

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ए.मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "A", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA No.58/Mum/2015
Assessment Year: 2009-10**

D C I T – 5(1)(2) Room No. 568, 5 th Floor Aayakar Bhavan Mumbai 400020	बनाम/ Vs.	M/s. Essar Properties Ltd. Essar House, 11, K.K. Marg Mahalaxmi, Mumbai 400034
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No. AAACE0893Q		

राजस्व की ओर से / Revenue by	Shri Kailash Kanojiya
निर्धारिती की ओर से / Assessee by	Shri Sarad Desai

सुनवाई की तारीख / Date of Hearing :	18/07/2016
आदेश की तारीख /Date of Order:	18/07/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 28/10/2014 of Ld. Commissioner of Income Tax, with regard to the direction of the CIT(A) to treat the rental income as business income instead of income from house property.

2. During hearing, at the outset, the learned counsel for the assessee, Shri Sharad Desai claimed that the impugned issue is covered by the decision of the Tribunal in the case of assessee itself (ITA No.1166/Mum/2011) assessment year 2007-08 order dated 02.04.2014 and ITA No. 5852/Mum/2009 for Assessment year 2005-06 order dated 03.06.2011. This factual matrix was not controverted by the learned D.R., Shri Kailash Konojiya.

2.1 We have considered the rival submissions and perused the material available on record. In view of the above we reproducing hereunder the relevant portion from the aforesaid order of the Tribunal dated 02.04.2014 (ITA No. 1166/Mum/2011 for Assessment year 2007-08) for ready reference and analysis: -

“Challenging the order dt. 30.11 .20 10 of the CIT(A)-9,Mumbai, Assessing officer (AO) has raised following Grounds of Appeal:

"1. Whether on facts and in the circumstances of the case and in law the ld. CIT(A) has erred in holding the rental income of Rs.2,20,33,7591- should be treated as Business income

2. *On facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that rental expenses of Rs.2,20,33, 795/- and depreciation of Rs. 18,48,995/- on building and Rs.28,65,3791- should be allowed since the income has been held to be taxable under Business Income*

2. *Assessee-company, engaged in the business of Services, leasing and business Centre facilities, Maintenance & Running of Guest House, filed its return of income on 31.10.2007 declaring total income of Rs. Nil. Effective Ground of appeal is about holding rental income as business income. During the assessment proceedings AU found that the assessee was engaged in the business of leasing, property-management-services and business centre facilities, that it had shown lease income on account of lease rent of its premises at Rs.1,49,67,056/- and lease income of plant & machinery at Rs.72,00,000/-,that it had claimed administrative expenses of Rs.16,95,993/-, that net profit had been arrived at Rs. 81,67,346/-,that the assessee company had claimed lease rent as business income. He asked the assessee, vide questionnaire dated 17.09.2008,to explain as to why the rental income from property should not be treated as 'Income from House Property'. In response, it was submitted that the leasing of property itself was the business of the assessee-company and was congruent with the object clause in the Memorandum of Association of the company, that income should be charged under the head income from business, that the Tribunal in the assessee's own case had decided the issue in favour of the assessee in ITA No.2328/ Muni/2004 for AY. 1997-98 and in 1TA No.3464/M/05 for AY.2001-02, vide order dated 29.02.2008. However, the AO relying upon the decision of the Hon'ble Supreme Court delivered in the case of Shamboo Investment Pvt. Ltd.(263ITR143),held that income in respect of the premises*

owned by the assessee, was to be assessed under the head "income from house property". After allowing deduction u/s. 24 in respect of repairs and finance charges, he computed the income from house property at Rs.61,21,511/-.Vide his order dated 18.12.2008 passed u/s.143(3) of the Act, he completed the assessment on a total income of Nil after allowing set off of unabsorbed depreciation of Rs. 1,66,97,023/-.

3. *Against the order of the AO, assessee-company preferred an appeal before the First Appeal Authority(FAA).After considering the submissions of the assessee and the assessment order he held as under:*

2.3 This issue is covered in favour of the appellant, by the earlier orders of CIT(A) as well as by the Mumbai ITAT, the findings of my predecessor, CIT(A) in Assessment Year 2006-07 on this issue are as under:

"In the appellate proceedings, the Authorised Representative of the appellant brought to my knowledge the decision of ITAT Mumbai Bench in the case of Assessment year 2001- 02 and also in Assessment Year 1997-98 dated 29.02.2008 in ITA No. 2328/Mum12004 herein ITAT allowed the appeal of the appellant and dismissed appeal of the department holding that rental receipts by leasing activity is required to be taxed under the head business income. Following the decision of ITAT I hold that the rental receipts of the appellant are required to be taxed under the head business income.

In the assessment order the Assessing Officer has not allowed expenses of Rs. 49,06,358/- and depreciation of Rs. 68,81,881/- on building and depreciation on furniture amounting to Rs.2,92,390/-. The Assessing Officer has not allowed depreciation and other expenses since he held that rental receipts from the building are required to

be taxed under the head "Income from house Property". Since, I held that rent receipts are required to be taxed under the head business income these expenses as well as depreciation is required to allowed. Accordingly, these grounds of appeal are allowed."

2.4 Since the issue involved is covered by the order of CIT(A) and jurisdictional ITAT in favour of the appellant and the facts of this year are similar to the facts of the earlier years. Therefore, the Assessing Officer is directed to assess the rental income as income under the head business income and allow the expenses as well as depreciation as per past history of the case."

4. *During the course of hearing before us, representatives of both the sides agreed that the issue was covered by the orders of the Tribunal in favour of the assessee. We find that deciding the appeals filed by the assessee, Tribunal has consistently held that income of the assessee should be assessed under the head income from business and it should be allowed expenses incurred by it in carrying out its business. Depreciation claimed by the assessee has also been allowed by the Tribunal. FAA has granted relief to the assessee, in pursuance of the orders of the Tribunal. Thus, there is no legal infirmity in his order. Therefore, respectfully following the orders of the Tribunal for earlier years and confirming the order of the FAA, we decide effective ground of appeal against the AO.*

As a result, appeal filed by the AO stands dismissed."

2.2 We find that the issue before us is with respect to direction to treat the rental income as 'business income' instead of 'income from house property'. It is noted that the Tribunal in the case of assessee itself for Assessment

year 2007-08, following the decision of Assessment year 2006-07 decided the issue in hand to treat the 'rental income' as 'business income'. Before us the learned representatives from both sides fairly agreed that the impugned issue is covered in favour of the assessee. The Tribunal in the aforesaid orders has consistently held that income of the assessee should be assessed under the head 'income from business' and it should be allowed expenses, incurred by the assessee, in carrying out its business. Even the depreciation claimed by the assessee has been allowed by the Tribunal. Thus we find no infirmity in the conclusion of the learned CIT(A) as no contrary facts/decision were brought to our notice by either side and more specifically the Revenue. It is also noted that the Tribunal vide order in ITA No. 1432 of 2011 order dated 28.02.2012 while adjudicating the appeal filed by the Revenue under section 260A of the Act considering the decision in Shambu Investment P. Ltd. vs. CIT (2003) 263 ITR 143 affirmed the stand of the Tribunal. Thus the stand of the learned CIT(A) is affirmed.

Resultantly the appeal of the Revenue is dismissed.

This order was pronounced in the open court in the presence of Ld. Representative from both sides at the conclusion of the hearing on 18/07/2016.

Sd/-

(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/07/2016

n.p. P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT-5, Mumbai.
4. आयकर आयुक्त / CIT(A)-9, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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