

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI JOGINDER SINGH, JM AND SHRI SANJAY ARORA, AM**

आयकर अपील सं./I.T.A. No. 2743/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-8(2)(3), Room No. 213, 2 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	Nishta Mall Management Co. Pvt. Ltd. Knowledge House, Shyam Nagar, Off. Jogeshwari, Vikhroli Link Road, Jogeshwari (E), Mumbai-400 060
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAECM 0705 H		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Randhir Gupta
प्रत्यर्थी की ओर से/Respondent by	:	Shri Nishit Gandhi
सुनवाई की तारीख / Date of Hearing	:	24.2.2016
घोषणा की तारीख / Date of Pronouncement	:	29.2.2016

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals)-17, Mumbai ('CIT(A)' for short) dated 14.1.2013, allowing the Assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2009-10 vide order dated 30.11.2011.

2. The principal issue arising in this appeal, agitated per its' first four grounds, is in respect of the head of income under which the rental income for allowing the user

of house property is to be brought to tax. While the assessee, a company in the business of owning and maintaining Malls, i.e., composite shopping and business complexes, claims it to be business income, the Revenue's stand is of the same being from the exploitation of house property, for which the Act prescribes a separate head of income, i.e., 'Income from house property' (Chapter IV-C), and is accordingly to be taxed under the said head. At the very outset, it was submitted by the Id. Authorized Representative (AR), the assessee's counsel, that the assessee's case is squarely covered by the decision by the Tribunal in its' own case for A.Y. 2006-07 (in ITA No. 5882/Mum/2010 dated 30/10/2015), adducing a copy thereof. The tribunal, following the decision by the Hon'ble Apex Court in *Chennai Properties and Investment Ltd. v. CIT* [2015] 373 ITR 673 (SC), has allowed the assessee's claim. There is no change in the facts and circumstances of the case, so that the said decision would have clear application for the current year as well.

3. We have perused the said order by the tribunal, wherein, it, examining the nature of the income as well as the judicial authority on the subject, has decided by issuing definite findings of fact, holding the nature of the said income to be in the nature of business income, so that the assessee would stand to be allowed all the expenses incurred in relation to the promotion of the upkeep of the Mall. Reference for the purpose may be made to paras 2 to 5 of the said order (copy on record), which we have perused. The Id. Departmental Representative (DR) could not bring to our notice any change in the facts and circumstances with reference to the preceding year. Under the circumstances, we therefore have no hesitation in allowing the assessee's claim. We decide accordingly.

4. The only other issue arising in this appeal is per its Ground 5, which, again, relates to the head of income under which the income by way of interest on income-tax refund is to be assessed, the assessee claiming it to be a business receipt. The Id.

CIT(A) has allowed the assessee's claim holding that the said interest had a direct and a proximate nexus with the appellants' business. We find no basis for the said finding. Income-tax is a levy on income, from whatever source derived. Business, as such, is only a source of income from which income could be earned. The assessee does not have any business relationship with the Revenue nor could it therefore be said that the excess tax deposit, on which the refund arises, stands made in the course of the business. Going by the assessee's stand, the interest paid to the Revenue, for the delay in deposit of tax or other levy under the Act would qualify as a business expenditure, a wholly unmaintainable proposition, rejected by the Apex Court, as in the cases of *Bharat Commerce & Industries Ltd. v. Union of India* [1998] 230 ITR 733 (SC) and *East India Pharmaceutical Works vs. CIT* [1997] 224 ITR 627 (SC). Why, income-tax itself would stand to qualify as a deductible business expense. The assessee's case is wholly without merit, so that the said income would only be assessable u/s. 56. We decide accordingly.

5. In the result, the Revenue's appeal is partly allowed.

परिणामतः राजस्व की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on February 29, 2016

Sd/-
(Joginder Singh)

न्यायिक सदस्य / Judicial Member

Sd/-
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 29.02.2016

व.नि.स./Roshani, 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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai