

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain , Judicial Member**

ITA NoS. 1810 &1811/Mum/2015
(Assessment Years: 2010-11 & 2011-12)

Vaishnav S Puri (HUF)	D C I T – 19(3)
Prop. of Kaks International	Matru Mandir, Naka Chowk
NCL Bldg., 8 th Floor	Vs. Opp. Bhatia Hospital
Bandra Kurla Complex	Tardo, Mumbai 400034
Bandra (E), Mumbai 400051	
PAN – AACHP9479A	

Appellant

Respondent

Appellant by: Shri Ashok Patil
Respondent by: Shri Rajat Mittal

Date of Hearing: 17.11.2016
Date of Pronouncement: 18.11.2016

ORDER

Per Jason P. Boaz, A.M.

These appeals by the assessee are directed against the orders of the CIT(A)-34, Mumbai both dated 16.01.2015 for assessment years 2010-11 and 2011-12. Since common issues are involved, these appeals were heard together and are being disposed off by way of this common order.

2. From a perusal of the grounds raised by the assessee in the appeals for assessment years 2010-11 and 2011-12, the grievance of the assessee revolves around the treatment of income earned by the assessee from running its business centres, i.e. whether the income is to be brought to tax under the head 'Income from House Property' as held by the Department or 'Business Income' as claimed by the assessee.

3.1 At the very outset, the learned A.R. of the assessee fairly conceded that in the assessee's own case a Coordinate Bench of the Tribunal in ITA Nos.7046/Mum/2006, 4382/Mum/2007 and 4747/Mum/2008 dated 12.01.2011 for assessment years 2003-04 to 2005-06 has decided this

very issue in favour of Revenue and against the assessee. This order (supra) was followed by another Coordinate Bench in the assessee's own case for A.Y. 2008-09 in ITA No. 1225/Mum/2013 dated 01.12.2015. The learned A.R. further pointed out that against the aforesaid order of the ITAT, the assessee has preferred appeals before the Hon'ble Bombay High Court for assessment years 2003-04 to 2005-06 and the appeal in ITA Nos. 1411 to 1413 of 2011 have been admitted on the following question of law:-

“Whether on the facts and circumstances of the case the receipts under various agreements are income from business or income from other sources or income from house property?”

3.2 Since this question of law (supra) has been admitted by the Hon'ble High Court, the assessee has filed a declaration in Form No. 8 as per Rule 16 under section 158A of the Income Tax Act, 1961 (in short 'the Act'). By this declaration, the assessee undertakes that it will not raise the said question of law in appeal before any appellate authority as per the provisions of law.

3.3.1 We have heard the rival contentions and perused and carefully considered the material on record before us; including the submission put forth by the learned A.R. of the assessee, the declaration filed under section 158A of the Act, as well as the impugned order of the learned CIT(A). We find that the CIT(A) has decided the appeal of the assessee on this issue following the decision of the Coordinate Bench for earlier assessment years 2003-04 to 2005-06 in the case on hand (supra). In view of the fact that the appeals for earlier assessment years have been admitted by the Hon'ble High Court in Income Tax Appeal Nos. 1411 to 1413 of 2011 with 456 of 2012, the declaration of the assessee is as per the provisions of section 158A of the Act. Respectfully following the decisions of the Coordinate Bench in ITA No. 1225/Mum/2013 dated 01.12.2015 for A.Y. 2008-09 and earlier assessment years 2003-04 to 2005-06 (supra) and in the light of the declaration of the assessee, the appeals by the assessee for A.Y. 2010-11 and 2011-12 are dismissed.

4. In the result, the assessee's appeals for assessment years 2010-11 and 2011-12 are dismissed.

Order pronounced in the open court on 18th November, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 18th November, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -34, Mumbai*
4. *The CIT - 23, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

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Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.