

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**ITA No. 4722/MUM/2025 (AY: 2015-16)**  
*(Physical hearing)*

Janak Vithaldas Vyas 2 <sup>nd</sup> Floor, Temalebar Build. 70, V B Kandi Marg, Fort, Mumbai-400 023 PAN : <b>ABEPV2852Q</b>	Vs	Assessing Officer, Ward 20(2)(1), Mumbai, Piramal Chamber, Mumbai-400 012
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri Karan Vakharia, CA
Revenue by	Shri Kiran K Chhatrapati – SR DR
Date of Institution	25.07.2025
Date of hearing	09.09.2025
Date of pronouncement	13.10.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Id. CIT(A) / NFAC dated 28.05.2025 for A.Y. 2016-16. The assessee has raised following grounds of appeal:

***"Ground No. 1: Addition of Rs. 20,62,791/-as 'Income from House Property' instead of 'Income from Business or Profession'***

*1. The Ld. CIT(A) erred in upholding the order of the Learned Assessing Officer (Ld. AO) passed under section (u/s) 147 read with 144 of the Income Tax Act, 1961 (the Act) wherein an addition of Rs. 20,62,791/-has been made. under the head Income from House Property".*

*2. The Ld. CIT(A) has erred in confirming the action of the Ld. AO in treating a legitimate business income in the form of Leave and licence fees and Maintenance services charges' as 'Income from house property".*

*3. That the Ld. AO and CIT(A) has further erred in law and on facts in not considering the judicial precedent established by Hon'ble Tribunal in the case of*

*the Appellant for AV 2007-08 involving identical facts and circumstances, wherein it was held that income from sub-letting of immovable property, where the property is not directly owned by the Appellant, constitutes business income and not house property income.*

**Ground No. 2: Interest u/s 234A**

*1. In accordance with grounds no. 1, the Appellant requests that interest levied u/s 234A should be NIL as the appellant would not liable to pay tax once the income for sub-letting is treated as business income taxable under presumptive taxation under section 44AD."*

2. The brief facts of the case are that assessee is an individual and no return of income is filed by assessee. The Assessing Officer issued notice u/s 148 dated 26/03/2021 that income of assessee has escaped assessment within the meaning of section 147 of the Act. The assessee was asked to file return of income. The AO recorded that no response was made by assessee. Further, notice u/s 142(1) of the Act was issued on 24/11/2021 but no compliance was made. Ultimately, the assessee filed return of income on 20/12/2021 declaring incomer of Rs.14,39,080/-. The case was reopened on the basis of information that there was no TDS credit u/s 194A and 194I on aggregate payment of Rs.41,43,280/- received by the assessee and he has not filed any return of income; hence, not offered income from his financial activities or source of such activities. The AO, during the assessment noted that in the computation of income, the assessee has shown rental income of Rs.29,46,843/- and offered the same under the head, 'business income' on presumptive basis @8% of receipts and offered presumptive income of Rs.2,35,748/- u/s 44AD. The AO asked the assessee to furnish the details of business activities in last five years along with the computation of income on declaring rental income on

presumptive basis. In response to show cause notice, the assessee filed its reply dated 27/01/2022. In the reply, the assessee stated that he is dealing in the trading of F&O and other financial intermediary services. The assessee furnished copy of rent agreement with Hyundai Motors Ltd and one other Leave & licence Agreement for various other services. The AO was of the view that Hyundai Motors Ltd had deducted TDS u/s 194I. The nature of payment by Hyundai Motors Ltd is of 'rent'. Such nature of payment cannot be ignored while determining rental income which is assessable u/s 24. The main source of income of assessee is not from sub-letting property but also from interest received as seen from 26AS. The assessee has received interest of Rs.1,96,437/-. The sub-letting income is only in respect of three months. The AO rejected the contention of assessee and treated the entire receipts of rent from Hyundai Motors Ltd at Rs.29,46,843/- as total aggregate rent and after allowing statutory deduction @30%, the AO brought balance amount of Rs.20,62,271/- under the head "Income from house property", instead of business income as offered by assessee on presumptive basis. Aggrieved by the additions in the assessment order, the assessee filed appeal before CIT(A). Before CIT(A) no written submission was filed by assessee despite allowing three opportunities as recorded in para 7 of order of CIT(A). The Ld. CIT(A) confirmed the action of AO in ex-parte order. The Ld.CIT(A) confirmed the action of AO in ex-parte order. The Ld.CIT(A) also recorded that he has considered all the material placed before him. Further aggrieved, the assessee has filed present appeal before Tribunal.

3. I have heard the submission of Ld. authorised representative (Ld. AR) of assessee and the Ld. Senior Departmental representative (Sr-DR) for the revenue and have gone through the orders of lower authorities carefully. The Ld.AR of the assessee submits that assessee has sub-let a part of premises, which in capacity of landlord being lessee. The assessee sub-let certain part of property to Hyundai Motors Ltd vide Leave & Licence Agreement dated 7<sup>th</sup> November, 2011. Copy of such Leave & Licence Agreement is placed at page 205 to 216 of paper book. The assessee simultaneously executed a service agreement for providing various services in the tenanted premises. Copy of service agreement between the assessee and Hyundai Motors Ltd is placed at pages 271 to 220 of paper book. The Ld.AR submits that on similar set of facts, on identical issue, the Tribunal in appeal for A.Y 2007-08 has held "income from subletting of movable property" which is not directly owned by assessee constitute the 'business income' and not Income from 'house property'. Thus, the ground of appeal raised by assessee is covered in favour of the assessee. Further, similar view was taken by Mumbai Bench of Tribunal in Shreenathji Balaji Computer Pvt Ltd vs ACIT in ITA No.6251 & 6253/Mum/2012order dated 17/06/2015 and in Sohan Trading & Investment (P) Ltd (2016) 75 taxmann.com 297 (Mumbai-Trib.). The Ld.AR of the assessee submits that assessee is not the owner of let out property and the income earned on sub letting and from service agreement is to be treated as business income instead of 'Income from house property'.

4. On the other hand, the Ld.CIT-DR for the revenue submits that assessee has not filed return of income. The assessee was having sufficient taxable income not only from rental activity, but also from other sources, as well. In the assessment, the AO clearly held that sub letting of property is only for three months and that the scheme of presumptive tax u/s 44AD and 44A is not applicable to assessee. Before CIT(A), the assessee has not filed any submission. Thus, there is no finding of first appellate authority on the issue which the assessee is claiming as covered. Copy of decision allegedly passed in favour of assessee for A.Y. 2007-08 has not been placed on record. Therefore, the matter may be restored back to the file of CIT(A) with the direction to assessee to furnish complete details and to pass the order.
5. I have considered rival submission of both the parties and have gone through the order of lower authorities carefully. The issue before the Tribunal raised in the present appeal is whether the rental income can be offered under presumptive tax scheme. No doubt, that tenant in the tenanted property has deducted tax at source against payment of rent. The Ld.AR of the assessee claiming that on similar set of facts, the appeal for A.Y. 2007-08 was decided in its favour. However, copy of such decision is not placed on record, nor I could trace such decision on website of Tribunal. The decision relied by Ld.AR of the assessee in Shreenathji Balaji computer Pvt Ltd ((supra) and Soham Trading & Investment vs ACIT (supra) is not applicable to the facts of the present case. In both the cases, though the assessee have not offered the rental income under presumptive tax scheme. Considering the peculiar facts of the case that

complete details were not furnished by assessee before first appellate authority, who passed ex-parte order, therefore, I deem it appropriate to restore the case to the first appellate authority with the direction to assessee to furnish complete details and Ld.CIT(A) is directed to pass the order on merit.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order was pronounced in the open Court on 13/10/2025.

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

MUMBAI, Dated: 13/10/2025

*Pavanan*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai