

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.5332/Del/2025
(ASSESSMENT YEAR 2016-17)**

**ITA No.5333/Del/2025
(ASSESSMENT YEAR 2017-18)**

**ITA No.5334/Del/2025
(ASSESSMENT YEAR 2018-19)**

Deputy Commissioner of Income Tax, Central Circle-1, Noida.	Vs.	M/s Advant IT Park Private Ltd. R-99F, Second Floor, Near Metro Station, Dilshad Garden, East Delhi-110095, New Delhi. PAN-AAFCA0572P
(Appellant)		(Respondent)

C.O No.221/Del/2025

Arising out of ITA No.5332/Del/2025
(ASSESSMENT YEAR 2016-17)

C.O No.222/Del/2025

Arising out of ITA No.5333/Del/2025
(ASSESSMENT YEAR 2017-18)

C.O No.223/Del/2025

Arising out of ITA No.5334/Del/2025
(ASSESSMENT YEAR 2018-19)

M/s Advant IT Park Private Ltd. R-99F, Second Floor, Near Metro Station, Dilshad Garden, East Delhi-110095, New Delhi. PAN-AAFCA0572P	Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Noida
(Appellant)		(Respondent)

Assessee by	Shri Virsain Aggarwal, Adv. Shri Rohit Kapur, Adv.
Department by	Shri Jitender Singh, CIT-DR
Date of Hearing	04/12/2025
Date of Pronouncement	22/01/2026

ORDER

PER MANISH AGARWAL, AM:

These three appeals are filed by the Revenue against the common order of Learned Commissioner of Income Tax (Appeals)-3, Noida ('the CIT(A)' in short) all dated 13.06.2025 arising out of the orders passed u/s 143(3) of the Income Tax Act, 1961 ('the Act' for short) for Assessment Years 2016-17 to 2018-19 respectively. The assessee has also filed cross objections.

2. The Appeals filed by the Revenue and Cross Objections filed by the assessee are tabulated as under:

Sr. Nos.	Appeals/C.Os	Asstt. Year	CIT(A)'s Order dated	Assessment Order dated	Assessment Order under section
1	ITA No.5332/Del/2025	2016-17	13.06.2025	26.12.2018	143(3) of the IT Act
2.	C.O.No.221/Del/2025	-do-	-do-	-do-	-do-
3.	ITA No.5333/Del/2025	2017-18	13.06.2025	27.12.2019	143(3)
4.	C.O. No.222/Del/2025	-do-	-do-	-do-	-do-
3.	ITA No.5334/Del/2025	2018-19	13.06.2025	29.03.2021	143(3A) and 143(3B)
4.	C.O. No.223/Del/2025	-do-	-do-	-do-	- do -

3. At the beginning of the proceedings, Ld. AR for the assessee submits that C.Os. are taken in support of the order of Ld. CIT(A), thus are not pressed. Accordingly, C.Os. filed by the assessee are hereby dismissed as not pressed.

4. Before us, both the parties have stated that the facts involved in all these appeals are common, therefore, they are taken together and decided by a common order.

5. First we take up the appeal filed by Revenue for **Assessment Year 2016-17** in **ITA No.5332/Del/2025**.

6. Brief facts of the case that assessee is a company incorporated with the object, inter alia, to develop, operate and rent out IT/Software Parks and provide comprehensive infrastructure and allied facilities thereto. The assessee was allotted a plot in Sector-142, Noida on leasehold basis for setting up Software/IT park. Accordingly, the assessee has constructed two towers and completion certificate was issued by competent authorities and the IT Park also fulfills all the conditions as per Govt. Order issued in this regard. Thereafter, the Ministry of Communication and Technology Department gave permission to the assessee for STP units under the Software Technology Park Scheme and the Units operating are duly registered under the said Scheme. The assessee has taken the entire receipts including lease rent, hire charges, and maintenance charges etc. as income under the head "Profits and Gains from Business or Profession" whereas the AO has treated the same as a rental income and taken the lease rent as "Income from house property" and hire charges and maintenance as "Income from other sources", on the ground that the assessee was not notified as an Industrial Park/SEZ by the CBDT. The Ld. CIT(A) after detailed analysis of the facts and also considered the assessee's objects allowed the appeal of the assessee by holding the entire income as business income.

7. Against the order of Id. CIT(A), Revenue is in appeal before the Tribunal by taking following grounds of appeal:

- “1. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A)-3. Noida has erred in deleting the addition of Rs. 12,06,08,781/- and Rs. 6,49,86,381/ made by the Assessing Officer under the heads "Income from House Property" and "Income from Other Sources", respectively, by reclassifying the same as "Business Income", ignoring the nature of receipts*

and the fact that the assessee was primarily engaged in passive leasing activities.

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in admitting additional evidence during appellate proceedings in contravention of Rule 46A of the Income Tax Rules, 1962, on the incorrect premise that the same did not constitute additional evidence, thereby violating the principles of natural justice and rendering the appellate order perverse.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the objects narrated in MOA while coming to the conclusion that such narration of object clauses leads to the conclusion of systematic and organized activity of services provided by the assessee ignoring the fact that Hon'ble Supreme Court in the case of Sultan Brothers has clearly held that a mere entry in the object clause showing a particular object would not be the determinative factor to arrive at a conclusion whether the income is to be treated as income from business.*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in misinterpreting the CBDT Circular No. 16/2017, which applies only to notified SEZ/IT Parks/Industrial Parks, whereas the assessee's project was never notified under any such government scheme, and thus, the benefit under the Circular could not have been extended to the assessee.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that the assessee has failed to furnish any notification/approval from the competent authority recognizing the project as SEZ/Industrial Park, and therefore reliance on CBDT Circular No. 16/2017 was factually and legally untenable.*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating that the predominant source of income of the assessee was lease rental from immovable property and not from any systematic or organized business activity, thereby ignoring the judgment of the Hon'ble Supreme Court in the case of Raj Dadarkar & Associates [2017] 81 taxmann.com 193 (SC).*
7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in treating incidental and compulsory services such as power backup, security, lifts, etc., as "complex commercial support services without establishing independent or standalone business character, which are in fact inherent in property leasing activity and not constituting business per se.*
8. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in applying the principle of consistency based on past assessments, whereas it is settled law that each assessment year is separate and the rule of res judicata does not apply to income-tax proceedings, particularly when the AO has applied correct legal principles in the year under appeal as held by Hon'ble Supreme Court in Raja Bahadur Visheshwara Singh v. CIT(1961) 41 ITR 685 (SC), Installment Supply (P.) Ltd. vs Uol 1962 AIR 53 (SC).*

9. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that a mistake committed in one year need not be rectified in the assessment proceedings of subsequent years, by overlooking the fact that it is a settled proposition that there is no heroism that an error in one year cannot be corrected in the assessment of subsequent years.*
10. *That the order of CIT(A) being erroneous in law and facts be set aside and order of the A.O. be restored.*
11. *That the above grounds are without prejudice to each other and appellant craves leave to add, alter or amend any ground or grounds on or before the date of hearing of appeal."*

8. Since all the grounds of appeal are regarding the solitary issue of treating the total income declared by the assessee as "Income from House Property" and "Income from Other Sources" as against business income, therefore, all the grounds of appeal are taken together and decided as under:

9. In support of the Grounds of appeal taken by the Revenue, Ld. CIT-DR vehemently supported the orders of AO and submits that the Assessing Officer in the assessment order at page-1 has observed that the assessee derived income from the Lease Rent of 36.44 Crs. and Maintenance Charges of Rs.11.58 Crs. and the dominant income is from lease rental derived from the spaces constructed by it given on lease which is in the nature of rental income. The Ld. CIT-DR submits that hire charges were taken on the amenities provided such as furniture and fixtures and other installations and maintenance charges were received on the services provided like operation and maintenance of common areas such as elevators, DG sets, AC Plants, Firefighting equipment, O&M of car parking Space, O&M of open spaces etc. and therefore, the same are rightly treated as the income from other source by the AO. Ld. CIT DR submits that main source of income of the assessee is rental income received from constructed portion of the property given out on rent therefore it is the Income from house property and the AO has rightly treated the same so. The Ld.

CIT DR submits that CBDT issued circular No.16/2017 wherein it is provided that if the company is engaged in the business of developing, operating and maintaining and industrial park and provide infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out building along with other amenities in an Industrial Park/SEZ in software development technologies would be chargeable under the head income from house property. However, since the assessee company was not registered as the Industrial Park/ SEZ by the board, the benefit of the said circular could not be extended to the assessee. In the case of the assessee, it had only applied for notification u/s 80IA of the Act under the Industrial Park Scheme 2008, but as per assessee's own admission, the IT park has not been got notified. The Ld. CIT-DR submitted that entire receipts of the assessee are predominantly containing the rental income from the tenants and, therefore, as per section 22 of the Act, any income arising to the letting out property whether from residential or commercial has to be assessed under the head "Income from House Property". Ld. CIT-DR submits that the Ld. AO has rightly treated the income of the assessee as rental income and income from other sources and he requested for the confirmation of the said order.

10. Before us, the Ld. AR for the assessee submits that assessee has constructed IT Park wherein spaces in the shape of offices, showrooms are let out to various companies along with furniture and fixtures. As per Ld. AR one of the main objects of the assessee company includes "to build, set up, develop, maintain and/or operate Software Technology Park, IT Park, Industrial Parks, special Economic Zone (SEZ) and to rent out space and provide Infrastructure and other facilities to the occupants of the Software Technology Park, IT Park, Industrial Park, Special Economic Zone (SEZ) Including 100% power back-up, Air conditioning, furnishing, data

communication, and any other services required by the occupants” and accordingly, assessee has carried its business activities in terms of the objects and income received from lease rent as well as hire charges and maintenance charges was shown under the head “Income from Business or Profession”. Ld. AR submits that lower authorities have placed reliance on the judgment of the Hon’ble Supreme Court in the case of *Sultan Brothers Pvt. Ltd. reported in [1994] 51 ITR 353 (SC)* and *CBDT Circular No.16/2017* for treating the business income as income from house property and income from other sources. Ld. AR submits that aforesaid judgment of Hon’ble Supreme Court has been discussed and distinguished by the apex court in the case of *Chennai Properties & Investments Ltd. vs. CIT, Central-III, Tamil Nadu [2015] 56 taxmann.com 456 (SC)* wherein the Hon’ble Supreme Court concluded that the question of identifying the income as income from ‘business or profession’, depend on situation of each case whether particular business is letting out or not. Ld. AR submits that Ld. CIT(A) has considered all the facts and thereafter held the income of the assessee as Income from business or profession which order deserves to be confirmed. Ld. AR also filed a written submission which is placed on record.

11. Heard both the parties and perused the materials available on record. The assessee was incorporated under The Companies Act, 1956 in terms of the certificate to incorporation issued on 25.11.2004. The main objects of the company are as under:

“1. To carry on the business of import, export, purchase, assemble, stockists, distributors, agents, dealers, traders, designers, jobbers, in all types/kinds of computers, computer software development, computer hardware, data entries, software implementation, system study, software documentation and related matters, computer systems, computer peripherals, Integrated circuits, process control, printers, monitors, UPS, computer components, spare parts, computer based systems, computer aided designs, tele-communication systems and its related software and hardware, networking of local area and wide area, data

communication hardware and software, electronic equipment's, office automation, computer stationery/ furnitures, diskettes, magnetic tapes and other computer/electrical/electronic related items.

2. *To promote, encourage, establish, develop, maintain, organize, undertake, manage, operate, conduct and to run in India or abroad computer training centers, data processing centers, computer coaching centers, computer consultancy business, software consultancy, electronic mall E-commerce, E-business and internet applications, web-sites services designing and hosting, cyber cafe and other allied activities for all sorts and services relating to computers, its maintenance, repair, programmes and operations for industrial, commercial, domestic public utility, defense, Govt. and other general customers or Section of society.*
3. *To provide consultancy in the field of information technology, computer hardware and software, system designing, data processing and data transfer and to act as dealers, distributors, agents, representative of Indian and foreign concerns persons operating in the line of information technology*
4. *To carry on the business of information technology development system integration and networking information system audit including security audit, electronic banking, internet related web site designing web page, e-mail, e-business, e-commerce and internet applications, cyber cafe, information and security connected products and any other activities relating to information technology.*
5. *To conceive, develop and design applications and IT Enabled services in the areas of law, Medicine, health, human resources, finance and accounting, architecture, engineering. customer relationship management, business research, knowledge, management, network management, web design and hosting, that can provide to businesses and consumers outside India (in the form of IT Enabled Services). To develop the corresponding software that will help in providing guidance and assistance to external customers In some or all of these area. To maintain database and provide consultancy to the customer's business needs by using any conceivable electronic medium which may include the internet, phone cable, TV and tax.*
6. *To build, set up, develop, maintain and/ or operate Software Technology Park, IT Park, Industrial Parks, special Economic Zone (SEZ) and to rent out space and provide Infrastructure and other facilities to the occupants of the Software Technology Park, IT Park, Industrial Park, Special Economic Zone (SEZ) Including 100% power back-up, Air conditioning, furnishing, data communication, and any other services required by the occupants."*

12. It is further observed that gross receipts of the assessee as appearing in the Profit & Loss account includes the following:

(i)	Maintenance income	-	Rs.11,58,21,206/-
(ii)	Lease Rent	-	Rs.36,94,05,619/-
(iii)	Profit of sale of Units	-	Rs. 1,34,50,192/-
(iv)	POS Sale	-	Rs. 7,76,586/-
(v)	POS Service	-	Rs. 14,19,248/-
Gross Total			Rs. 50,08,72,851/-

13. The main allegation of the AO is that predominant income of assessee is rental income from leased out space constructed in terms of lease agreements executed. Besides this, assessee is having hire agreements and maintenance agreements. As per lease agreements, the office/showroom space is leased out to the lessee subject to the condition that premises taken on lease would be fully ready for occupation which includes installations of furniture and fixtures, utilities and other facilities. Besides this tenant were allowed to use common facilities such as meeting rooms, lifts, AC, power back, parking space etc. As per hire agreements, assessee provides furniture, electrical installation, DG set infrastructure, air-conditioning etc. which are needed to make the premises commercially operational to the lessee. Under maintenance agreement, the lessee is under obligation to paid maintenance charges for the uses of common facilities available in the building such as common air-conditioning, security, common area upkeep, parking etc. All these agreements are executed separately. Ld. CIT(A) after appreciating the nature of the activities of the assessee vis-à-vis all the three types of agreements and overall facts has held the income of the assessee received from lease rentals, hire charges and maintenance charges as business income. The relevant observations of ld. CIT(A) are reproduced as under:

“6. In the light of the above submissions and documents filed by the AR during the course of appellate proceedings, the various grounds of appeal are adjudicated as below:

6.1 Various Grounds of Appeal: In various grounds of appeal, the appellant has contested the treatment of the income earned by the assessee as rental income by the AO rather than business income as shown by the appellant. During the course of assessment proceedings, the AO noted that the assessee is deriving income from following heads:

- a. Maintenance Income*
- b. Lease Rent*

The AO noted that the main sources of assessee's income is rental income received from constructed portion of property given on rent and receipt of maintenance income. The AO further noted that the assessee offered the entire receipts from the above activities under the head "business & profession" rather than "house property" or "income from other sources". The AO further noted that CBDT Circular No. 16 of 2017 dated 25.04.2017 on the subject of "lease rent from buildings in an Industrial Park/SEZ" clearly outlines that income from letting out of premises along with other facilities in an Industrial Park/SEZ is to be charged under the head "Profits & Gains of Business". The AO held that only those assesseees who are located in an Industrial Park/SEZ are covered under the above Circular. Accordingly, Toner the AO directed the assessee to justify whether the appellant is recognized as an Industrial Park/SEZ. The AO from the reply of the assessee filed during the course of assessment proceedings held that the assessee is neither an Industrial Park nor SEZ and hence, is not covered under Circular No. 16 of 2017 issued by CBDT. The AO accordingly held that as the assessee does not fall under the category of recognized Industrial Park/SEZ, the lease rental income would be assessed as Income from House Property. Similarly, the maintenance income was treated as income from other sources.

The appellant during the appellate proceedings reiterated the contentions as filed before the AO. The contentions of the appellant are summarized as under:

- a. The appellant company was incorporated on 25.11.2004. As per the MOA, the main object of the company includes "to build, set-up, develop, maintain and/or operate software technology park, IT Park, Industrial Park, SEZ and to rent out the space and provide infrastructure and other facilities to the occupants.*
- b. The appellant applied for allotment for an Institutional plot to NOIDA which was allotted on 17.02.2006. As per the appellant, the lease deed of the said plot stipulates that the same has to be used only for software IT Units/ITES Units.*

- c. *As per the appellant, the construction and setting up of the IT Park has been done as per the norms of NOIDA. Further, as per appellant, the construction of the facilities was in accordance with the policies and procedures for institutional property management issued by the NOIDA. As per the said policy, 10% of the said FAR would be permitted for institutional facilities and rest 90% has to be used for IT/ITES Services. The Institutional facilities permitted have also been highlighted by the appellant and the same has been made part of the submissions in paper book.*
- d. *Hence, as per appellant, following the policy of the NOIDA, the appellant allocated 90% of the total space for core activities and 10% for various other commercial facilities. The appellant further stated that approval of Ministry of Communication and Information Technology Government of India was received for setting-up of infrastructure facilities under the software technology park scheme.*
- e. *Further, as per appellant, the leading customers of the appellant include Bharat Heavy Electricals Limited, KPMG, Samsung Engineering Pvt. Ltd. and Hexaware Technologies Limited etc. The appellant further highlighted the nature of activities of various customers who had applied for space at the facility of the assessee. Further, as per appellant, perusal of the agreements executed with various customers reveal that the assessee was supposed to provide the operational and maintenance services including supply of electricity, operation & maintenance of lifts, common areas, firefighting equipment, manning of guard room, pest control, security, driver rooms and other common facilities including cafeteria, Food court, ATMs, Private Desks, Health Club and Common Reception.*
- f. *The appellant further stated that the assessee has to employ a large number of people for rendering services to its customers. As per appellant, the assessee had more than 150 full time employees to manage the affairs of the IT Park apart from hundreds of contractual manpower.*
- g. *The appellant further stated that the assessee is maintaining an IT Park and the observations of the AO that the assessee has not set-up an IT Park are incorrect. Moreover, as per AR, the AO is not correct in holding that the assessee is not registered under the Industrial Park Scheme, 2008. As per appellant, the assessee has applied for the said scheme but the above criteria cannot be the sole deciding factor in changing the head of income of the assessee. As per appellant, the notification under Industrial Park Scheme, 2008 can have consequences with respect to tax benefits u/s 801A and not on the issues which have been adjudicated by the AO.*
- h. *Further, as per appellant, the tenants are involved in activities related to software or information technology. Moreover, as per appellant, the 10% space used for providing various facilities is as per the norms of the NOIDA*

as the balance 90% space has been used for core activities. The appellant further stated that the observations of the AO with respect to the nature of work of Connaught Plaza Restaurants Pvt. Ltd. (Macdonalds) and Jubilant Foodworks Limited (Dominoz) are incorrect for the reasons that the said entities are providing facilities to the software clients housed in the other parts of the building.

- i. The appellant further stated that the scope of IT and ITES services is given by the CBDT in its Notification No. 11521 dated 26.09.2000 and the same have been placed in the paper book. As per the appellant, the customers operating from the core 90% area are carrying out one or the other activities as listed in the above said notification. The appellant has highlighted the nature of work carried out by the entities in the core area including India Mart Intermesh Limited, Samsung Engineering India Pvt. Ltd., KPMG, Bharat Heavy Electricals Limited etc. to justify its position that the entities are operating in IT/ITES Services. Accordingly, as per AR, the appellant has developed an IT Park and has also been operating the same.*

Accordingly; the AR stated that the assessee carried out the complex commercial activities and hence, its income has to be characterized as business income and not income from house property/income from other sources.

Conclusion

Perusal of the assessment order reveals that the AO has treated the income of the assessee from leasing out of space and maintenance income from common facilities provided to the lessees as rental income and income from other sources respectively. The basic premise of the AO in doing the said alteration in the heads of income is based on CBDT Circular No. 16 of 2017 wherein, it has been directed that, Income from letting out of premises in an Industrial Park/SEZ is to be charged under profits & gains of business. As per AO, only an entity located in Industrial Park/SEZ can claim benefit of treatment of income from leasing out of property as Toner Blyusiness income and not any other assessee. Also, the AO has noted that activities Sofia number of clients on the premise of the assessee were not related to IT Odented Services. The appellant on the other hand stated that the reliance of the AO on the CBDT Circular No. 16 of 2017 dated 25.04.2017 is misplaced for the reason that though the said circular extends specific benefit to entities operating in an IT Park/SEZ but it nowhere denies the said benefit to entities not operating in a notified IT Park. Further, as per appellant, the activities of all the clients are IT Oriented and the observations of the AO are incorrect viz a viz the nature of the activities being carried out on the premises of the assessee.

It needs to be highlighted that the assessee has built an institutional premises as per the norms of the NOIDA. As per the policy document for institutional premises, 90% of the space is to be used for core activities and 10% can be used for providing various services like food courts, ATM etc. to the clients occupying

the core 90% of the space. The observations of the AO viz a viz the outlets of Dominos and MacDonalds, that the said entities are not into IT related services, are incorrect to the extent that said entities fell into the category of facility providers occupying 10% of the space as ordained by the policy document of the NOIDA. On the issue of other entities occupying the premises of the assessee including KPMG, BHEL, Samsung etc.; the appellant has provided an exhaustive list of activities which shall fall in the category of IT enabled services as per CBDT Notification No. 11521 dated 26.09.2000. The said notification is reproduced below for ready reference:

"In exercise of the powers conferred by clause (b) of item (i) of Explanation 2 of section 10A, clause (b) of item (i) of Explanation 2 of section 10B and clause (b) of Explanation to section 80HHE of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby specifies the following information technology enabled products or services, as the case may be, for the purpose of said clauses, namely:

- (I) Back-office Operations,*
 - (ii) Call Centers*
 - (iii) Content Development or Animation*
 - (iv) Data Processing,*
 - (v) Engineering and Design;*
 - (vi) Geographic Information System Services;*
 - (vii) Human Resource Services;*
 - (viii) Insurance Claim Processing*
 - (ix) Legal Databases;*
 - (x) Medical Transcription;*
 - (xi) Payroll;*
 - (xii) Remote Maintenance;*
 - (xiii) Revenue Accounting*
 - (xiv) Support Centers, and*
 - (xv) Web-site Services*
- [F. No. 142/49/2000-TPL]*

From the reading of the above Notification, it is apparent that the scope of IT/ITES Services is exhaustive and as per the appellant, the various clients operating from the premise of the assessee fall in one or another of the activities as cited above. Hence, no adverse inference can be drawn viz a viz the nature of activities being carried out on the premise of the assessee which can cast a shadow on the claim of its income under various heads as shown in the return.

Now coming to the core issue of treatment of the income derived from the letting out of the premises and maintenance charges as business income by the assessee and the action of the AO in changing the head of the said income into income from house property and income from other sources. Perusal of assessment order shows that in Para 2, the AO has clearly noted that the assessee is mainly deriving

income from lease rent and maintenance operations. The AO in Para 2.1 has further noted that the maintenance income shown by the assessee is from operation and maintenance of services in common areas like elevators, DG sets, AC plants, fire fighting equipment, O & M of car parking space, O & M of open spaces, security services, insurance of complex, cost of petrol and diesel for common facilities, cost of administrative and maintenance staff, cost of consumables and annual fee to various authorities. It needs to be emphasized here that the assessee in its Memorandum of Association has clearly stated in the main objective at No. 6 as under:

"To build, set up, develop, maintain and/or operate Software Technology Park, IT Park, Industrial Parks, Special Economic Zone (SEZ) and to rent out space and provide infrastructure and other facilities to the occupants of the Software Technology Park, IT Park, Industrial Park, Special Economic Zone (SEZ) including 100% power back-up, Air conditioning, furnishing, data communication and any other services required by the occupants"

From the reading of the above clause of MOA it is clear that the assessee has specifically mentioned that renting out of space and providing various services to the occupants is one of the main objectives of the assessee company. The above issue has been further clarified by the Hon'ble Supreme Court in the case of Raj Dadarkar & Associates reported at [2017] 81 taxmann.com 193 (SC) wherein it has been held that apart from the mentioning in the Memorandum in Association of an object clause, it also needs to be seen whether the assessee was engaged in any systematic or organized activity of providing service to occupiers of shops/stalls. So, apart from the Memorandum of Association mentioning the nature of activities of the assessee, it also needs to be examined, how the assessee is involved in providing various services to the occupants. The Hon'ble High Court of Allahabad in the case of Meeraj Estate & Developers v. CIT reported at [2020] 113 taxmann.com 231/269 Taxman 134/418 ITR 681 has held that to claim income from letting out of a premises as business income, there should be recurrent, organized and systematic business activity. Perusal of the submissions of the appellant reveal that the assessee provided following services to the occupants of the leased premises:

- a. Furniture, fixtures and utilities so that premises is fully ready for occupation.*
- b. Maintenance of common areas (Including corridors, passage, stairway, open space, basement, etc.).*
- c. Maintain business center with all facilities including meeting rooms.*
- d. Maintain lifts and air conditioning system.*
- e. Maintain uninterrupted supply of electricity along with 100% power back-up facility and maintain DG Sets.*

- f. *Maintain cafeteria/food court.*
- g. *Maintain manned and secured parking facility and traffic management and security in the whole complex.*
- h. *Maintain complete fire-fighting system along with all fire-fighting equipment in the whole complex and obtain all required licenses/ approval and to ensure compliance in relation to fire prevention and fire safety.*
- i. *Maintain uninterrupted supply of soft water.*
- J. *Provide space/ facility for installation of satellite antenna/ dish and/or other telecommunication/ wireless equipment.*
- k. *Maintain the entire sanitation system and electrical fittings.*
- l. *Maintain STP/WTP/effluent treatment system and rain water harvesting facility*
- m. *Provide façade cleaning services.*
- n. *To provide Pest Control in all common areas.*
- o. *To provide and maintain common driver room facility in the compound.*
- p. *To provide and maintain ATM facility, Travel Desk, Health Club cum Gym.*
- q. *Maintain common reception area.*
- r. *Maintain washrooms in the whole of the building.*

The above submissions of the appellant reveal that apart from the object clause in the Memorandum of Association, the assessee is also doing a systematic and organized activity to provide various services to the occupants of the premises. The above has also been confirmed by the AO in assessment order. The assessee is involved in a systematic and recurring activity in providing various services and as per the additional evidences submitted during the course of appellate proceedings, 150 regular employees and hundreds of contractual employees were engaged to provide various services at the premises. In above circumstances, it is obvious that apart from the object clause in the MOA mentioning about the activities of the assessee, the actual activities carried out by the assessee point towards a very systematic, recurrent and organized support system being provided to the occupants of the premises leading to a fair conclusion that the nature of income of the assessee is business income rather than rental income.

On the above issue, the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. vs. Commissioner of Income-tax, Central -III, Tamil Nadu reported at [2015] 56 taxmann.com 456 (SC) has held as under:

Section 28(1), read with section 22, of the Income-tax Act. 1961 Business income Chargeable as (Letting out of properties) Whether where in terms of memorandum of association, main object of assessee-company was to acquire properties and earn income by letting out same, said income was to be brought to tax as business income and not as income from house property - Held, yes (Paras 5 and 11) (In favour of assessee)

.....
The Memorandum of Association of the assessee-company mentions that main object of the company is to acquire and hold the properties 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. It may further be noted 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. [Para 5]

In aforesaid circumstances, it is concluded that 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 Accordingly, Instant appeal is allowed and order of the High Court is set aside. [Para 11]

Further, the Hon'ble Supreme Court of India in the case of Principal Commissioner of Income-tax vs. M.P. Entertainment and Developers (P.) Ltd. reported at [2024] 169 taxmann.com 139 (SC) has held as under:

SLP dismissed against impugned order of High Court that where assessee-company's main object was business of constructing, owning, acquiring, developing, managing running, hiring, letting out, selling out or leasing shopping mall, rental income derived by letting out properties in mall, was to be taxed as income from business and not as income from house property

Further, the Hon'ble Supreme Court of India in the case of Rayala Corporation (P.) Ltd. vs. Assistant Commissioner of Income-tax reported at [2016] 72 taxmann.com 149 (SC) has held as under:

"Where assessee-company was engaged in business of leasing out its house properties to earn rent, income so earned as rent should be treated as 'business income', and not as 'income from house property"

Further, the Hon'ble High Court of Madras in the case of Commissioner of Income-tax vs. G.V. Foundations (P.) Ltd. reported at [2022] 138 taxmann.com 168 (Madras) has held as under:

"Where assessee-company had let-out its business premises along with other amenities and received certain rental income, since only commercial space was given by assessee on a license basis, rental income received thereon was to be assessed under head business income and not income from house property"

*Further, the Hon'ble High Court of Kerala in the case of **Commissioner of Income-tax, Thiruvananthapuram vs. Oberon Edifices & Estates (P.) Ltd.** reported at [2019] 103 taxmann.com 413 (Kerala) has held as under:*

"Where primary intention of assessee by letting out shops in mall was commercial exploitation of property, income so derived from same would be assessed as income from business and not as income from house property"

*Further, the Hon'ble High Court of Karnataka in the case of **Commissioner of Income-tax -III vs. Velankani Information Systems (P.) Ltd.** reported at (2013) 35 taxmann.com 1 (Karnataka) has held as under:*

Section 28(1), read with sections 22 and 56, of the income-tax Act, 1961- Business income -Chargeable as [Rental income] - Assessment year 2005-06-Assessee-company let out specialized buildings in STP and provided comprehensive facilities to IT industry Whether, where agreements for letting out of building and provision of services were entered into contemporaneously and object was to enjoy entire property as a whole, which was necessary for carrying on business, income could not be separated on basis of separate agreements Held, yes Whether, therefore, income from letting out was assessable as business income and not as income from house property or income from other sources - Held, yes [Para 26] [in favour of assessee]

*Further, the Hon'ble High Court of Karnataka in the case of **Rao Computers Consultants (P.) Ltd. vs. Joint Commissioner of Income-tax, Bangalore** reported at [2021] 130 taxmann.com 399 (Karnataka) has held as under;*

Section 28(1), read with sections 22 and 56, of the Income-tax Act, 1961- Business income -Chargeable as (Rental income) Assessment year 2011-12 Whether rental income received by assessee from letting out building along with other amenities in an industrial park would be chargeable to tax under head 'income from business and profession and not as 'income from house property - Held, yes [Paras 2 to 5] [In favour of assessee]

*Further, the Hon'ble High Court of Bombay in the case of **National Leasing Ltd. vs. Assistant Commissioner of Income reported at [2024] 168 taxmann.com 39 (Bombay)** has held as under:*

Where assessee-company was engaged in business of purchasing and renting properties and it had no other source of income, assessee was correct in accounting income derived from letting out properties under head 'income from profits and gains of business, and not as income from house property

*Further, the Ld. Tribunal Bench of Allahabad in the case of **Rajesh Kumar Jaiswal vs. DC/ACIT(CENTRAL) Income-tax Department reported at [2025] 174 taxmann.com 276 (Allahabad - Trib.)** has held as under:*

"Where assessee, engaged in trading of liquor and other goods, rented out his property on a day-to-day basis and also provided certain facilities to those who would be taking premises on rent, it would be an organized activity of a composite nature and, thus, income from renting of properties was to be treated as business income and not as income under head 'income from house property'"

*Further, the Ld. Tribunal Bench of Delhi in the case of **Active Securities Ltd. vs. Income-tax Officer reported at [2024] 163 taxmann.com 714 (Delhi - Trib.)** has held as under:*

"Where assessee-company, engaged in business of construction of commercial complex had earned rental income for letting out same along with all facilities and amenities to occupants, same was taxable as business income and not rental income"

CIRCULAR No. 16/2017

The AO has relied upon above circular while making addition in case of assessee. It shall be important to understand the intent of circular no 16/2017. Perusal of para of Circular No. 16/2017 dated 25.04.2017 reads as under:

3. In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

Perusal of the above circular makes it clear that the Department has accepted the judgment of the Hon'ble High Court of Karnataka in the case of CIT vs. Information Technology Park Ltd. and it has been affirmed that in case of an undertaking which develops, operates and maintains and Industrial Park/SEZ in accordance with the scheme framed by the Government, the income from letting out of the premises shall be charged to tax under profits & gains of business. The above circular is not an exclusionary circular, wherein, the businesses located

outside notified area have to treat lease money income as rental income. On the contrary, the said circular specifies that in the case of notified SEZs, the income from leasing out of premises has to be treated only as business income. The import of the above circular is not to deny benefit to the assessee who are not notified in a particular scheme but to definitely give benefit to the ones notified under the scheme. This means that in case the assessee is not located in a notified SEZ/Industrial Park, then to determine whether the income from leasing out of properties and maintenance of the same is under the category of business or rental income, the nature of its income has to be analyzed by looking into the memorandum of association, the nature of business activities, the complexity involved in the business and whether the income from leasing out of the properties also includes income from other systematic, recurrent and organized facilities being provided to the clients of the assessee.

The *Ld. ITAT Bench of Jaipur in the case of Agrani Build estate vs. Principal Commissioner of Income-tax reported at [2023] 153 taxmann.com 300 (Jaipur -Trib.)* on the issue of Circular No. 16/2017 dated 25.04.2017 has held as under:

"However, *Id. PCIT* while invoking the provisions of Section 263 of the Act erred in placing a restrictive interpretation to CBDT Circular No. 16/2017 dated 25-04-2017 wherein the *Id. PCIT* has missed the principal enumerated in the said circular. The said circular emphasizes that lease rent received by the assessee from letting out the building alongwith other amenities in a Software Technology Park would be chargeable to tax under the head "Income from House Property". Therefore, in this way every case of "letting out buildings alongwith other amenities" would automatically fall in the income from business and it will not be merely restricted to Software Technology Park only as has been wrongly understood by *Id. PCIT*. It is important to mention here that the AO after detailed enquiries and verification on completed the assessment u/s 143(3) dated 15-02-2021 at the return income of Rs. 6,68,250/-. However, the assessment order was revised by the *id. PCIT* by placing restrictive interpretation to CBDT Circular No. 16/17 dated 25-04-2017 by holding that the said circular is only applicable in the case of Software Technology Park. We also noticed that during the course of proceedings u/s 263 of the Act before *Id* of the *PCIT*, the decision of Hon'ble Supreme Court in the case of *Chennai Properties & Investments Ltd. (supra)* was brought to the notice of the *Id. PCIT* wherein the Hon'ble Supreme Court in this case has held that where object as per object clause of the company was to do business of letting out, the same has to be taxed under the head income from business and profession. It was further held. "It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities (Para 8 of the order). Finally, in Para-11 of the order, Hon'ble SC taking into consideration the fact that as per object clause of memorandum of association of the company, its object was

letting out of properties held that....."letting of the properties is in fact is the business of the assessee".ld. PCIT has neither distinguished in the case of Hon'ble SC nor has followed the same. The order of Id. PCIT is contrary to the law laid down by the Hon'ble Supreme Court. Thus from the totality of the discussion, we are of the view that in the present case since the assessment was completed by the AO on the basis of exhaustive enquiries and detailed submissions filed by the assessee firm and even otherwise Explanation 2 to Section 263 inserted vide Finance Act, 2015 cannot override the basic requirements of Sub-section (1) of Section 263.

In view of the above discussion, the treatment of the income from leasing of properties and income from maintenance of properties by the assessee is held to be in the nature of business income. Also, the AR has submitted that the AO has not followed the rules of consistency as the characterization of income by the appellant was duly accepted in the assessment orders passed u/s 143(3) for AYs 2012-13 dated 11.03.2015, A.Y. 2013-14 dated 08.02.2016 and AY 2014-15 dated 23.08.2016 and for AY 2013-14 under section 148 dated 31.03.2025 and for AY 2023-24 under section 148 dated 31.03.2025. It is seen from the above assessment orders that no change in the character of business income from leasing out of properties has been done by the AO. The above facts reveal that the AO has not been inconsistent in his approach during framing the assessments in the cases of appellant wherein, the same issue has been handled differently in different years. Accordingly, in view of the above discussion and stated judicial pronouncements, the contentions of the appellant are found to be correct and hence various grounds of appeal are allowed.”

14. From the above, it is seen that Id. CIT(A) has observed that the nature of income of the assessee has to be analyzed by looking into the MOU, business activities carried out, the complexity involved in the business and whether the income from leasing out of the properties also includes income from other systematic and organized activity provided to the tenants by the assessee. As observed above in this case, the main object of the assessee is to build, set up, develop, maintain and/or operate Software Technology Park, IT Park, Industrial Parks, special Economic Zone (SEZ). The Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. vs. CIT (supra) has followed the judgement of the Apex court in the case of Karanpura Development Co. Ltd Vs. CIT reported in (1962) 44 ITR 362(SC) wherein the hon'ble court has held that “.....*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 stressed upon by the Hon’ble Court that the object of the company also kept in view in judge the nature of activities. The Hon’ble Supreme Court after considering the judgment of Sultan Brothers (P.) Ltd. (supra) relied upon by the revenue in the present case held the rental income as income from Business or profession by making following observations:

- “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-letting 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 diving 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 Borthers (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 bbe 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."*

15. In the case of Rayala Corporation (P.) Ltd. vs. ACIT reported in 72 taxmann.com 149 (SC) has held as under:

"Section 28 (i), read with section 22, of the Income-tax Act, 1951-Business income - Chargeable as (Rental income) - Whether so as to make rental income taxable under head 'Profits and Gains of business or profession', rent should be main source of income, or earning income from rent should be for purpose for which company is incorporated-Held, yes-Assessee-company was engaged in business of leasing its

properties to earn rent-It was only business of assessee-company Whether income earned an rent by assessee-company should be treated as 'business Income' and net 'income from house property Held, yes [Paras 10 and 11] [In favour of assessee]

16. Similarly, the Hon'ble Supreme Court in the case of PCIT vs. M.P. Entertainment and Developers (P.) Ltd. [2024] 169 taxmann.com 139 (SC) has held has under:

“Section 280 of the Income-tax Act, 1961- Business Income Allowability of (Rental income) Assessment years 2011-12 to 2014-15-Assessee-company's main object was business of constructing, owning acquiring developing, managing, running, hiring, letting out, selling out or leasing shopping mall-t derived rental income by letting out properties in mall-High Court by impugned order held that rental income received by assessee from sub-letting of mall could not be assessed as income from house property and same was to be assessed as "income from business-Whether SLP filled by revenue against impugned order of High Court was to be dismissed-Held, yes [Para 3] [in favour of assessee]”

17. The assessee is having income not only from letting out the premises but also providing the amenities and facilities which are basic requirements for occupation of the space provided to the tenants and the facilities provided are essential for to become the space operational. In view of these facts, and by respectfully following the judgement of hon'ble Supreme court as relied upon herein above, we are of the view that the income declared by the assessee should be considered as income from business or profession. One more aspect which requires consideration is that for Assessment Years starting from 2012-13 to 2014-15 and 2020-21 and 2023-24, the assessments were completed u/s 143(3)/148 of the Act and the income of the assessee was accepted as Income from Business or Profession, thus, as a principal of consistency also as held by the Hon'ble Supreme Court in the case of **Radhasoami Satsang vs. CIT [1992] 193 ITR 321 (SC)**, the income of the assessee should be treated as “Income from Business and Profession” and as income from house property. Accordingly, we dismiss all the grounds of Revenue and confirmed the

order of Ld. CIT(A) in holding the income of the assessee as Income from business or profession. Thus, all the grounds of appeal of the Revenue are dismissed.

18. In the result appeal of the revenue is dismissed.

ITA No.5333/Del/2025 for Assessment Years 2017-18 &
ITA No.5334/Del/2025 for Assessment Years 2018-19

19. As stated above, the facts involved in ITA No. 5332/Del/2025 for Ay 2016-17 are identical to the facts in both of these appeals. Before us, both the parties have made same arguments, thus, by following the observations made hereinabove in ITA No.5332/Del/2025 for Assessment Year 2016-17 which are *mutatis mutandis* applied in both appeals i.e. ITA No.5333/Del/2025 for Asst. Year 2017-18 and ITA No.5334/Del/2025 for Asst. Year 2018-19, accordingly, both the appeals of the Revenue are dismissed.

20. In the final result, all the three appeals filed by the Revenue are dismissed. The Cross Objections filed by the assessee dismissed as not pressed.

Order pronounced in open Court on 22.01.2026.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 22.01.2026

PK/Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI