

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No. 2347/Mum/2015
(Assessment Year 2010-11)

M/s. Baluwala Builders,
C/o. Abbas Y. Baluwala,
A-902, Aristo Sapphire,
2nd Hansabad Lane,
Santacruz (W), Mumbai 400 054.
PAN:AAAFB 4153D

..... Appellant

Vs.

The Addl. CIT 19(2),
3rd Floor, Piramal Chambers,
Lalbaug, Mumbai

.... Respondent

Appellant by : Shri Ramesh Iyer
Respondent by : Shri Deepak Ripote

Date of hearing : 21/07/2016
Date of pronouncement : 21 /09/2016

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2010-11 is directed against an order passed by CIT(A)-34 Mumbai dated 26/02/2015 which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 28/02/2013.

2. In this appeal, although assessee has raised multiple Grounds of appeal, but the solitary dispute revolves around the taxability of income received by the assessee on letting out of its property.

3. In brief, the relevant facts are that assessee is a partnership firm engaged in the business of builders and developers. The assessee carried out redevelopment of SRA project at Sahara Village, Andheri East, which was completed in assessment year 2009-10. In the course of such activity, assessee also constructed a commercial complex called "Sahara Classic", where a portion was sold to outsiders and the unsold portion was retained, which was let out to various parties. The rental income so received was offered to tax under the head 'income from house property', whereas the Assessing Officer taxed the same as income under the head 'income from business'. Notably, the said stand of the Assessing Officer was consistent with his stand in the case of the assessee for the earlier assessment year 2008-09. The appeal of the assessee to the CIT(A) has also been dismissed, against which assessee is in further appeal before the Tribunal.

4. It was noted at the time of hearing that one of the reasons weighing with the CIT(A) to dismiss the appeal was the non-appearance of the assessee before him in spite of issuance of notices. The CIT(A) has also, on merits, upheld the stand of the Assessing Officer in treating the rental income to be assessed as 'income from business'.

5. Before us, the Ld. Representative for the assessee pointed out that the notice of hearing issued by the CIT(A) could not be attended to since it was sent to an address which was belonging to a partner, who

had died in December, 2013 i.e. after institution of appeal before the CIT(A). Furthermore, it is pointed out that the same issue has been addressed by the Tribunal in the case of the assessee for assessment year 2008-09 vide ITA No.2023/Mum/2012 dated 17/04/2013. By referring to the said decision, it is sought to be pointed out that the Tribunal has upheld the plea of the assessee that the income earned by renting of office premises was assessable as 'income from house property' and so far as income from hiring of furniture and fixtures is concerned, the same is liable to be treated as 'income from other sources'.

6. The Ld. Departmental Representative has not controverted the aforesaid factual matrix brought out by the Ld. Representative for the assessee .

7. We have carefully considered the rival submissions. The precedent relied upon by the assessee before us clearly covers the controversy in question, and the following discussion in the order of the Tribunal dated 17/04/2013(supra) is relevant:

"7. We have considered the issue and the submissions made in this regard. Without going into the legal principles relied upon by either party, the fact is that assessee has developed the project as part of slum rehabilitation project and had constructed some commercial offices along with residential premises. Out of commercial premises so constructed, Assessee retained some office space and only six of them have been leased on leave and license basis and in some cases along with certain fixtures and furniture as seen from the agreements. There is no other activity undertaken by the Assessee, so as to construe, as a business proposition. The facts in this case are exactly similar to the facts in the case of Shambhu Investment Pvt. Ltd. Vs. CIT 263 ITR 143(SC) decided by Hon'ble Supreme Court, wherein the income from the property was held to be assessable as

income from 'house property'. This decision of the Hon'ble Supreme Court is in favour of the assessee, whereas the Ld. CIT(A) states in page 9 of the order mentions that the decision supports the contentions of the Revenue. We are of the considered opinion that the lease rent is assessable as income from house property only as the assessee is owner of the property and conditions of sections 22 do satisfy assessing the same under the House Property. The issue of occupancy certificate, non completion of project are not relevant for assessing the income in the impugned assessment year. If those were to be taken as material, the action of the AO in bringing to tax part of the income received on pending project also cannot upheld, as such, it may have to be set off to the expenditure on project under the head business. Not only that, while shifting the income from the head 'house property' to 'business' the Assessing Officer failed to consider the allowance of depreciation, interest and others expenditure relevant for considering the computation under the head 'Business'. We cannot up hold the contentions of the revenue that the leased rent on the property has to be construed under the head 'Business'. It is also seen that the income received from leasing of advertisement space was also considered as 'House Property' which may be income from other sources, if not business. Therefore, we are not in a position to uphold the orders of the AO. We hold that the lease income received on leasing out of the premises has to be considered under the head 'income from the house property'.

8. In his anxiety to take it as a business income, the Assessing Officer brought the entire receipt under one head and CIT(A) also confirmed the same. Since we hold that income was assessable as income from 'House property' the AO has directed to exclude the income from fixtures and furniture etc. which are not exactly income from 'house property' to be considered as 'income from other sources' and in doing so he has to allow necessary claim for depreciation, if any. Further, the income received on banner advertisement also should be considered as 'income from other sources' or 'business' as facts may decide after due examination. To the extent of computation of income under various heads, we restore the issue to the file of AO to do accordingly, after examination of the facts and giving due opportunity to assessee."

In view of the aforesaid, we deem it fit and proper to set-aside the order of the CIT(A) and direct the Assessing Officer to recompute the income of the assessee in terms of the decision of the Tribunal dated

17/04/2013(supra). As a consequence, the appeal of the assessee is allowed, as above.

8. In the result, appeal of the assessee is allowed for statistical purposes, as above.

Order pronounced in the open court on 21/09/2016

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 21/09/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai