

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E': NEW DELHI

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 685/Del /2013
Assessment Year: 2004-05

The Dy.C.I.T.
Central Circle - 7
New Delhi

Vs.

M/s MGF Development Ltd
4/17B, Asaf Ali Road
MGF House, New Delhi

PAN : AAACM 8146 J

[Appellant]

[Respondent]

Date of Hearing : 28.06.2016

Date of Pronouncement: 08.08.2016

Appellant by : Shri Sanjay Kumar, CIT-DR
Respondent by : Shri Aditya Goel, CA

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the Revenue is directed against the order of the CIT(A)-XXIII, New Delhi dated 16/11/2012 passed in first appeal No. 372/11-12 for A.Y 2004-05.

2. Ground Nos. 1 and 3 are of general in nature and the same requires no adjudication. The remaining sole ground of the Revenue reads as under:

“2. On the facts and on the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.1,14,54,243/- made by the A.O on account of depreciation claimed on stock in trade.”

3. We have heard the rival submissions and have perused the relevant material on record. The ld. counsel of the Revenue supported the action of the A.O and reiterated the allegations the assessee recorded in the assessment order. The ld. counsel of the Revenue also contended that as per para 5.2 the ld. CIT(A) has remanded the case to the A.O for verification of this fact that the impugned assets are lease hold or not which is not within his powers as per provisions of Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

4. The ld. AR strongly supported the impugned first appellate order. However, he could not controvert this contention of the ld. counsel of the Revenue that the ld. CIT(A) has no powers to restore the case to the A.O for verification of lease hold assessee on which depreciation was claimed and lease rent was shown as business income.

5. Having heard the rival submissions and perused the relevant material available on record, from the operative para 5.2 of the Id. CIT(A)'s order, we observe that he granted relief to the assessee with the following directions and conclusion:

“5.2 I have considered the matter. The appellant, MGF Developments Limited, was incorporated on September 16, 1996. The principal activity of MGF is leasing, hire purchase and real estate development. The appellant is engaged in the field of retail real estate development, including developing, leasing and maintaining shopping malls. The shops in the malls developed by the appellant are leased out to different parties. The lease rent received is treated as business income by the appellant. The appellant remains the owner of leased assets, i.e. the shops in the shopping malls. If the appellant was claiming income from leased shops under the head ‘income from house property’, the question of allowing any depreciation would not have arisen. It is not disputed that the appellant is treating the income from lease rent as business income. It is not disputed that the appellant is the owner of these assets. Under the Income tax Act, 1961 depreciation is to be allowed u/s 32(1) on assets or block of assets owned by the assessee and used for the purposes of the business. In the present case, the assets are part of the block of assets called ‘buildings’. This fact is undisputed. These assets have been used for the purposes of the business of the appellant of developing shopping malls and leasing out shops. This is also undisputed. Therefore, the appellant fulfills the conditions laid down u/s 32 to claim depreciation on the assets owned by it and put to use for the purpose of business. It is

immaterial whether the asset is being treated for the purpose of accounting as lease hold improvement or stock-in-trade. That may be the requirement under the Companies Act, 1956 and the implementation of accounting standards prescribed thereunder. But for the purpose of computing taxable income under the Income Tax Act, 1961 the provisions of this Act will be applicable and provisions of Companies Act or accounting standards are not material for this purpose. In my opinion, the appellant is entitled to claim depreciation on lease hold assets owned by it and also on any improvement to such assets which have been capitalized in its books of account. Accordingly, on merits, the appeal is allowed. The Assessing Officer is directed to recompute the depreciation by first adding back the depreciation claimed as per Companies Act, 1956 and then reducing the depreciation allowable as per the Income Tax Act, 1961. While giving effect to this order, the Assessing Officer will also verify that these assets are indeed lease hold assets. Appeal is allowed accordingly.”

6. In view of the above the main controversy between the assessee and the A.O was that the A.O has denied depreciation by holding that any asset, which is not part of block of assets and is shown in the inventory would be ‘stock in trade’ on which depreciation is not allowable as per provisions of the Act. The ld. CIT(A) accepted the contention of the assessee and held that the assets are part of the block of assets called ‘Buildings’ which have been used for the purpose

of the business of the assessee if, i.e, developing shopping malls and leasing out shops and thus applicant fulfils the condition laid down in section 32 of the Act and consequently become eligible for claim of depreciation, The ld. CIT(A) directed the A.O to recompute depreciation by first adding back as per Companies Act, 1956 and then reducing the depreciation allowable as per provisions of the Act. However, the ld. CIT(A) directed the A.O to recomputed the depreciation. Accordingly as per his directions noted in para 5.2, as reproduced hereinabove, to the A.O which is beyond his jurisdiction and the directions of the ld. CIT(A) to the A.O cannot be held as sustainable. Further, from the record, inter alia, assessment order, impugned order of the ld. CIT(A) and other evidence it is amply clear that the A.O did not made proper verification of the claim of the assessee as per facts of the case. Hence, we also find it necessary and proper to direct the A.O to recalculate the claim of the department placed by the assessee on the block of assesseees which were put to use for the business purposes of the assessee during the relevant period by allowing improvement to such assets which have been capitalized in the books of accounts. The A.O is also directed to recomputed the depreciation first adding back the depreciation claimed as per Companies Act, 1956 and then reducing the depreciation allowable as

per provisions of the Act and the A.O shall also verify the fact that the assessee on which depreciation is being claimed and lease hold or not after allowing due opportunity of hearing to the assessee. Accordingly the sole ground of the Revenue is allowed for statistical purposes.

7. In the result, the appeal of the Revenue stands allowed for statistical purposes as indicated above.

The order is pronounced in the open court on 08.08.2016.

Sd/-

**(J.S. REDDY)
ACCOUNTANT MEMBER**

Sd/-

**(C.M. GARG)
JUDICIAL MEMBER**

Dated: 08th August, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi