs.38,07,409/- under the head Depreciation. No basis whatsoever, has been given for bifurcation of the building into business asset and current asset, no agreement with tenants, no basis of allocation of cost, etc. has been given by the assessee to bifurcate the same building. No details or basis for allocation of capital employed for the same has been given. No segregated balance sheet of business asset and non business asset is given.*

Thereafter, the Ld. PCIT has discussed several case laws and set aside the assessment order directing the Ld. AO to make necessary verification/enquiry on the instant issue and pass a fresh assessment order and recompute the assessee's income after making proper inquiries on the issue involved and the assessment order was set aside to this limited extent. The judicial pronouncements relied upon by the Ld. PCIT are as under:

- i. Commissioner of Income tax, Central -1 Kolkata Vs Maithan International 56 taxmann.com 283(2015) (Calcutta)
- ii. Gee Vee Enterprise vs. Addl. CIT [1975] 99 ITR 375 (Del)
- iii. Thalibai F. Jain vs. ITO 101 ITR 1, 8 (Kar)

- iv. Malabar Industrial Co. Pvt. Ltd. vs. CIT (2000) 243 ITR 83, 87-88 (SC) affirming the Hon'ble Kerala High Court's decision in 198 ITR 611
- v. Rampyari Devi Saraogi vs. CIT [1968] 67 ITR 84 & Smt. Tara Devi Aggarwal vs. CIT [1973] 88 ITR 323 (SC)
- vi. CIT vs. Shree Manjunathesware Packing Products & Camphor Works [1998] 231 ITR 53/96 Taxman 1

6. In the written submissions filed before us, the assessee has submitted as under:

*The appellant has preferred the present appeal against the order dated 12.03.2024 passed by the Ld. Pr. Commissioner of Income-Tax ('PCIT)-2, Kolkata u/s 263 of the Income Tax Act (in short the 'Act') for AY 2019-20.*

*2. The sole grievance of the appellant in this appeal is against the PCIT's action of holding that the AO had allowed the appellant's claim for depreciation of Rs.38,07,409/ on the let-out building whose rental income had been offered to tax under 'Income from House Property' which rendered the assessment order dated 26.09.2021 passed u/s 143(3) of the Act to be erroneous and prejudicial to the interests of the Revenue.*

*3. The relevant facts are that, the appellant owns a commercial building at Y9, Block EP and GP, Sector V, Salt Lake City, Kolkata-700091 comprising of seven (7) floors. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Floors are occupied by the appellant for its own business purposes. The Ground Floor, 3<sup>rd</sup> Floor and 7<sup>th</sup> Floor are let out to different entities/bodies corporate. Statement giving the details of floors let out to tenants and floors occupied by the assessee exclusively for its own business is enclosed at Page 5 of the Paper Book. The portion of the building occupied for business purposes (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Floors) have been reported under the head Fixed Assets - 'Building' appearing in Note No. 9 of the Financial Statements [Pages 6 to 25 of*

*the Paperbook (relevant page 23)] on which depreciation is claimed both in the books of accounts as well u/s 32 of the Income-tax Act, 1961. The book depreciation on the portion of building occupied for business purposes was Rs.36,75,870/- which was added back in the computation of income and correspondingly the depreciation on building pertaining to 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Floors had been added to the Block of Assets and depreciation thereon of Rs.38,07,409/- was claimed in the return of income.*

*4. The remaining portion of the building which has been let out (Ground Floor, 3rd Floor and 7th Floor) has been reported under the head 'Non-Current Investments'- Note No. 10 of the Audited Financial Statements [Page 21 of the Paperbook]. The let-out portion of the building neither formed part of the Fixed Assets in the books as it was not used for business purposes and accordingly no depreciation was claimed thereon u/s 32 of the Income-tax Act, 1961. The total rental income of Rs. 1,52,70,872/- was derived from such let-out portion. After claiming standard deduction u/s 24(a) of the Act, a total income of Rs. 1,06,89,610/- [Rs.1,52,70,872 - Rs.45,81,262(@30% of Rs. 1,52,70,872)] has been offered to tax under the head 'Income from House Property' in the return of income filed for the relevant AY 2019-20. It is hereby evident that neither did the appellant debit depreciation on the let-out portion of the building in the books of accounts in as much as it was reported as Non- Current Investments and likewise no depreciation was claimed or allowed in the return of income for AY 2019-20.*

*5. The above manner of accounting and tax treatment of the business-occupied and let-out portions of the building was not only in accordance with law but the same has been consistently followed by the appellant in all the past as well as subsequent assessment years. In none of the income-tax assessments framed u/s 143(3) of the Act for the earlier/subsequent years have the Revenue doubted the same. In fact in the course of income-tax assessment for AY 2019-20 as well, the appellant had placed on record the audited balance sheet and return of income, from which it was evident that the portion of the building let out to tenants was disclosed under the Head 'Non-Current*

*Investments' and no depreciation under the Income-tax Act was claimed thereon. After verifying and examining the same, the AO accepted the depreciation of Rs.38,07,409/- claimed in the return of income qua the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Floors which was occupied for business purposes.*

*6. The Ld. Pr. CIT vide show cause notice dated 24.01.2024 sought to revised the impugned assessment order on the erroneous premise that the depreciation of Rs.38,07,409/- which was allowed by the AO pertained to the let-out portion of the building and thus alleged that allowance of the same was erroneous and it has resulted in prejudice being caused to the interests of the Revenue. Before the Ld. Pr. CIT the above facts were brought on record and his mistaken assumption that the appellant had claimed depreciation on let-out portion of building was clarified. It was explained that the cost/value of let-out portion of building was reflected by way of 'Non-Current Investments' on which no depreciation had been claimed by the appellant. The Ld. Pr. CIT however instead of objectively dealing with the objections put forth by the appellant wrongly alleged that the depreciation of Rs.38,07,409/- claimed in the return of income pertained to the building which was let out for earning rental income and since the assessee was already entitled to a statutory deduction, i.e. Standard Deduction of Rs.45,81,262/- u/s 24(a) of the Act, then no depreciation was allowable as deduction from the rental income of Rs.1,52,70,872/- derived from the building.*

*7. The appellant reiterates that the depreciation of Rs.38,07,409/- claimed in the return of income pertained to the portion of the building (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Floors) which was occupied by the assessee and used exclusively for the purpose of business. It is evident from the facts placed on record that no depreciation whatsoever was claimed on the portion of the building (Ground Floor, 3<sup>rd</sup> & 7<sup>th</sup> Floors) which was let out for earning rental income and reflected under the head 'Non-Current Investments'. In view of the foregoing and the facts narrated above, it is submitted that the findings of the Ld. Pr. CIT were untenable on the given facts and in law and therefore the impugned revisionary order deserves to be quashed.*

7. The assessee has placed reliance on the decision of the Pr. CIT Vs. Maheshwari Logistics Ltd. 162 taxmann.com 579 involving similar facts and circumstances as involved in the present case. In the decided case as well, the Ld. PCIT had revised the assessment order on the erroneous premise that the Ld. AO had wrongly allowed the depreciation on assets without verifying the same. On appeal the assessee showed that it had not claimed depreciation on such assets and therefore there was no occasion for the Ld. AO to have verified the same. The Hon'ble Tribunal found merit in the plea of the assessee and quashed the revision order passed u/s 263 of the Act. The Hon'ble High Court upheld the order of the Tribunal. For the reasons mentioned in the written submission, the assessee submitted that the impugned order dated 12.03.2024 may be cancelled.

7. We have considered the rival contentions raised by the Ld. AR and the Ld. DR. Although the building was common but different floors were being used for business purposes on which depreciation was claimed and separate floors were given on rent on which no depreciation was claimed but income from house property was being shown. There is merit in the argument of the assessee that no depreciation was claimed on the let out portion being the Ground Floor, Third Floor and the Seventh Floor. The other five floors were occupied by the assessee for business purposes on which depreciation of Rs. 3807409/- was claimed under the Building Schedule in the ITR. The portion let out was being shown as Non-Current Investments Building at Rs. 3,45,54,355/- and after standard deduction, income from house property of Rs. 1,06,89,611/- was shown in the return of income. Thus, the depreciation was claimed only on the portion of the building owned for business purposes which was shown

under the head 'income from business or profession'. Thus, neither the order of the Ld. AO was erroneous nor the same was prejudicial to the interest of the Revenue in any manner so as to justify the revision by the Ld. PCIT. Thus, the revision order dated 12.03.2024 having been passed on incorrect appreciation of facts, is not justified on the facts of the case and in law and is hereby quashed. Thus, Ground Nos. 1(a), 1(b), 1(c), 1(d), 1(e), 1(f) and 1(g) of the appeal are allowed. Ground No. 2 is general in nature and does not require any separate adjudication.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25<sup>th</sup> September, 2024.

**Sd/-**  
**(Sanjay Garg)**  
**Judicial Member**

**Sd/-**  
**(Rakesh Mishra)**  
**Accountant Member**

**Dated: 25<sup>th</sup> September, 2024**

AK, P.S.

Copy to:

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

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata