

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Visakhapatnam Benches, Visakhapatnam**

**Before Shri Vijay Pal Rao, Vice-President  
A N D  
Shri S. Balakrishnan, Accountant Member**

आ.अपी.सं / **ITA No.185/Viz/2024**  
(निर्धारण वर्ष / Assessment Year: 2020-21)

ACIT Circle 1(1) Guntur (Appellant)	Vs.	BBM Estates (P) Ltd Guntur PAN: AAACE2607G (Respondent)
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**C.O No.12/Viz/2024**

**(Arising out of ITA No.1895/Viz/2024)**

BBM Estates (P) Ltd Guntur PAN: AAACE2607G (Appellant)	Vs.	ACIT Circle 1(1) Guntur (Respondent)
निर्धारिती द्वारा / Assessee by: Shri G.V.N. Hari, CA		
राजस्व द्वारा / Revenue by: Shri Satyasai Rath, DR		
सुनवाई की तारीख / Date of hearing: 07/01/2025		
घोषणा की तारीख / Pronouncement: 01/04/2025		

**आदेश/ORDER**

**Per Vijay Pal Rao, Vice President**

This appeal by the Revenue and C.O by the assessee are directed against the order dated, 20/02/2024 of the learned CIT (A)-NFAC Delhi, for the A.Y.2020-21.

2. At the outset, it is seen that there is a delay of 11 days in filing the appeal by the Revenue. The Assessing Officer has filed

an application for condonation of delay which is supported by an affidavit. The learned DR has submitted that the Assessing Officer was on Election Duty for the General Elections of 2024 as Nodal Officer for the Districts of Guntur, Bapatla and Palnadu and therefore, the Assessing Officer was not able to prepare the appeal within the period of limitation prescribed under the Act. The delay of 11 days in filing the present appeal is due to the unavoidable circumstances as the Assessing Officer was put into Election Duty for General Elections of 2024 held in the month of April, 2024.

3. On the other hand, the learned AR of the assessee has not opposed the condonation of delay of 11 days in filing the present appeal by the Revenue.

4. We have considered the rival submission and carefully perused the contents of the affidavit filed by the Assessing Officer. The relevant part of the affidavit explaining the cause of delay is as under:

**The learned Commissioner of Income-Tax (Appeals) disposed of the appeal vide order in ITA no ITBA/NFAC/S/250/2023-24/1061173477(1), dated 20-02-2024. The appeal before the Hon'ble ITAT is being filed on 20-04-2024. There is a delay of 11 days.**

**The petitioner humbly submits that the delay of 11 days is for the reason that the petitioner i.e. Assistant Commissioner is on election duty for the General Elections, 2024 as Nodal Officer for the Districts of Guntur, Bapatla and Palnadu. As the petitioner attends meetings with the District Collectors and also attends enquiries outside of the office. Therefore, the petitioner not able to prepare the grounds for the appeal and other relevant details within the time prescribed, it is therefore submitted that the delay of 11 days in filing the appeal before the Hon'ble Tribunal was unintentional and beyond the circumstances explained above. The petitioner, therefore, prays that the Hon'ble Income-Tax Appellate Tribunal to kindly condone the delay and pass appropriate orders in the matter.**

5. Thus, it is an undisputed fact that the General Elections for the Lok Sabha were held during this relevant period and therefore, the reasons explained by the Assessing Officer are considered to be sufficient cause for the delay of 11 days in filing the present appeal. Accordingly, the delay of 11 days in filing the present appeal by the Revenue is condoned.

6. The Revenue has raised the following grounds of appeal:

- i. The Ld.CIT(A) has erred in deleting the addition made by the Assessing Officer under the head Business Income of Rs.168,333,967/-, without considering the fact that the company is engaged in the business of letting out of properties;
- ii. The Ld. CIT(A) has ignored the fact that the facts of the case are identical to the facts of *Royal Corporation Pvt. Ltd. Vs. ACIT (2016) 386 ITR 500*, wherein the Hon'ble Supreme Court held that the income in question should be treated as business income and not income from House Property. In the instant case, the assessee itself admitted that the company is engaged in business of leasing of commercial properties. The assessee does not have any other business activity or business income;
- iii. The Ld.CIT(A) erred in ignoring the judgements of the Hon'ble Supreme Court in the cases of *Rayala Corporation Pvt. Ltd. Vs ACIT (2016) 386 ITR 500* and *Chennai Properties and Investments Ltd. (2015) 373 ITR 673* and misplacing reliance on the judgement of the Hon'ble ITAT, Hyderabad in the case of *Cache Properties Pvt. Ltd.*, the facts of which are clearly distinguishable from the facts of the assessee;
- iv. Any other Grounds of Appeal that emerge out of the Appeal Proceedings from time to time.

7. The learned DR submitted that the assessee has received amount of Rs.,19,08,01,284/- from letting out of the I.T. Park to M/s. Cognizant Technology Solutions India Private

Limited and the same was offered for taxation under the head income from house property. The assessee claimed standard deduction @ 30%, interest expenses and Municipality taxes total amount of Rs.8,08,17,246/- against the rental income. The Assessing Officer during the assessment proceedings noted that the assessee is in the business of real estate as well as leasing out/letting out of the property etc., and therefore, in view of the judgment of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd vs. CIT reported in 373 ITR 673, the rental income from the business of letting out the property to be assessed as business income and not as income from house property. The learned DR has further submitted that the Hon'ble Supreme Court in case of Rayala Corporation (P) Ltd vs. ACIT reported in 386 ITR 500 has held that where the business of the company is to lease out its property and to earn rent, then the income so earned should be treated as its business income and not as income from house property. The learned DR has referred to the memorandum of association of the assessee and submitted that to carry on business of letting/hiring properties is one of the main objects of the assessee company and therefore, the rental income earned by the assessee for letting out the property, in question, is a business income of the assessee. The learned DR has referred to the order of the learned CIT (A) and submitted that the learned CIT (A) has relied upon the decisions where the assessee was not in the business of letting out the property but the rental income was earned from letting out of the property to be assessed as income from house property, whereas in case of the assessee, the assessee is in the business of letting out/leasing out of the property. Thus, the learned CIT (A) erred in ignoring the

judgments of the Hon'ble Supreme Court in the case of Rayala Corporation (P) Ltd vs. ACIT (Supra) as well as Chennai Properties & Investments Ltd vs. CIT (Supra). The learned DR has referred to the notes on the financial statement and submitted that the assessee itself has reported the rental income as business income and the property, in question, as business property of the assessee and therefore, the claim of income from house property is contrary to the facts and law and therefore, cannot be allowed. Thus, the learned DR has submitted that the impugned order of the learned CIT (A), qua, this issue is liable to be set aside and the order of the Assessing Officer to be restored.

8. On the other hand, the learned AR of the assessee has submitted that this company is having only one property which was let out to M/s. Cognizant Technology Solutions India Private Limited. Other than the above property, no other immovable property was held by the company. The learned AR has further submitted that this is only a mistake that a terminology of business was used while preparing the annual account. The assessee company has not purchased and sold any property from 2014 to 2020 after it was acquired by the present management except the additions were made to the existing building as per the requirement of M/s. Cognizant Technology Solutions India Private Limited. In fact, the company is not doing any business of purchase and selling of the property and letting of the property. The learned AR has further submitted that the Assessing Officer has accepted the rental income as income from house property for the A.Y 2014-15 and 2017-18 and there is no change in the nature of the income for the year under consideration. Thus, in

the absence of any change in the facts and circumstances, the rental income accepted in the earlier years as income from house property cannot be treated as business income of the assessee for the year under consideration. He has relied upon the following decisions in support of his contention:

- i) Raj Dadarkar & Associates vs. ACIT (2017) 394 ITR 0592 (S.C)
- ii) Shambhu Investment (P) Ltd vs. CIT (2003) 263 ITR 0143
- iii) CIT vs. Shambhu Investment (P) Ltd (2001) 249 ITR 0047.
- iv) Dy. CIT vs. Cache Properties (P) Ltd (2021) 89 ITR (Trib) 0038 (Hyderabad) (SN).

9. Thus, the learned AR has submitted that the learned CIT (A) is justified in allowing the claim of the assessee for the rental income as income from house property. He has supported the impugned order of the learned CIT (A) and submitted that the learned CIT (A) has followed the decision of the Hyderabad Benches of the Tribunal in case of Dy. CIT vs. Cache Properties (P) Ltd (Supra).

10. We have considered the rival submission as well as the relevant material available on record. The assessee declared the rental income in the return of income as income from house property which was treated by the Assessing Officer as business income of the assessee by relying upon the judgments of the Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of Rayala Corporation (P) Ltd vs. ACIT (Supra) as well as

Chennai Properties & Investments Ltd vs. CIT (Supra). The relevant facts on this point are that the assessee has entered into a lease agreement dated 24/11/2016 with M/s. Cognizant Technology Solutions India Private Limited to lease out the property bearing No. 5/639, Old Mahabalipuram Road, Kandanchavadi, Chennai. The said property has been constructed comprising of Ground + 7 floor I.T Park under the name and style of Varalakshmi Tech Park. The total leased out built up area in the said property was 3,20,645 sft and canteen area of 21,000 sft. As per clause 3 of the agreement, the let out property was comprising of IT Park including canteen area with fixtures, assets comprising of elevator, air conditioning equipment, structural glazing, transformers, diesel generator and all fire safety equipment etc., as listed in Annexure-A to the said agreement. The term of the lease was for a period commencing from 19/01/2016 and ending on 30/09/2020 with a locking period up to 30/09/2018. As per clause (3.3) of the lease agreement, the lease may be renewed for a further period as may be mutually agreeable by the parties by execution and registration of fresh lease deed subject to such other terms and conditions as may be mutually agreed between parties. Thus, the letting out of the I.T Park by the assessee to M/s. Cognizant Technology Solutions India Private Limited was not an adhoc or temporary arrangement but it was for more than 4 years being the initial lease period with the option of renewal of the lease. As per the Memorandum of Association placed at page No.68 of the paper book, the main objects for which the assessee company was established are mentioned as under:

**The Companies Act, 1956**  
(Company Limited by Shares)

MEMORANDUM OF ASSOCIATION  
OF  
BBM ESTATES PRIVATE LIMITED

- I. The name of the Company is BBM Estates Private Limited
- II. The Registered Office of the Company will be situated in the State of Karnataka.
- III. The Objects for which the Company is established are:
  - A. MAIN OBJECTS WHICH WILL BE PURSUED BY THE COMPANY ON ITS INCORPORATION:
    1. To carry on the business(es) of dealing in Real Estate, Property Development Estate Agency and without limiting the generality above, to acquire by purchase, exchange, rent or otherwise deal in lands, buildings hereditaments or any estate or interest therein and any rights over or connected with lands so situated and to turn the same to account in any way as may seem expedient and in particular by laying out, developing or assist in developing, preparing land and building and preparing building sites by planning, paving, drawing and by constructing, re-constructing pulling, down, altering, improving, decorating, furnishing and maintaining offices, flats, service flats, houses, hotels, restaurants, bungalows, chawls, warehouses, shops, cinema houses, shopping and commercial complexes, buildings, works and conventions of all kinds by consolidating or subdividing properties, by leasing, letting or renting, selling (by installments), ownerships, hire purchase basis or otherwise or disposing of the same.
    2. To carry on the business of Developers, Builders, Contractors and Sub Contractors, for construction, designing, execution, control and/or erection of all kinds of super-structures and erections like building for residential, and other purposes, water tanks, runways, facilities like roads, bridges, dams, gardens, parks, shops and market complexes, power and other energy supply works and other conveniences of public utilities and/ or demolition of such construction or structures and ways.
    3. To carry on the business of leasing, letting, hiring the properties and to appoint/employ any agency including proprietors, owners, lessors, managers, keepers, lessees, caterers, partners for collecting lease, rents, license fees, hire charges and any income, including drainage, water, electric and other charges, and/or to purchase or sell or otherwise deal in property including residential houses, commercial buildings, flats, rooms and to manage or let or license, hire the same or any part thereof for any period, whether belonging to Company or not.
    4. To carry on the business of import, export, devise, design, buy, sell and /or otherwise, deal in all kinds of building materials such as bricks, mortar, concrete, granite, marble, roof tiles, flooring and wall tiles, cement, pre-fabricated materials, lime, plaster, brick, iron, wood, timber, glass, plastics, iron and steel products, metals, concrete, artificial stone, paving materials, and other materials, used in the decoration of furnishing of buildings, exhibitions or other structures of all kinds.

11. Thus, it is clear that the business of leasing/letting/hiring the properties is one of the main objects of the assessee company. We further note that as per the notes on account and audited report, the assessee has declared the rental income from M/s. Cognizant Technology Solutions India Private Limited as sale of services under Note No.17, as under:

BBM ESTATES PRIVATE LIMITED			
Details of items relating to financial statements for the year ending on March 31, 2020			
Note No.	Particulars	Amount in ₹	Amount in ₹
16	<b>Cash and Cash Equivalents</b>		
	<u>Details of bank balance</u>	<u>IFSC Code</u>	
	IDBI Bank 12810300001007		26,147.00
	Indus Ind Bank - 200998880541		15,844.66
	Lakshmi Vilas Bank - 0161351000004840		24,279.00
	State Bank of India - 34146473898	SBIN0013483	64,134.65
	Axis Bank Current Account No.919020087072962		24,45,854.22
			<u>25,76,259.53</u>
	<u>Details of Fixed deposits -</u>	<u>Date of Maturity</u>	
	SBI FD No. 35117048136		42,255.00
	SBI FD No. 35118281648		27,982.00
	SBI FD No. 35132811103		27,355.00
	SBI FD No. 35132816463		41,032.00
	SBI FD No. 3770987460		3,27,65,269.00
			<u>3,29,03,893.00</u>
17	<b>Sale of Services</b>		
	<u>Details of lease income</u>	<u>TDS</u>	
	Cognizant Technology Solutions India Private Limited		
		1,90,80,132.00	19,08,01,284.00
		<u>1,90,80,132.00</u>	<u>19,08,01,284.00</u>
18	<b>Other Income</b>		
	<u>Details of interest income</u>		
	Interest Received on T T G D C L for the F.Y -2019-20	61,158.00	6,11,580.00
	Income Tax Refund Received for the F.Y -2018-19	-	27,930.00
	Interest Received on FDR's for the F.Y -2019-20	3,22,719.00	32,27,181.00
	Interest Received on Loan for the F.Y -2019-20	70,618.00	7,06,182.00
		<u>4,54,495.00</u>	<u>45,72,873.00</u>
19	<b>Employee benefits payable</b>		
	<u>Details of salaries and other allowances</u>	<u>TDS</u>	
	G. Thirukumaran	6,000.00	11,39,508.00
	PVSA Padma	-	13,10,000.00
		<u>6,000.00</u>	<u>24,49,508.00</u>
20	<b>Finance Cost</b>		
	<u>Details of Interest expenses</u>		
	Interest paid on term loan to State Bank of India		1,61,42,135.00
	Interest paid on term loan to Axis Bank Ltd		38,67,267.00
			<u>2,00,09,402.00</u>
	<u>Details of Interest on statutory payments</u>		
	Interest on delay in payment of advance income tax for the year 19-20		18,270.00
	Interest on delay in payment of advance income tax for the year 18-19		94,633.00
			<u>1,12,903.00</u>

12. Thus, in the books of account, the assessee has shown the lease income as sale of service/business income of the assessee. The outstanding rent is also reported as trade receivables in Note No.15 as under:

15	<u>Trade Receivables</u>	1,72,52,136
	<u>Details of trade receivables</u>	1,72,52,136
	Cognizant Technology Solutions India Pvt Ltd	

For BBM ESTATES PVT. LTD.

13. This property is also forming part of the property, plant and equipment as reported in Note No.10 to the notes forming part of the financial statement in the category of tangible asset. It is manifest from the books of account that this property has been shown as the business asset of the assessee company and not as a stock-in-trade. Thus, the leasing out of the property is the main object of the assessee and further the lease income is shown as sales of services/business income of the assessee in their books of account. Even the outstanding lease rental is also shown as trade receivables which shows the nature of the income as recognized by the assessee and reported in the audited books of account as business income. The Hon'ble Supreme Court in the case of Chennai Properties & Investments (P) Ltd vs. CIT (Supra) while considering an identical issue has held in para 4.2 to 11 as under:

*“4. We have heard the learned counsel for the parties on the aforesaid issue. Before we narrate the legal principle that needs to be applied to give the answer to the aforesaid question, we would like to recapitulate some seminal features of the present case.*

*5. The Memorandum of Association of the appellant-company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B)*

respectively. The main object of the appellant company is to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasise is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. It may further be recorded that in the return that was filed, entire income which accrued and was assessed in the said return was from letting out of these properties. It is so recorded and accepted by the assessing officer himself in his order.

**6.** It transpires that the return of a total income of Rs.244030 was filed for the assessment year in question that is assessment year 1983-1984 and the entire income was through letting out of the aforesaid two properties namely, "Chennai House" and "Firhavin Estate". Thus, there is no other income of the assessee except the income from letting out of these two properties. We have to decide the issue keeping in mind the aforesaid aspects.

**7.** With this background, we first refer to the judgment of this Court in East India Housing & Land Development Trust Ltd.'s case (*supra*) which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question arose for consideration was whether the rental income that is received was to be treated as income from the house property or the income from the business. This court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.

**8.** Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P.) Ltd. (*supra*), we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. CIT [1962] 44 ITR 362 (SC)'. That was also a case where the company, which was the assessee, was formed with the object, *inter alia*, of acquiring and disposing of the

*underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: —*

*"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The dividing line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."*

**9.** *After applying the aforesaid principle to the facts, which were there before the Court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the aforesaid judgment in Karanpura Development Co. Ltd.'s case (supra) squarely applies to the facts of the present case.*

**10.** *No doubt in Sultan Brothers (P.) Ltd.'s case (supra), Constitution Bench judgment of this Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at an conclusion whether the income is to be treated as income from business and such a question would depend upon the*

*circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words: —*

*"We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature."*

**11.** *We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."*

14. The Hon'ble Supreme Court has specifically observed that letting out of the property is in fact the business of the assessee and therefore, the same was rightly disclosed as income under the head "income from business". Similarly, in the case of Rayala Corporation (P) Ltd vs. ACIT (Supra), the Hon'ble Supreme Court has held in para 9 to 13 as under:

**9.** *Upon hearing the learned counsel and going through the judgments cited by the learned counsel, we are of the view that the law laid down by this Court in the case of Chennai Properties & Investment Ltd. (supra) shows the correct position of law and looking at the facts of the case in question, the case on hand is squarely covered by the said judgment.*

**10.** *Submissions made by the learned counsel appearing for the Revenue is to the effect that the rent should be the main source of income or the purpose for which the company is incorporated should be to earn income from rent, so as to*

*make the rental income to be the income taxable under the head "Profits and Gains of Business or Profession". It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning rent therefrom. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue.*

**11.** *The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income.*

**12.** *In view of the law laid down by this Court in the case of Chennai Properties & Investment Ltd. (supra) and looking at the facts of these appeals, in our opinion, the High court was not correct while deciding that the income of the assessee should be treated as Income from House Property.*

**13.** *We, therefore, set aside the impugned judgments and allow these appeals with no order as to costs. We direct that the income of the assessee shall be subject to tax under the head "Profits and gains of business or profession".*

15. In the said case, the assessee had only one business and that is on leasing its property and earning rental therefrom and accordingly, the Hon'ble Supreme Court has held that the business of the company is to lease its property and to earn the rent and therefore, the income so earned should be treated as its business income. In the case in hand, the leasing out of the property is one of the main objects of the assessee company and this lease/rental income is the only income reported by the assessee as business income in the books of account/audited financials. We found that the claim of the assessee in the return of income declaring the rental income as income from house property is contrary to the facts as recorded in the books of account as well as the terms and conditions of the lease agreement. Therefore, this is not a case of exploiting the property by the owner for rental income but it is one of the main objects of

the assessee company and the only business income of the assessee company. The decisions relied upon by the learned AR of the assessee has been considered by the Hon'ble Supreme Court in the judgments in the case of Chennai Properties & Investments (P) Ltd vs. CIT (Supra) as well as Rayala Corporation (P) Ltd vs. ACIT (Supra). Even otherwise, in case of Raj Dadarkar & Associates vs. ACIT (Supra), the primary question involved was whether the assessee was the owner of the shopping centre within the meaning of section 32 r.w.s. 27 of the I.T. Act, 1961 and once this issue was decided against the assessee by treating the assessee as deemed owner of the leasehold premises acquired for more than 12 years, then treating the rental income as income from house property or profit & gain from the business or profession was only a consequential issue. Therefore, the said judgment will not help the case of the assessee.

16. As regards the rule of consistency, as contended by the learned AR, we are of the considered view that when the claim of the assessee is contrary to the admitted facts, as well as settled law, then a mere non-disturbance of claim by the Assessing Officer for the particular assessment would not give a right to the assessee to perpetuate impermissible claim. Accordingly, we do not find any substance in this contention of the learned AR as well as the reasons given by the learned CIT (A). Hence, in the facts and circumstances, as discussed above and in view of the binding precedents of the Hon'ble Supreme Court cited (supra), the impugned order of the learned CIT (A) qua this issue is not sustainable and the same is set aside and the order of the Assessing Officer is restored.

**C.O. No.12/Viz/2024**

17. The assessee has raised the following grounds in the cross objection:

*“1. The learned CIT (A) is justified in holding that the lease rent received by the respondent is assessable under the head “income from House Property”.*

*2. Without prejudice to the above, the learned CIT (A) ought to have held that the Assessing Officer is not justified in disallowing expenses amounting to Rs.1,88,69,349/- while recomputing the lease income under the held “Profits & Gains of business or profession”.*

*3. Any other grounds of cross objection that may be raised at the time of hearing”.*

18. Ground No.1 of the Cross Objection supports the impugned order of the learned CIT (A) and therefore, in view of our findings in the Revenue Appeal, the same stands dismissed.

19. Ground No.2 is regarding disallowance of expenses made by the Assessing Officer while assessing the lease income as income from business or profession. We have heard the learned AR as well as the learned DR and carefully perused the orders of the authorities below. The Assessing Officer disallowed certain expenditure against the business income which was challenged by the assessee before the learned CIT (A). The learned CIT (A) while passing the impugned order has allowed the claim of the assessee regarding the rental income as income from house property and therefore, did not adjudicate the issue of disallowance of expenses made by the Assessing Officer. Accordingly, this issue is remanded to the record of the learned CIT (A) for adjudication on merits. Needless to say, the assessee shall be given an appropriate opportunity of hearing before passing the fresh order.

20. In the result, Revenue appeal is allowed and the C.O of the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 1<sup>st</sup> April, 2025.

Sd/-

Sd/-

<b>(S. BALAKRISHNAN) ACCOUNTANT MEMBER</b>	<b>(VIJAY PAL RAO) VICE-PRESIDENT</b>
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Hyderabad, dated 1<sup>st</sup> April, 2025

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Asstt. Commissioner of Income Tax, Circle 1, 2 <sup>nd</sup> Floor, Standard House, Nagaram Palem, Guntur
2	BBM Estates (P) Ltd, 8-24-53, Bommidala House, Mangalagiri Road, Guntur 522001 A.P
3	Pr. CIT - Visakhapatnam
4	DR, ITAT Vizag Benches
5	Guard File

*By Order*