

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "D" MUMBAI
BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM

I.T.A. No.3891/Mum/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

The Dy. Commissioner of Income Tax, 13(3)(2), Room No.229,2 nd fl, Aayakar Bhavan, M.K.Road, Mumbai-400093	बनाम/ Vs.	M/s Zears Developers P. Ltd., God Gift Towers, 4th floor, Hill Road, Bandra (W), Mumbai-400050
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स्थायी लेखा सं./PAN : AAACZ2097E		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Shri Purshottam Kumar
प्रत्यर्थी की ओर से/ Assessee by	:	Shri Rajesh Sanghvi

सुनवाई की तारीख /Date of Hearing	:	28.2.2017
घोषणा की तारीख /Date of Pronouncement	:	7.3.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This is an appeal filed by the revenue against the order dated 20.4.2015 passed by the Id.CIT(A)-51, Mumbai for the assessment year 2011-12.

2. The revenue has taken following grounds of appeal:

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing balance interest of Rs.82,30,294/- as business expenditure, without appreciating the fact that there is no proof that such expenditure is incurred for the purpose of business?"

2. "Whether on the facts and in the circumstances of the case, the Ld. IT(A) has not appreciated the fact that in case, the interest expenditure is allowed as business expenditure, then there should have been increase in the value of closing stock to that extent?"

3. "Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in deleting the disallowance of Rs.27,10,667/-, being standard deduction @ 30% claimed against income from amenities, without appreciating the fact that there are two sets of agreements, one for rent and the other for amenities provided and as such income from amenities should have been taken as business income?"

4. The appellant prays that the order of the CIT (A) on the grounds be set aside and that of the Assessing Officer be restored."

3. At the outset, the Id. Counsel submitted before us that the issue raised by the revenue in grounds of appeal no.1 to 3 is regarding allowing interest of Rs. 82,30,294/- as business expenditure and allowing Rs.27,10,667/- as standard deduction at the rate of 30% claimed against the income from amenities by the FAA. The Id. AR filed a copy of form no.36 along with the grounds raised in the earlier year AY 2010-11 and the decision of the co-ordinate bench of the Tribunal in ITA No.5615/Mum/2013 (AY-2010-11) dated 26.5.2015 submitting thereby all these issues were fully covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case (supra) and therefore the appeal of the revenue deserved to be dismissed.

4. On the other hand, the Id. DR appeared to be fairly agreed with the contention raised by the Id.AR.

5. We have carefully considered the rival contentions, perused the material placed before us including the orders of authorities below and case law relied upon by the assessee. We find that the issues raised in grounds no.1 and 2 qua

allowing the interest of Rs.82,30,294/- by the Id.CIT(A) as business expenses is identical to one as decided by the co-ordinate bench of the Tribunal in assessee's own case (supra). For the sake of ready reference, we reproduce the observations and finding of the Tribunal as under :

"3. So far as allowing interest of Rs. 93,65,760/- as business expenditure is concerned the learned DR placed reliance upon the conclusion drawn in the assessment order, whereas the learned counsel for the assessee defended the conclusion arrived at in the impugned order.

3.1 We have considered the rival submissions and perused the material available on record, we find that the claim of the impugned amount was declined by the Assessing Officer as claimed business loss on the plea that no meaningful business was carried out. The Id. Commissioner of Income Tax (Appeals) found that the assessee booked sales of 191.52 lakhs from sale of 773 sq.ft. of commercial space, this factual matrix is was also accepted to be correct in para 5.7 of the Assessment Order itself. The account of the assessee further shows unsold stock of Rs. 6,49,82,508/-. In the Assessment Order it has been specifically mentioned that two other projects "Shiv Asthan" & "Anita Apartments" were stopped due to legal problems. Thus, it cannot be said that the business was completely stopped. There is a possibility that sometimes there may be sale or lull in the sale but it cannot be inferred that the Assessee-company has closed down fact remains that the assessee made sales of Rs. 1.91 Crores during the relevant period therefore, we are not in agreement with the observation made in the assessment order that there was no sale or no meaningful business. The Ld. Assessing Officer allocated part of the interest expenses towards house rented and disallowed balance interest more specifically when the assessee is a going concern. The Id. Commissioner of Income Tax (Appeals) even 5 M/s Zears Developers P. Ltd considered the reply the queries raised to the assessee claiming that the assessee started work on the dormant project and proposal for residential complex was responded vide letter dated 03.05.2013 evidencing that the assessee is ongoing concern, thus we find no infirmity in the conclusion drawn by the Id. Commissioner of Income Tax (Appeals). Finally, the appeal of the Revenue is dismissed."

6. Respectfully following the decision of the Tribunal in assessee's own case, we are inclined to dismiss the appeal of the department on this issue as raised in ground no.1 and 2 by upholding the order of Id.CIT(A).

7. The issue raised in ground no.3 also stands covered in favour of the assessee and against the revenue by the same decision as mentioned above. The relevant part of the judgement is reproduced below for the sake of convenience as under :

"Grounds no. 1 and 2, raised by the Revenue pertains to treating amenities income amounting to Rs. 90,35,556/- as "Income from House Property" and allowing deduction @ 30% u/s. 24(a) of the Act without appreciating the facts that there were two sets of agreement, one for the rent and other for the amenities provided thus the income from amenities should have been treated as "Business Income".

2. At the time hearing, the Id. DR, Shri Vijay Kumar Bora, advanced his arguments which are identical to the ground raised by submitting that the substantial income arose out of amenities should have been treated as business income and not income from House Property. The assessment order was defended. On the other hand, Shri Rajesh Sanghvi, learned counsel for the assessee contended that the amenities are interconnected, therefore, cannot be considered in isolation and thus the amenities will stand with rent and it is actually an income from house property. The impugned order was defended.

2.1 We have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee is in the business of Real Estate Development, declared loss of Rs. 42,66,877/-. The learned Assessing Officer determined the income at Rs. 83,09,550/-. The assessee earned gross rental receipts to the tune of Rs. 1,39,87,808/- which was consisting of Rs. 44,52,252/- (treated as rental income) and Rs. 78,35,556/- (from amenities) and further a sum of Rs. 12,00,000/- on account of amenities from Croma 3 M/s Zears Developers P. Ltd and another Rs. 2,00,000/- as rent from Vodaphone. The learned Assessing Officer, while completing the assessment treated the income emanating from amenities as business income. This stand of the Assessing Officer was challenged in appeal before the Id. Commissioner of Income Tax

(Appeals) on the plea that the amenities like flooring, HBAC, Generator, Electrical Cabling, Plumbing, Sprinklers, Hydrants, Signage, Anchor space etc. are part and partial of the rent agreement. The Id. Commissioner of Income Tax (Appeals) agreed with the submission of the assessee against which the Revenue is in appeal before the Tribunal.

2.2. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the Id. respective counsels, if kept in juxtaposition and analyzed, we find that while coming to a particular conclusion the Id. Commissioner of Income Tax (Appeals) justifiably analysed the rent and the amenities agreement and followed the decision from Hon'ble jurisdictional High Court in J.K. Investors (Bombay Ltd.) ITA No. 1089 to 2011 and Bhaktavar Construction Pvt. Ltd. 162 ITR 452 holding that amenities agreement cannot operate in isolation of the rent agreement. The amenities are part and partial of the rent agreement, thus the amount received as amenities is part and partial of the rent thus it is income from house property, therefore, the stand of the Id. Commissioner of Income Tax (Appeals) is affirmed."

8. Respectfully following the decision of the Tribunal in assessee's own case, we hereby uphold the order of the Id.CIT(A) and dismiss the appeal of the department.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 7th March, 2017.

Sd
(D.T.GARASIA)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 7.3.2017

Sr.PS:SRL:

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**