

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

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7119/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Ashapura Developers 101B, Hallmark Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (East), Mumbai - 400051	<b>बनाम/</b> Vs.	Jt. Commissioner of Income Tax Range 25(1) 1 <sup>st</sup> Floor, Pratyakskar Bhavan, Bandra (E), Mumbai - 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANFA1971F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vijay C. Kothari
Department by:	Shri B.D.Naik

सुनवाई की तारीख / Date of Hearing: 24.05.2016

घोषणा की तारीख /Date of Pronouncement: 24.08.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 03.09.2013 passed by the Commissioner of Income Tax (Appeals) 35, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11.

2. The assessee has raised the following grounds:-

- “1.1 *The learned Commissioner of Income Tax (Appeals) fails to appreciate the identification of immovable property and any ancillary assets or infrastructure services provided to Licensees.*
- 1.2 *The learned Commissioner of Income Tax (Appeals) fails to appreciate the provisions of Section 14 and Section 22 of the Income Tax Act, 1961.*
- 1.3 *The learned Commissioner of Income Tax (Appeals) erred in not applying the express provisions of Section 14 and section 22 for Income from House Property, which is against to the Principle of Law.*
- 1.4 *The learned Commissioner of Income tax (Appeals) has made an error in presuming that we have let out ancillary and incidental assets along with immovable property and carried out business activity in systematic and scientific manner with exploitation of immovable property by quoting the following citations:*
- i. *CIT V/s. National Storage Pvt. Ltd. [48 ITR 477(BOM)]*
  - ii *CIT V/s. Admiralty Flats Motel [133 ITR 985 (MAD)]*
  - iii *CIT V/s. Associated Buildings Company Ltd. [137 ITR 339 (BOM)]*
  - iv *CIT V/s. K.L.Puri HUF [223 ITR 43(DEL)]*
  - v *The Saswad Mali Sugar Factory Ltd. V/s. CIT [236 ITR 706 (BOM)]*
  - vi *CIT V/s. Halai Memon Association [243 ITR 439 (MAD)]*
  - vii *Mukherji Estate (P) Ltd. V/s CIT [244 ITR 1(CAL)]*
- 1.5 *The learned Commissioner of Income Tax (Appeals) fails to identify the base of difference between immovable property and commercial asset before applying the above referred citations.*

- 1.6 *The learned Commissioner of Income Tax (Appeals) erred in not applying following citations without identifying the difference of facts, which is a violation of Principle of Law.*
- i. *Azimganj Estate Pvt. Ltd. V/s. CIT [ITA No.242 of 2003 (KOL)]*
  - ii *Roma Builders [ITA No.4118/Mum/2008 Dt.09.03.2011, 60 DTR (Mum) TRI 231]*
  - iii *East India Housing & Land Development Trust Ltd. [42 ITR 49 (SC)]*
  - iv *Sultan Brothers Pvt. Ltd. Vs/ CIT [51 ITR 353 (SC)]*
  - v *O. RM. SP. SV. Firm V/s. CIT [39 ITR 327 (MAD)]*
  - vi *Salisbury House Estates Ltd. V/s. FRY [AC 432 (HL)]*
  - vii *Atma Ram Properties (P)Ltd. V/s. Dy.cIT [85 ITD 86 (DEL)]*

3. However, the assessee has take the number of grounds in his appeal but the sole ground which is in dispute is that the rental income received by the assessee is liable to be treated as income from house property or income from business. The assessee filed the return of income declaring total income to the tune of Rs.14,52,84,405/- on 14.10.2010. The return of income was processed u/s.143(1) of the Income Tax Act, 1961 ( in short “the Act”). Thereafter, the case was selected for scrutiny. It came into notice that the assessee firm has shown the rental income to the tune of Rs.8,34,46,573/- and claimed 30% deduction u/s.23 of the Act. The assessee has developed a shopping-cum-office complex in the name and style of M/s.Hallmark Business Plaza in Bandra (East), Mumbai. Apart from letting out office space he was deriving rent from it, the appellant also maintained the complex and also earned income from various

activities linked to the complex like parking charges, amenities charges, mobile charges etc. The Assessing Officer was of the view that the assessee was letting out the property used for business, therefore, the same was not liable to be treated as income from house property but as business income. Therefore, the lease income was treated as business income and Assessing Officer assessed the income to the tune of Rs.15,99,62,580/-. Feeling aggrieved the assessee has filed the present appeal before the CIT(A) who confirmed the order of the Assessing Officer, hence the assessee has filed the present appeal before us.

4. The contention of the assessee is that the assessee is in the business of construction and development of the property. Its main object is construction and the assessee leased out the unsold property on rent, therefore the rental income from the said property is liable to be treated as house rent income. In support of his claim, the learned representative of the assessee has placed reliance upon the law settled by Hon'ble Bombay High Court in case of Commissioner of Income Tax 12 Vs. M/s. Sane & Doshi Enterprises on 9 April, 2015. On the other hand the learned representative of the department has placed reliance upon the order passed by the CIT(A) in question. It is not in disputed that the assessee has developed a shopping-cum-office complex in the name and style of M/s.Hallmark Business Plaza in Bandra (East), Mumbai. He has let out the office place for rent to

different entities and derived income from it. Beside this the assessee was also doing the maintenance of complex and also earning income from various activities linked to the complex like parking charges, amenities charges, mobile charges etc. In brief the assessee had let out the property and was rendering the services attributable to the complex. Since the Assessing Officer was of the view that the assessee was commercially exploiting his shops cum office complex, therefore the income of the assessee is liable to be treated as business income. Hence the Assessing Officer declined the contention of the assessee and treated the income from business income despite income from house property. Undoubtedly the learned CIT(A) has confirmed the same. The learned representative of the assessee has relied upon the law settled by the Hon'ble Bombay High Court in case of Commissioner of Income Tax 12 Vs. V/s. Sane & Doshi Enterprises decided on 9 April, 2015. Now it is to be seen whether the facts of the case is identical to the facts of this case or not. The said order perused which speaks that the assessee was engaged in the real estate business and constructed a complex viz. May Fair Tower. It is stated to be a partnership firm registered under the Indian Partnership Act, 1932. He has also shown the rental income but the authority treated the same as income from business. Therefore, the matter went up to the Jurisdictional High Court and the Hon'ble High Court in the case cited above decided the matter in favour of the assessee. The facts and circumstances of this case is quite similar to the facts and

circumstances of the present case. In both the cases the assessee have constructed commercial complex and rented out the unsold shops / offices on lease. In case of the Hon'ble Bombay High Court, Commissioner of Income Tax 12 Vs. M/s. Sane & Doshi Enterprises decided on 9 April, 2015, the income of the assessee was treated as income from house property. Finding identical facts and circumstances of the present case, we are of the view that in the present case the law is quite applicable and the income of the assessee is liable to be treated as income from the house property and accordingly he would be entitled exemption u/s.22 of the Act. hence in view of the above said law we set aside the finding of the CIT(A) in question and direct the Assessing Officer to re-assess the income of the assessee in view of the observation made above.

5. In the result, the appeal filed by the **assessee is hereby Allowed for statistical purpose.**

Order pronounced in the open court on 24<sup>th</sup> August, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24<sup>th</sup> August, 2016

*MP*

**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
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