

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

BEFORE HON'BLE SH. SANDEEP GOSAIN, JM &  
HON'BLE SH. G. MANJUNATHA, AM

आयकरअपीलसं./ I.T.A. No. 5926/Mum/2017  
(निर्धारणवर्ष / Assessment Year: 2014-15)

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| ITO 12(1)(3),<br>R. No. 522, 5 <sup>th</sup> floor,<br>Aayakar Bhavan, M. K.<br>Road, Mumbai-400 020 | <b>बनाम/</b><br>Vs. | Balwas Realty and<br>Infrastructure Pvt. Ltd.<br>4 <sup>th</sup> floor, Techniplex-1<br>Veer Savarkar Flyover,<br>Goregaon (w),<br>Mumbai-400 050 |
| स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACB2165L   |                     |   |
| (अपीलार्थी/Appellant)  | :                   | (प्रत्यर्थी / Respondent)   |

|                               |   |                            |
|-------------------------------|---|----------------------------|
| अपीलार्थीकीओरसे/ Appellant by | : | Shri Arvind Kumar,<br>DR   |
| प्रत्यर्थीकीओरसे/Respondentby | : | Shri Rajesh S. Shah,<br>AR |

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| सुनवाईकीतारीख/<br>Date of Hearing       | : | 09.01.2019 |
| घोषणाकीतारीख /<br>Date of Pronouncement | : | 16.01.2019 |

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 20, Mumbai dated 30.06.17 for AY 2014-15 on the grounds mentioned herein below:-

1. *Ld. CIT(A) has erred in deleting the addition of Rs.5,09,27,464/- house property income determined by the AO against the income/loss shown as business income by the assessee."*
2. *" Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) relying upon the decision of Apex Court in the case of M/s Chennai Properties and Investments has failed to appreciate the facts of the assessee company is quite distinguishable from the facts of M/s Chennai Properties and Investments Ltd.*
3. *" Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in disallowing the set off of brought forward business loss of Rs.7,47,711/- of A.Y.2010-11 & 2013-14 which is claimed by the appellant.*
4. *"The appellant prays that for these and other reasons it is submitted that the order of the Ld. CIT(A) on the above grounds be set aside and that of the A.O. be restored."*
5. *"The appellant craves leave to amend add, amend or any of the grounds of appeal."*

**Ground No. 1 & 2**

2. These ground raised by the revenue are inter connected and inter related and relates to challenging the order of Ld.

CIT(A) in deleting the addition of Rs.5,09,27,464/- house property income determined by the AO against the income/loss shown as business income by the assessee, therefore we thought it fit to dispose of the same by this common order.

3. Ld. AR appearing on behalf of the assessee submitted before us that these grounds are covered by the order of Hon'ble ITAT in ITA No. 1180/Mum2017 for AY 2013-14 in assessee's own case, wherein the *identical ground* raised in the present appeal has already been decided on merits.

4. On the other hand, Ld. DR fairly agreed to the contention of Ld. AR that the issue is covered in favour of assessee.

5. We have heard both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the *identical ground* has already been decided by the Coordinate Bench of Hon'ble ITAT in ITA No. 1180/Mum2017 for AY 2013-14 in assessee's own case. The operative portion of the order of Hon'ble ITAT passed

in ITA No. contained in para no. 2 to 8, which is reproduced below:-

*4. All the issues are in connection with the treatment of lease amount of the assessee as business income by the CIT(A). The Ld. Representative of the Revenue has argued that the CIT(A) has wrongly treated the income of the assessee as business income, however, the AO has treated the said income as income from house property rightly and correctly, therefore, the finding of the CIT(A) is not justifiable and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has refuted the said contention and argued that the CIT(A) has decided the matter of controversy on the basis of the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. Vs. CIT (2015) 56 Taxmann.com 456 (SC) and on the basis of the decision of the Hon'ble Supreme Court in the case of Shambhu Investment P. Ltd. Vs. CIT 263 ITR 143 (SC) therefore, the finding of the CIT(A) is not liable to be disturbed in the interest of justice. It is also specifically argument that the case of the assessee has duly been covered by the decision of the Hon'ble ITAT Mumbai Bench in ITAT. No.1771/M/2016 dated 05.01.2018, therefore, in the said circumstances, the appeal of the*

revenue is liable to be dismissed. Before going further, we deemed it necessary to advert the finding of the CIT(A) on this issue which has been given in para no. 9 and is reproduced as under.: -

“9, The 3rd, 4th, 5th and 6th grounds of appeal are of similar nature and are taken together as these pertain to head of income which the liability to pay tax arises. I have carefully considered the facts of the case, the submissions of the appellant and order of the Assessing Officer in this connection it is noted that the assessee company had given its two industrial buildings Indiplex-I and Indiplex-II on lease and had received licence fee of Rs.2,52,59,282/- , service charges of Rs.1,68,39,526, income from facilitation charges of ^ 1,57,000 and Common Area Maintenance charges of Rs.25,01,615/- which were shown as business income. During the course of assessment proceedings, the Assessing Officer had made additions by treating the business income declared by the assessee to be in the nature of income from house property. The counsel of the assessee has vehemently opposed the additions the Assessing Officer and submitted that these be deleted. It is noted that assessed company is in the business of building and leasing premises of

*special nature as per the requirements of the clients. The Company has installed special equipment and premises is designed to suit clients needs. It is not simply letting out a structure to earn rental income out of it is noted that on similar facts Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. vs CIT [2015] 55 Taxmann.com 456 (SC) has held that where in terms of memorandum of association, main object of the assessee company was to acquire properties and earn income by letting the same, said income was to be brought to tax as business income and not as income from house property. It is noted that facts of the present case are identical to the facts of the case of Chennai Properties and Investments Ltd. as discussed and the ratio as laid out by the Apex Court is applicable on the of the case. Respectfully following the judgment of the Apex Court in the case Properties and Investments Ltd. and on the facts of the case it is held life), income earned by the appellant company during the year was in the nature of business income and not in the nature of income from House Property as taken by the Learned Assessing Officer, the additions made by the Assessing Officer in this regard cannot be sustained in appeal and are*

*directed to be deleted. The A.O. is directed to compute the income in the hands of the assessee by considering leave and license income and income from service charges to be assessable as income from business in the hands of the assessee and the related expenditure has to be allowed in the hands of the assessee. Since the income is held to be in the nature of business income the assessee would be entitled to the set off of brought forward business loss as per the return of income. The A.O, is directed to allow this claim of the assessee. Accordingly, these grounds of appeal of the appellant are allowed.”*

*5. However, it also came into notice that the Hon’ble ITAT in the assessee’s own case in ITA. No. 1771/M/2016 dated 05.01.2018 has decided the matter of controversy in favour of the assessee in which the income from lease and service charges of the assessee has been treated as income from the business. The relevant finding has been given in para no. 4, 5 & 6 which are hereby reproduced as under.: -*

*“4. Issue No. 1 & 3 are inter-connected, therefore, are being taken up together for adjudication. Under these issues the matter of controversy is that whether the income from leave and license of Rs.1,99,73,433/- and service*

*charges of Rs.1,33,90,233/- were chargeable under the head of income from business or income from house property. The Ld. Representative of revenue has argued that the Ld. CIT(A) has wrongly treated the income from leave and license chargeable to income from business whereas the same should be treated as income from house property, therefore, in the said circumstances the order passed by the CIT(A) is wrong against law and facts and is liable to be set aside. On the other hand, the Ld. Representative of the assessee has strongly relied upon the finding of the Ld. CIT(A) and also relied upon the order passed by the Hon'ble ITAT in the assessee's own case for the A.Y. 10-11 in ITA. No.261/M/2016 dated 08.11.2016. Before going further we deemed it necessary to advert the finding of the CIT(A) on record: -*

*“The second, third and fourth grounds of appeal are of similar nature and are taken together as these pertain to head of income which the liability to pay tax arises. I have carefully considered the facts of the case, the submissions of the appellant and order of the Assessing Officer. In this connection it is noted that the assessee ITA No. 1180/M/2017 A.Y.2013-14 6 company had given*



*its two industrial buildings Indiplex-I and Indiplex-II on lease and had received license fee of Rs.1,99,73,433/- and service charges of Rs.1,33,90,233/- which were shown as business income. During the course of assessment proceedings, the Assessing Officer had made additions by treating the business income declared by the assessee to be in the nature of income from house property. The counsel of the assessee has vehemently opposed the additions made the Assessing Officer and submitted that these be deleted. It is noted that assessee company is in the business of building and leasing premises of special nature as per the requirements of the clients. The company has installed special equipment and the premises is designed to suit clients needs. It is not simply letting out a structure to earn rental income out of it. It is noted that on similar facts Hon'ble Supreme Court in the case of Chennai Properties and Investment Ltd. Vs. CIT (2015) 56 Taxmann.com 456 (SC) has held that where in terms of memorandum of association, main object of the assessee company was to acquire properties and earn income by letting the same, said income was to be brought to tax as business income and not as income from house property. It is noted that facts*

*of the present case are identical to the facts off the case of Chennai Properties and Investment Ltd. as discussed and the ratio as laid out by the Apex Court is applicable on the facts of the case. Respectfully following the judgment of the Apex Court in the case of Chennai Properties and Investment Lt business of the assessee and memorandum of association and also relying upon the finding of the Hon'ble Supreme Court in the case of Chennai Properties and Investment Ltd. Vs. CIT (2015) 56 Taxmann.com 456 (SC) has allowed the claim of the assessee and treated the income from leave and lease and service charges as business income. Moreover, the facts are more clear when the Hon'ble ITAT has decided the issues in favour of the assessee while passing the order in the assessee's own case for the A.Y. 2010-11 in ITA. No. 261/M/2016 dated 08.11.2016 as Hon'ble ITAT has held as under:-*

*“3. We have heard rival contentions and gone through the facts and circumstances of the case. We find that the assessee entered into leave and license agreement and service agreement separately in respect of leasing out of industrial premises and for providing services. The assessee company has given its two industrial buildings i.e.*

*Indiplex-I and Indiplex-II on lease and received license fee of Rs. 25, 82,016/- and service charges of Rs. 21, 24,766/- , which was shown as business income. We find from the objects of the company as mentioned in the Memorandum of Association, the main objects of the Company was to acquire properties and construct and hold the property. During this process assessee earned these leave and license charges as well as service charges. The assessee filed following details in respect of these two properties:- “ Income from House property : On perusal of details filed, it is noticed that the Kashimira project consists of two Industrial buildings viz. IndiplexI and Idiplex-II. In respect of Indiplex-l. the assesses have entered into leave and license agreement on 02 May 2009 with we Eagle Burgmann India Pvt. Ltd for granting license to the licensee to conduct and operate its business from the said Industrial building. Further, the assesses has entered into service agreement with this Eagle Burgmann India Pvt. Ltd for maintenance and security of the Indiplex-l. In the P&L No the assessee has credited leave & license fee received of Rs. 5.82.016 land service charges of Rs. 21,24,776 under the head Business income. For the Industrial building Indiplex-II the assessee has*

*entered into leave and license agreement with M/s Microtact Hydraulic (India) P. Ltd on 18<sup>th</sup> December. 2009.” The assessee also filed submissions before us, which reads as under:-*

*‘The entire premises were developed and constructed by our client to be used as industrial estate. The structures of the building were designed and constructed with the intention of always using them as industrial units. Our client has also installed crane and pulley in the industrial premises to facilitate loading and unloading of goods in a convenient manner directly in to the units of the licensee. Our client in addition to the passenger lifts has also installed industrial lifts for taking the goods from one floor to other floors of the building. Our client submits that they have developed and constructed the premises with the intention of using them as industrial units by giving the licensees not only the premises but also the supporting ITA No.261/Mum/2016 3 infrastructure required for smooth functioning of an industrial unit. In addition to the leave & license agreement, our client has also entered into service agreement in respect of various services rendered by them. Copy of the said agreement is annexed herewith as Annexure-C. it can be seen from the annexed*

*agreement that in addition to letting out of premises our client provides various kinds of services such as security, maintenance of premises, operating and maintenance of elevators, repairs and maintenance of the building and fire alarm and other safety features. In addition to the aforesaid services, the agreement also contains a residual clause whereby our client is to provide various assistance as may be requested by the licensee. Further our client submits that they have developed the entire property into an industrial complex with the requisite infrastructure facilities and they also provide various services to the licensees. In view of the above our client submits that they have let out the industrial units along with various infrastructure facilities and they also provide various other services to the licensees. In addition to the aforesaid, our client would also like to state that the directors of our client are also employed fulltime to enable the smooth functioning and operation of the industrial complex and to look after the day to day activities which are involved in maintenance of the industrial units and also to cater the various requirements of the licensees. Directors Remuneration amounting to Rs 15, 55, 000 is paid to the directors during the year and the same can*

*be verified from note 9 of the “Schedule 16. Noted to Accounts.” In view of the above facts, we find that this issue is covered in favour of assessee and against Revenue by the decision of Hon’ble Supreme Court in the case of Chennai Properties and Investments Ltd. Vs. CIT (2015) 56 Taxmen.com 456 (SC). The CIT (A) also allowed in favour of assessee by observing as under:-*

*“7. I have carefully considered the facts of the case, the submissions of the appellant and order of the Assessing Officer. In this connection it is noted that the assessee company had” given its two industrial buildings Indiplex-I and Indiplex-II on lease and had received licence fee of Rs. - 25,82,016/and service charges of . Rs. 21,24,776/- which were shown as business income. During the course of assessment proceedings, the Assessing Officer had made additions by treating the business income declared by the assessee to be in the nature of income from house property. The counsel of the assessee has vehemently opposed the additions made the Assessing Officer and submitted that these be deleted. It is noted that assessee company is in the business of building and leasing premises of special nature as per the requirements of the clients. The Company has*

*installed special equipment and premises is designed to suit clients needs. It is not simply letting out a structure to earn rental income out of it. It is noted that on similar facts Hon'ble Supreme Court in the case of Chennai Properties ITA No.261/Mum/2016 4 and Investments Ltd. vs CIT [2015] 56 Taxmann.com 456 (SC) has held that where in terms of memorandum of association, main object of the assessee company was to acquire properties and earn income by letting the same, said income was to be brought to tax as business income and not as income from house property. It is noted that facts of the present case are identical to the facts of the case of Chennai Properties and Investments Ltd. as discussed and the ratio as laid out by the Apex Court is applicable on the facts of the case: Respectfully following the judgment of the Apex ' Court in the case of Chennai Properties and Investments Ltd. and on the facts of the case it is held that the income earned by the appellant company during the year was in the nature of business income and not in the nature of income from House Property as taken by the Learned Assessing Officer. The additions made by the Assessing Officer in this regard cannot be sustained in appeal and are directed to be deleted.*

*Accordingly, the grounds of appeal of the appellant are allowed.” 4. We find from the above facts and circumstances of the case that the CIT (A) has rightly allowed the claim of the assessee that of the leave and license charges and service charges as income from business and we uphold the same. This issue of Revenue’s appeal is dismissed.”*

*6. In view of the above said facts and circumstances, we are of the view that the CIT(A) has rightly allowed the claim of the assessee and considered the income from leave and license charges and service charges as income from business. Accordingly, we decide these issues in favour of the assessee against the revenue.”*

*6. On appraisal of the above mentioned finding and considering this fact that the case of the assessee has duly been covered by the assessee’s own case for the A.Y.2012-13 in ITA. No.1771/M/2016 dated 05.01.2018, therefore, in the said circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.*



6. After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and ITAT as mentioned above in assessee's own case, we find that the *identical issue* had already been decided by the ITAT in ITA No. 1180/Mum2017 for AY 2013-14, 1771/Mum/16 for AY 2012-13 and 261/Mum/16 for AY 2010-11 in assessee's own case. Therefore, respectfully following the decision of the Coordinate Benches of ITAT and in order to maintain judicial consistency, we apply the same findings in the present case which are applicable *mutatis mutandis* in the present case. Resultantly, these grounds raised by the revenue stands dismissed.

**Ground No. 3.**

7. This ground raised by the revenue relates to challenging the order of Ld. CIT(A) in disallowing the set off of brought forward business loss of Rs.7,47,711/- of A.Y.2010-11 & 2013-14 which is claimed by the assessee.

8. We have heard the counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that while deciding this ground, the AO had held that since assessee had not carried out any other business activity except for earning rental income and service charge, which according to AO was treated as income under the head '**Income from House Property**', therefore disallowed the set off of brought forward business loss of Rs. 7,47,711/- by treating the business income as NIL.

The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 10 of its order and the same is reproduced below:-

*10. As regards the 5<sup>th</sup> ground of appeal, I have perused the submissions made by the appellant and have also perused the computation of income for AY 2014-15 and the Return of Income in ITR 6 submitted by the Assessee. It is noted that the Computation of Income for AY 2014-15 and the Return of Income in ITR was submitted by the assessee to the Ld. AO during the assessment proceedings. It is observed that the Ld. AO has erred in holding the amount of Rs. 7,47,711/- ( Rs. 2,53,993/- +Rs. 4,93,718/- for A.Y.*

2010-11 and A.Y. 2013-14 respectively) as Brought forward Business Loss and disallowing the said amount of Rs. 7,47,711/-. In view of the fact that the aforesaid amount of Rs. 7,47,711/- represents the credit available u/s 115JAA of the Income-tax Act, 1961, the disallowance of the said amount of Rs. 7,47,711/-made by the A.O. cannot be sustained in appeal and is set aside. The learned A.O is hereby directed to give the credit for the said amount of Rs. 7,47,711/- u/s 115JAA of the Income-tax Act, 1961. Accordingly, this ground of Appeal of the appellant is **allowed.**

After having gone through the facts of the present case and hearing the parties at length, we find that Ld. CIT(A) while appreciating the facts of the present case had rightly considered that AO has erred in holding the amount of Rs. 7,47,711/- as Brought forward Business Loss and disallowing the said amount, which represents the *credit available* u/s 115JAA of the Income-tax Act, 1961 and hence the disallowance of the said amount of Rs. 7,47,711/-made by the A.O. was rightly set aside by directing AO to give the credit for the said amount u/s 115JAA of the Income-tax Act, 1961.

In view of our findings on ground no. 1 & 2 and while taking into account the findings of Ld. CIT(A), we are of the view that there are no reasons to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this grounds raised by the revenue stands **dismissed**.

**Ground No. 4 & 5**

9. These grounds raised by the revenue are general in nature, thus requires no specific adjudication.

10. In the net result, the appeal filed by the revenue is **dismissed** with no order as to cost.

*Order pronounced in the open court on 16<sup>th</sup> Jan, 2019.*

Sd/-  
(G. Manjunatha)  
लेखासदस्य / Accountant Member  
मुंबई Mumbai; दिनांक Dated :  
Sr.PS. Dhananjay

Sd/-  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

16.01.2019

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**

(Dy./Asstt.Registrar)

**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**