

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

आयकर अपील सं./ITA No.5184/Mum/2010

आयकर अपील सं./ITA No.4560/Mum/2013

AND

आयकर अपील सं./ITA No.2588/Mum/2014

(निर्धारण वर्ष / Assessment Years :2007-08, 2009-10 & 2010-11)

ITO-1(1)(1), Mumbai-20	Vs.	M/s Air Trades & Tours Pvt. Ltd., No.2, Maker Bhavan, New Marine Lines, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA 3485 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Ms. Arju Garodia
निर्धारिती की ओर से /Assessee by : Shri Deepak Tralshawala
सुनवाई की तारीख / Date of Hearing : **10/05/2016**
घोषणा की तारीख/Date of Pronouncement **10/05/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by the revenue against the order of CIT(A)-Mumbai, for the assessment years 2007-08, 2009-10 & 2010-11.

2. Common grievance of the revenue in all the years under consideration relates to deleting addition made on account of income from house property in respect of property at Ooty and Pune.

3. Rival contentions have been heard and record perused. The facts of the case are that the assessee company is the owner of the three buildings at Ooty, Udaipur & Pune and all these three buildings are part of

the block of assets of the company. During the course of assessment proceedings, the Assessing Officer, gave a finding that looking into the business of travel agency, the use of the premise for business purpose does not arise. The Assessing Officer accordingly made addition of Rs.63,76,045/- by taking notional value of these properties after allowing standard rebate @ 30%. On the other hand, the authorized representative of the company vehemently argued that these properties were being used for the business of the company and the Assessing Officer simply ignored the reply dated 20.11.2009 in which it was clearly explained that all these three properties were being used for the business of the company and therefore the notional income from SOP cannot be worked out in respect of these properties.

4. By the impugned order the CIT(A) deleted the addition so made after observing as under :-

8.3 I have gone through the assessment order as well as the submission of the appellant on this issue. The Assessing Officer has not denied that the properties at Ooty, Udaipur & Pune are not appearing in the block of assets of the company. The Assessing Officer has only expressed his opinion that looking into the business of the company, the said properties could not be used for the business of the appellant. The Assessing Officer has not brought anything on record in support of his contention. The law on this issue is very clear. The notional income can be considered only for those assets which are not used for the business purposes. The all three properties are appearing in the fixed assets of the company for the last many years on which the depreciation has also been allowed by the department in the earlier years. After the amendment with effect from 1-4-1989, once an asset is part of the block of assets, income, if any, arising from the said asset will be assessed as business income and the said assets cannot be taken out of the block of assets. It is an undisputed fact that the all three properties are part of the block of assets for the last many years and the said block is yet to be exhausted. The income, if any, from these assets will continue to be taxed as business income and the

same cannot be taxed under the head "Income from House property".

8.4 In view of the above, the action of Assessing Officer, by taking notional income of properties, is totally unjustified and is against the facts of the case as well as the law on the issue. Accordingly, the addition of Rs.63,76,045/- made by the Assessing Officer is deleted."

Against the above order of CIT(A), the revenue is in appeals before us.

5. We have considered rival contentions and carefully gone through the orders of authorities below and found from the record that all these buildings were shown as fixed assets in the balance sheet of the assessee and since its purchases the said properties were continuously used by the assessee for the purpose of his business. The assessee being in travel agency business, these premises were used for foreign clients, who visits India. In earlier year also depreciation was provided in respect of these properties which were forming part of its block of assets and assessee's claim of treating the same as business assets was accepted. We had verified the balance sheet of the companies placed in the record, wherein continuously these were shown as business assets.

6. In view of the above, we do not find any infirmity in the order of CIT(A) for deleting addition made by the AO estimating the rental income of the assets used for the purpose of business.

7. With regard to declining of claim of depreciation, we found that the issue is squarely covered by the decision of Hon'ble Delhi High Court in the case of Oswal Chemicals and Fertilizers Ltd., 341 ITR 467 (Del), wherein it was held that assets forming part of block of assets are eligible for claim of depreciation. Respectfully following the decision of Hon'ble

Delhi High Court, we do not find any infirmity in the order of CIT(A) for deleting disallowance on depreciation in respect of assets forming part of block of assets.

8. In the assessment year 2007-08, the revenue is also aggrieved for deleting the addition of Rs.3,73,202/- on account of commission paid back on cancellation of booking.

9. The facts relating to this ground are that the assessee is in the business of Tour & Travel Agency. Return of income for assessment year under consideration was filed on 30.10.2007 declaring total income of Rs.Nil. The assessee earned commission income of Rs.5,32,519/- on International Airlines out of which a sum of Rs.1,59,687/- was reduced being refund of commission on cancellation of bookings. Similarly, the assessee earned commission of Rs.7,93,320/- from booking in domestic airlines out of which a sum of Rs.2,13,515/- was reduced being the commission paid back on cancellation of bookings. The Assessing Officer, vide letter dated 9.10.2009, had asked the assessee to give break up of commission paid back client-wise with documentary evidence. In response to this letter, the appellant had stated that the commission was paid back to various parties on cancellation of bookings. The Assessing Officer was not satisfied with the reply of the assessee and he accordingly made an addition of Rs.3,73,202/- (159687+ 213515) as unproved expense.

10. By the impugned order, the CIT(A) deleted the addition after observing as under :-

“4.4 During the course of appellate proceedings, the authorized representative has reiterated that the commission was not paid by his client but the same was only refunded to various parties due to cancellation of the bookings. Partywise details has been submitted by the appellant. The commission amount on cancelled tickets have been refunded by the appellant in a normal course of business. The appellant cannot hold or keep right of income on the cancelled tickets, hence, the appellant has to return the same as a normal business incidence transactions. Therefore the Assessing Officer was not correct by rejecting the claim of the appellant by treating the amount as unproved expense. It is a case similar to sales made by certain party and there are certain entry of sale return. In that case, net sale figure has to be taken in the P&L A/c and sales return cannot be equated with expenditure incurred. However, the appellant had not given party-wise details before the Assessing Officer. These details have been produced during the appellant proceedings. On perusal of these details, it is seen that the amounts are refunded to those parties from whom the commission income was earned. Thus, on the basis of aforesaid facts, the A.O. is directed to delete the addition.”

11. We have considered rival contentions and found that commission was refunded by the assessee to the parties, whose booking were cancelled. The assessee has filed partywise details before the AO since the booking was cancelled the commission on such booking which have already been received were refunded to the clients in the normal course of business. The detailed finding recorded by CIT(A) at para 4.4 has not been controverted by Id. DR by brining any positive material on record. Accordingly, we do not find any reason to interfere in the order of CIT(A) in deleting the addition made on account of refund of commission.

12. Ground with regard to deleting disallowance of depreciation and addition made on account of income from house property are same as in the assessment year 2009-2010 and 2010-2011. Following the reasoning given hereinabove, we do not find any infirmity in the order of CIT(A).

13. In the result, all the three appeals of the revenue are dismissed.

Order pronounced in the open court on this 10/05/2016.

**Sd/-
(AMARJIT SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 10/05/2016

प्र.कु.मि/pkm, नि.स/ PS

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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai