

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" 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.1622/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

Income tax Officer Ward 20(3)-1 Room No.605, 6 th Floor Piramal Chambers, Lalbaug Mumbai – 400 012.	बनाम/ Vs.	M/s. Electronics & Engineering Co., EEC House, Plot No.C-7, Dalia Indl Est., New Link Road, Andheri (W) Mumbai-400 053.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFE 0594 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Cross objection/ प्रत्याक्षेप No.96/Mum/2015

Arising out of ITA No.1622/Mum/2014 AY : 2009-10

M/s. Electronics & Engineering Co., Andheri (W) Mumbai-400 053.	बनाम/ Vs.	Income tax Officer Ward 20(3)-1 Mumbai – 400 012
(प्रत्याक्षेपक /Cross objector)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mayur Kishnadwala
Department by:	Shri G. Nanthakumar-DR

सुनवाई की तारीख / Date of Hearing: 07.09.2016

घोषणा की तारीख /Date of Pronouncement: 28.09.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The Revenue as well as the assessee have filed the present appeal/cross objection challenging the order dated 11.12.2013 passed by the Commissioner of Income Tax (Appeals) -31, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10

ITA/1622/Mum/2014:

2. The revenue has raised the following grounds:-

"1. The ld. CIT(A) has erred on facts and circumstances of the case and in law by not appreciating the fact that the decision of the Hon'ble ITAT on the issue of considering Rent receipt income as Income from business instead of Income from House Property is not accepted by the revenue since this issue has been settled by the Apex Court in favour of the revenue in its mark judgment rendered in the case of M/s. Shambu Investment Pvt. Ltd. vs. CIT (263 ITR 143).

2. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

3. Brief facts of the case are that the assessee, is engaged in business and filed its return of income on 31.08.2009 declaring total income to the tune of Rs.21.16 crores. The Assessing Officer completed the assessment u/s.143(3)of the Act determining its income to the tune of Rs.1.13 crores. A notice u/s. 143(2) dated 15.09.2010 was issued and served upon the assessee on 22.09.2010.

Subsequently, a notice u/s.142(1) dated 05.07.2010 alongwith questionnaire was issued and served upon the assessee. The assessee declared the rental income received from letting out office premises to sister concerns under the head “business centre receipt”. The assessee firm was carrying out business activities of manufacturing of non destructive testing equipment & allied quality control equipments. The said business was closed down by the assessee and the assessee let out the property for the period w.e.f. F.Y. 2002-03 onwards. The Assessing Officer dealt with the income declared by the assessee under the head “business centre receipt” as income from “house property” u/s. 22 of the I.T.Act and accordingly taxed. Thereafter, the assessee filed an appeal before the CIT(A) who confirmed the order of the Assessing Officer . Therefore, the present appeal has been filed before us.

4. We have heard the argument advanced by the Id. Representatives of both the parties and have gone through the records. The Id. Representative of the department has argued that the CIT(A) has decided the issue in favour of the assessee wrongly and illegally. Therefore, the order of the CIT(A) is wrong against law and facts therefore liable to be set aside. It is also argued that the “business centre receipt” of the assessee has rightly been treated by the Assessing Officer by holding the said income as ‘income from house property’ but the CIT(A) has wrongly treated the “business centre

receipt” as business income. Therefore, the said order is not sustainable in the eyes of law. In this regard, the Id. Representative of the department has placed reliance on the law settled in the case of M/s. Shambu Investment Pvt. Ltd. vs. CIT (263 ITR 143).

4.1 On the otherhand the Id. Representative of the assessee has argued that the Id. CIT(Appeals) has decided the issue correctly and judiciously and on the basis of the subsequent finding of the Tribunal in assessee’s own case in ITA No. 2138/Mum/2012 order dated 11.10.2013 for the assessment year 2008-09. Therefore, the finding of the CIT(A) in question on this issue is not liable to be disturbed in accordance with law. Order of CIT(A) perused. Before going further, it is necessary to advert the finding of the CIT(A) on record on this issue which reads as under:-

“5.1 In Ground no. 1, the appellant has challenged the assessment of rent receipts from the letting out of the business centre premises under the head "income from house property" as against "income from business" as declared by the appellant. On perusal of the orders passed by ITAT in the appellant’s own case for A.Ys. 2005-06, 2006-07, 2007-08 and 2008-09, I find that the issue was decided in favour of the appellant and against the revenue. The relevant extract from the Hon'ble Tribunal's order in ITA No. 2138/Mum/2012 dated 11.10.2013 for A.Y 2008 - 09 is as follows:

"6. We have heard the rival contention, perused the relevant findings of the authorities below and the material available on record. The issue before us has been decided in favour of the assessee after detail discussion by the Tribunal in the earlier years. At the time of hearing, the learned Counsel for the assessee has also filed a copy of business centre agreements and the floor plan of the building, showing that most of the area is being used by the assessee for its own business and

other part has been let out due to temporary suspension of the manufacturing business pending decision of the Court cases by the workers. On a perusal of these details and also other attendant facts, we find that this issue has been discussed at length by the Tribunal and has arrived to a conclusion that the business centre receipts has to be treated as business income. The detail finding has been given in ITA No.4516/Mum/2010 in the assessment year 2005-06, order dated 30th November, 2011, which has been followed in subsequent years i. assessment year 2006-07 and 2007-08 also. Consistent with the earlier years' judicial precedence, we also direct the Assessing Officer to treat the business centre receipts to be assessed as business income and not as income from house property. Thus, the ground raised by the Revenue is treated as dismissed."

4.2 The CIT(A) passed the order on the basis of the finding of ITAT in ITA No.2138/Mum/2012 dated 11.10.2013 for A.Y 2008– 09 in the assessee own case and copy of the order has been placed on record in which the Tribunal has considered the finding of M/s. Shambu Investment Pvt. Ltd. vs. CIT (2003) (263 ITR 143) and thereafter the income of the assessee has been treated as income from business. The tribunal has considered the copy of business centre agreements and the floor plan of the building, showing that most of the area was being used by the assessee for its own business and other part was let out due to temporary suspension of the manufacturing business pending decision of the Court cases by the workers. We find no ground to deviate the finding of the order of the Tribunal in assessee's own case mentioned above. Respectfully following the order of the Tribunal we decide this issue in favour of the assessee and against the revenue.

C.O.No.96/M/2015 (By assessee) :

5. The assessee has raised cross objection regarding levy of interest u/s. 234(b) and 234(c). This issue is consequential in nature

which is the outcome of the appeal filed by the revenue and accordingly is liable to be dealt with accordingly.

6. In the result, appeal of the revenue is dismissed and the C.O. of the assessee consequential as stated above.

Order pronounced in the open court on 28th, September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 28 सितंबर, 2016 को की गई।

Sd/-
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28th September, 2016

JV, Sr. 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)-
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