

आयकर अपीलीय अधिकरण, मुंबई “ एच ” खंडपीठ

Income-tax Appellate Tribunal -“H”Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य

Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member

आयकर अपील सं./I.T.A./3069/Mum/2015, निर्धारण वर्ष /Assessment Year: 2010-11

Priti Nimish Patel Sharda, 51, Hatkesh society, 7th Floor, Juhu Scheme, Vile Parle Mumbai-400 049. PAN:AAQPS 2319 Q	Vs.	DCIT, CC-25 Aayakar Bhavan, M.K. Road Mumbai.
--	-----	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Rahul Raman-DR

Assessee by: Ms. Arati Deshmukh-AR

सुनवाई की तारीख / Date of Hearing:21.02.2017

घोषणा की तारीख / Date of Pronouncement: 07.03.2017

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 23/02/2015,of the CIT(A)-51,Mumbai,the assessee has filed the present appeal.Assessee,an individual,is carrying on business of manufacturing and sale of metallic yarn.During the year under appeal,she was also director of one company.Effective ground of appeal is about taxability of Rs. 26.40 lakhs under the head business income.

Brief facts:

2.A search and seizure operation u/s.132 of the Act was conducted in the case of Patel Engineering Ltd. group of cases, on 16/12/2010. After recording satisfaction, a notice u/s.153C of the Act was issued to the assessee asking her to file the return of income for the year under consideration.She filed her return on 16/01/2013, declaring total income at Rs. 21.48 lakhs.Later on, on 27/02/2013, the assessee filed a revised return disclosing income of Rs. 15.89 lakhs.The assessee had offered income of Rs. 26,40,000/-was offered under the head income from house property, whereas, the AO following the order for the AY.2010-11 assessed the said income under the head business income. In the appellate proceedings, the First Appellate Authority (FAA)confirmed the order of the AO.

3.Before us the representatives of both the sides agreed that the issue stands decided in favour of the assessee by the order of the Tribunal dated 27/07/2016(ITA/3070/Mumbai/2015,AY.

2011-12).We would like to reproduce the said order and it reads as under:

“2.The only grievance of the assessee relates to assessing rental income of Rs.29,04, 000/-offered under the head income from house property,as business income.

3.Rival contentions have been heard and record perused. Facts in brief are that consequent to closure of business, the assessee has given its property on rent and was in receipt of licence fee income of Rs.29,04,000/-, which was offered as income from house property. During the course of assessment the AO observed that similar income was assessed as business income in the assessment year 2009-2010, but the assessee has not filed any appeal against that order, accordingly he treated the income from house property as business income. By the impugned order CIT(A) confirmed the action of AO, against which assessee is in further appeal before us.

4.I do not find any merit in the orders of lower authorities, insofar as the issue is directly covered by the decision of Hon'ble Supreme Court in the case of Shambhu Investments Pvt. Ltd., 263 ITR 143, wherein it was held that income realised by owner by way of rental income from a building is assessable under the head income from house property. Merely because in the assessment year 2009-10, the assessee has not filed any appeal against the treatment of income offered under the head income from house property as business income, will not preclude the assessee to put a rightful claim of its income which is duly covered by the decision of Hon'ble Supreme Court in the case of Shambhu Investments (supra). Accordingly, the AO is directed to compute the income under the head income from house property and allow necessary deduction u/s.24 of the I.T.Act.

5.In the result, appeal of the assessee is allowed.”

Respectfully, following the above order we decide the effective ground of appeal in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है।

Order pronounced in the open court on 07 March, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 07 मार्च, 2017 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 07.03 .2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.