

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No.3542/Mum/2004
(Assessment Year 1998-99)
ITA No.3964/Mum/2004
(Assessment Year 1999-2000)

DBS Financial Services Pvt. Ltd.,
213,Raheja Chambers,
Nariman Point, Mumbai 400 021
PAN:AAACD0540P
Vs.

..... Appellant

The Deputy Commissioner of Income Tax,
Circle 3(1),
Aaykar Bhavan,M.K.Road,
Mumbai 400 020

.... Respondent

Appellant by : Shri Niraj Seth
Respondent by : Shri G.Nantha Kumar

Date of hearing : 30/11/2016
Date of pronouncement : 07/12/2016

ORDER

PER B.R.BASKARAN,A.M:

Both the appeals filed by the assessee for AY 1998-99 and 1999-2000 are directed against the orders passed by Ld CIT(A)-28, Mumbai. Both the appeals were heard together, since most of the issues urged therein are identical in nature. Hence both the appeals are being disposed of by this common order, for the sake of convenience.

2. The assessee is running Business centres at Mumbai, Delhi, Bangalore and collects rents from the licensees. The assessee offered the rental income under the head Business, but the AO assessed the same as Income from House property. Consequently various expenses claimed by the assessee were also disallowed. The Ld CIT(A) also confirmed the same and hence the assessee has filed these two appeals before us.

3. The Ld A.R submitted that the Tribunal had also initially confirmed the orders passed by Ld CIT(A). However, after the decision rendered by Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd (Civil Appeal No.4494 of 2004 dated 9.4.2015), the Tribunal, vide its order dated 22-03-2016 passed in ITA No.2269/Mum/2004 & others relating to AY 1993-94 and others, has restored the matter back to the file of the AO with the direction to examine this issue afresh in the light of the decision rendered by the Hon'ble Apex Court in the above cited case.

4. The Ld D.R did not dispute the factual aspects presented by the Ld A.R.

5. With these back grounds, we shall deal with various grounds urged by the assessee in AY 1998-99. Ground No.1 & 2 deals with the issue of the head under which the income received by the assessee is assessable. The Ground No. 3, 5, 6 & 8 deals with the expenses disallowed by the AO, since he had assessed the income under the head income from house property. All these grounds require consideration together. Accordingly, consistent with the view taken by the co-ordinate bench in the assessee's own case (referred above), we set aside the orders passed by Ld CIT(A) on these issues and restore them to the file of the AO with identical directions given by the co-ordinate bench.

6. The Ld A.R did not press Ground No.4 and hence the same is dismissed as Not Pressed.

7. Ground No.7 relates to disallowance of interest expenditure on the ground the funds were utilised for making investment in Shares of Bausch & Lomb Ltd. The Ld A.R submitted that the assessee is a registered NBFC and hence it has made the impugned investment as part of its business activities. He submitted that the tax authorities have not appreciated this fact and hence they have disallowed the interest expenditure.

8. We heard Ld D.R on this issue. We notice that the tax authorities have not considered the claim of the assessee that it is a registered NBFC and investment has been made as part of its business activities. Hence we are of the view that this issue also requires fresh examination. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for fresh examination.

9. Ground No.8 is related to charging of interest u/s 234B of the Act. Since charging of interest is consequential in nature, this ground does not require any adjudication.

10. In ground No.9, the assessee has summarised the relief prayed for. Hence this ground also does not require any adjudication. The remaining Ground Nos. 10 & 11 are general in nature.

11. We shall now take up the appeal filed by the assessee for AY 1999-2000. Consistent with the view taken in AY 1998-99, the Ground Nos.1, 2, 3, 5, 6 are set aside to the file of the AO.

12. The Ground No.4 is not pressed and hence the same is dismissed as not pressed.

13. Ground No.7 relates to disallowance of interest on the ground that the assessee has made investments in Bausch & Lomb. Identical issue was set aside by us in AY 1998-99 to the file of the AO. Consistent with the view taken therein, we restore this issue also to the file of the AO.

14. Ground No.8 relates to the disallowance of proportionate interest on the ground that the assessee has given interest free advance to M/s Daver Finlease & Portfolio P Ltd. The Ld A.R submitted that the above said party is a non-related party and it was given out of commercial considerations. He submitted that the assessee has got own funds more than the amount of loan and hence the decision rendered by the jurisdictional High Court in the case of Reliance Utilities and Power Ltd (313 ITR 340) would apply to the facts of the present case. Accordingly he submitted that the disallowance made by the AO under this head needs to be deleted.

15. We heard Id D.R on this issue. However, we find merit in the contentions of the assessee, since it is taking support from the decision rendered by the jurisdictional Bombay High Court (referred supra). Since the factual aspects relating to the issue require verification, we restore this issue to the file of the AO with the direction to examine this issue afresh by applying the principles laid down by the Hon'ble jurisdictional Bombay High Court in the case of Reliance Utilities and power ltd(supra).

16. Ground No.9 only summaries the relief prayed for and hence it does not require any adjudication separately. Other grounds are general in nature.

17. In the result, both the appeals of the assessee are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 07/12/2016

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOCUNTANT MEMBER

Mumbai, Dated 07/12/2016
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai