

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No. 6651/MUM/2013,(A. Y : 2010-11)
ITA NO.4633/MUM/2014(A.Y : 2010-11)

Jasubhai Business Services Pvt.Ltd.,
26, Maker Chamber,VI, Nariman Point,
Mumbai 400 021.

PAN: AAACE 0847L

... Appellant

Vs.

The DCIT, Cir.3(2),
Aaykar Bhavan, M.K.Road,
Mumbai 400020

.... Respondent

Appellant by : Shri K.Shivram
Respondent by : Shri Prakash Patnade

Date of hearing : 22/06/2016
Date of pronouncement : 30/06/2016

ORDER

PER G.S.PANNU, A.M:

The captioned appeals of the assessee are directed against the order passed by CIT(A)-4, Mumbai dated 04/10/2013 & 28/05/2014, pertaining to the assessment year 2010-11, which in turn have arisen from the orders passed by the Assessing Officer dated 24/12/2012 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') and dated 23/12/2013 under section 250 of the Act respectively.

ITA NO.6651/MUM/2013:

2. In this appeal assessee has raised the following Revised Grounds of appeal:-

1. *The learned CIT(A) erred in confirming the order of learned Assessing Officer treating Business Services Charges received of Rs. 2,52,55,504/- as income from House Property without appreciating that Assessee is in the business of providing Business Service Centre and Business Service Charges are consistently assessed as Business Income and hence Business Service Charges received may be treated as income from Business and Profession u/s 28 of the Income Tax Act.*
2. *The learned CIT(A) erred in disallowing Rs. 12,10,223/- u/s 14A r.w.Rule 8D without appreciating that Sec. 14A r.w.Rule 8D cannot be invoked in on automatic fashion and that assessee had not incurred any administrative or other expenses for earning the exempt income and hence disallowance u/s. 14 r.w. Rule 8D may be deleted.*
 - 2.1 *Without prejudice to Ground No. 1 & 2 if the income of Business Service Charges are treated as Income from House Property and no expenses are allowed then no disallowance u/s. 14A r.w. Rule 8D can be made.*
3. *The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.*

3.. The appellant is a company incorporated under the provisions of the Companies Act, 1956 and is, inter-alia, engaged in the business of providing composite business infrastructure facility as a business centre services. The substantive dispute in this year pertains to assessability of income earned by the assessee for providing business centre facilities. In its return of income, assessee disclosed the nature of such income as assessable under the head 'income from business'. The Assessing Officer, however, treated it as an income assessable under the head 'house property'. The CIT(A) has also affirmed the stand of the Assessing Officer and accordingly the assessee is in further appeal before us.

3. Before us, Ld. Representative for the assessee pointed out that the lower authorities have erred in treating the receipts from providing business service centre as assessable under the head 'income from house property', whereas in the past as well as in the subsequent years, such income stands duly accepted as income from 'business and profession'. Apart therefrom, reference has also been made to the written explanation furnished before lower authorities, copies of which have been placed in the Paper Book at Pages 39 to 43, in order to justify that the income is earned for providing composite business centre service facilities and not merely for letting out of the premises. The Ld. Representative for the assessee explained that so far as rentals earned from the two premises situated at Chennai & Pune is concerned, the same has been offered by the assessee itself as income from 'house property' since the properties were let out to tenants and not used for the business of providing business centre services. It was, therefore, contended that assessee had itself demarcated its income from business and income from house property based on the manner in which the services have been rendered by the assessee.

4. On the other hand, Ld. Departmental Representative has pointed out that the Assessing Officer has analyzed the activities being carried out by the assessee and because the income is derived from exploitation of property, the same was liable to be assessed as income from house property.

5. We have carefully considered the rival submissions. Factually speaking, the discussion in the orders of the authorities below as well as the material on record reveals that assessee is in the business of

providing composite business services. Assessee is running commercial business centres with furnished infrastructure facilities including facilities of communication such as internet, maintenance of air-conditioning services, providing of infrastructure facilities, receptionist, telephone and fax-connectivity, house-keeping services, computer services, etc. It has also been canvassed before the lower authorities that such activities have been carried out by the assessee for over fifteen years. It was also asserted by the assessee that the management, maintenance and provision of facilities of the business centre and the physical control of the premises vests in the Administrative Manager, who is an employee of the assessee company. Based on the manner in which such services are rendered, assessee had set-up a plea that there was difference between letting out of house property and the running of commercial business centre. The relevant discussion in the orders of the authorities below reveals that none of the factual aspects canvassed by the assessee have been negated by the income-tax authorities. In fact, the emphasis of the Assessing Officer has been that since the premises owned by the assessee are used to provide such services, income therefrom be taxed as income from house property. In our considered opinion, the simplistic approach adopted by the Assessing Officer is clearly untenable and the controversy has to be addressed keeping in mind the nature and manner in which activities have been carried out by the assessee. Moreover, even on the principles of consistency, we find that the assessee is justified in asserting that the impugned income is liable to be treated as 'income from business'. In the Paper Book, assessee has furnished assessment order passed under section 143(3) of the Act for

assessment year 2012-13 dated 9/1/2015, wherein such income has been assessed as 'income from business'. Similar is the situation in assessments made for assessment years 2008-09, 2007-08 and 2009-10, copies of which have also been placed on record. Apart therefrom, Ld. Representative for the assessee brought to our notice copies of explanations furnished by the assessee in other assessment years justifying income from business service centre as business income, which has been accepted by the Assessing Officer. It was pointed out that similar explanation has been furnished in this year also, but the Assessing Officer has made a departure from the stand in other years.

5.1 In our considered opinion, there is no material to establish that the fact-situation in other assessment years brought out by the assessee is any way different from the instant assessment year. Quite clearly, the Assessing Officer has erroneously treated the income from business service centre as income from house property without bringing on record any fact or law situation, which was inconsistent from the other years. Even before us, no cogent change in facts or law has been brought out by the Revenue, which would justify the departure from the earlier stand of treating the income from providing business service centre facility as income from business income. Therefore, on these aspect we set-aside the order of CIT(A) and direct the Assessing Officer to treat the income earned by the assessee from business service centre as 'income from business' in conformity with his stand for the other assessment years. Thus, assessee succeeds on this aspect of the controversy.

6. The only other issue remaining is with regard to the disallowance made under section 14A of the Act. In this context, brief facts are that assessee company was found to have earned dividend income of Rs.31,01,182/-, which was exempt from tax. In its return of income assessee had disallowed a sum of Rs.7,93,306/- being interest expenditure, which was relatable to earning of such exempt income in terms of section 14A of the Act . The Assessing Officer , however, increased the disallowance to Rs.12,10,223/- by considering proportionate administrative expenses also being relatable to earning of such exempt income. In fact, before the Assessing Officer assessee contended that no administrative expenses have been incurred as the entire investment was in a partnership firm and mutual fund, which was a onetime investment. The CIT(A) has also affirmed the disallowance, therefore, assessee is in further appeal before the Tribunal.

6.1 Before us, the only plea raised by the assessee is that the Assessing Officer has enhanced the disallowance without recording any satisfaction as to how the disallowance computed by the assessee was unreasonable or unjustified.

6.2 The Ld. Departmental Representative for the Revenue has only relied on the order of the Assessing Officer in support of the case of the Revenue.

6.3 We have carefully considered the rival submissions. Quite clearly, the case set-up by the assessee is based on the provisions of section 14A(2) of the Act, which requires the Assessing Officer to record a satisfaction about the correctness of the claim by the assessee before proceeding to disallow any expenditure, which according to him has

been incurred in relation to earning exempt income. The necessity of recording such satisfaction has been upheld by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. vs C.I.T. (2012) 247 CTR (Delhi) 162 In the present case, we find from the discussion in the assessment order that there is no satisfaction recorded by the Assessing Officer about the correctness of the claim of the assessee and he has proceeded to re-compute the disallowance under section 14A of the Act by applying the provisions of Rule 8D of Income Tax Rules, 1962 in a mechanical manner. Therefore, in our view the action of the Assessing Officer is lacking in jurisdiction and deserves to be set aside. We hold so. As a consequence, we set-aside the order of the CIT(A) and direct the Assessing Officer to retain the disallowance made by the assessee in his return of income and delete the balance. Thus on this aspect assessee partly succeeds.

7. In the result, this appeal, of the assessee is partly allowed, as above.

ITA NO.4633/MUM/2014:

8. In this appeal, assessee has raised the following grounds of appeal:-

"The appellant objects to the order dated 28/05/2014 passed by commissioner of income tax, appeal 4, Mumbai for the Asst. Year 2010-11 on the following among other grounds.

1. On the facts and circumstances of the case the learned CIT (A) erred in confirming the order of DC IT in not deleting interest income of Rs. 9,58,865/-.

2. Learned CIT (A) failed to appreciate that interest income of Rs. 9,85,865/- was not offered in return of income as Income from Other Sources.

3. Learned CIT (A) failed to appreciate that appellant has offered entire net profit under the head business income and assessing officer treating entire income as income form House Property.

4. Each one of the above grounds is without prejudice to the other.”

9. At the time of hearing, Ld. Representative for the assessee submitted that due to smallness of the amount involved, the appeal is not being pressed. Hence, this appeal is dismissed as not pressed.

10. Resultantly, whereas the appeal in ITA No. 6651/Mum/2013 is partly allowed, the appeal in ITA No.4633/Mum/2014 is dismissed.

Order pronounced in the open court on 30/06/2016.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Mumbai, Dated 30 /06/2016

Sd/-
(G.S.PANNU)
ACCOUNTANT MEMBER

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