

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D', NEW DELHI

BEFORE, SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.3631/Del/2014
(ASSESSMENT YEAR-2011-12)

Dy. CIT, Central Circle-7, New Delhi	Vs.	M/s. Jagatjit Industries Ltd. 4 th Floor, Bhandari House 91, Nehru Place, New Delhi-19 PAN -AAACJ 1525E
(Appellant)		(Respondent)

Cross Objection No.53/Del/2015
(Arising out of ITA No.3631/Del/2015)
(ASSESSMENT YEAR-2011-12)

M/s. Jagatjit Industries Ltd. 4 th Floor, Bhandari House 91, Nehru Place, New Delhi-19 PAN -AAACJ 1525E	Vs.	Dy. CIT, Central Circle-7, New Delhi
(Cross Objector)		(Respondent)

Appellant By	Sh. S.K. Chaurasia, Sr. DR
Respondent by	Sh. M.K.Madan, CA
Date of Hearing	17.02.2020
Date of Pronouncement	19.05.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

This appeal is preferred by the Department against order dated 17.04.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-1,

New Delhi {CIT (A)} and pertains to Assessment Year 2011-12. The sole issue challenged by the Department is deleting the disallowance of Rs.2,11,03,333/- by the Ld. CIT (A) which had been disallowed by the Assessing Officer (AO) under the head "Maintenance Expenses". The Cross Objection has also been preferred by the assessee.

2.0 The brief facts of the case are that the assessee company is a company engaged in the business of Alcoholic Beverages, Malted Milk Food, Dairy products and Glass Containers etc. The Income Tax Return was filed declaring the total income amounting to Rs.3,66,95,928/- under normal provisions of the Income Tax Act, 1961 (hereinafter called 'the Act') and Rs.35,52,52,312/- u/s 115JB of the Act. In the return of income, the assessee had shown income from house property in which the gross rent received was shown at Rs.12,84,25,283/- against which the assessee had claimed house tax paid at Rs.1,07,15,049/- and had, thereafter, claimed deduction u/s 24 (a) of the Act @ 30% of the annual value which came to Rs.3,53,13,070/-. The net income from house property was declared at Rs.8,23,97,163/-. Similarly, income from maintenance services was shown at Rs.1,80,37,643/- against which the maintenance expenses claimed were shown at Rs.2,11,03,333/- and a net loss of Rs.30,65,691/-

was declared in the return of income. However, the AO held that maintenance income should be charged as income from house property only and that the maintenance charges were not deductible as expenditure once the benefit of statutory deduction u/s 24 (a) had been given. The Ld. CIT (A), however, on appeal, held that maintenance expenses were deductible although the loss was to be disallowed. Aggrieved, the Department seeks relief by praying for restoration of disallowance of maintenance expenses whereas the assessee seeks taxing of maintenance income under “income from other sources” after deduction of the maintenance expenses incurred therefrom.

3.0 The Ld. Senior Department Representative submitted that the Ld. CIT(A) had erred in deleting the disallowance of Rs.2,11,03,333/- made by the Assessing Officer on account of maintenance expenses. The Ld. Sr. Department Representative also submitted that the maintenance charges received in relation to the property should be regarded as part of the composite rent for computing the income taxable under the head ‘income from house property’ and no further deduction towards repairs and maintenance expenses actually incurred should be allowed thereafter because the statutory deduction @

30% u/s 24 (a) of the Act has already been allowed on the gross rental income. It was submitted that there was no basis for the Ld. CIT (A) to have allowed a further deduction of Rs.2,11,03,333/- towards maintenance expenses. It was argued that the ambit of the term 'rent' is very wide under the provisions of the Act and it would include any amount which is paid in consideration of the property being let out. It was submitted that the maintenance charges form part of the rent itself. It was submitted that if maintenance charge are not included in the definition of rent, it would enable the assessee to avoid the paying tax on the true annual value of the property.

4.0 In response, the Ld. Authorized Representative supported the order of the Ld. CIT (A) on issue of deletion of disallowance of maintenance expenses. The Ld. Authorized Representative also placed on record copy of the assessment order for Assessment Year 2016-17 and submitted that the Assessing Officer has in this assessment order charged income from maintenance under the head income from other sources and had also allowed deduction of charges incurred for maintenance from such income. The Ld. Authorized Representative prayed that similar treatment may be

given to the maintenance income and expenditure during the year under consideration.

5.0 We have heard the rival submissions and have also perused the material on record. We are in agreement with the contention of the Ld. Sr. Department Representative that the Ld. CIT (A) could not have deleted the disallowance of expenditure of maintenance services if he was treating the entire income from rent and maintenance charges as income from house property and thereafter was allowing statutory deduction u/s 24(a) of the Act @ 30% of the annual value. It is settled law that no other expenditure apart from the standard statutory deduction of 30% and the municipal taxes actually paid can be claimed as deduction from income from house property. On the other hand we also note that, subsequently, in Assessment Year 2016-17, although the assessee had again claimed the maintenance income as part of rental income and had also claimed deduction of maintenance expenditure as part of the gross rent, the Assessing Officer has treated the maintenance income and expenditure as being chargeable to tax under income from the other sources. This is in line with the judgment of the Hon'ble High Court of Karnataka in the case of CIT vs. Shantikumar Narayana Hotel Pvt. Ltd. reported in 201 ITR 138

(Kar.) wherein it was held that even if there is a composite agreement in respect of building and amenities and if the services provided are separable then the income derived from the amenities can be treated as income from other sources. We also note that the Assessing Officer as well as the Ld. CIT (A) have disallowed the loss of Rs.30,65,690/- claimed by the assessee under loss from maintenance. It is our considered opinion that only the rental income should be charged to tax under income from house property after allowing deductions in respect of the Municipal taxes paid and of the 30% standard statutory deduction u/s 24(a) of the Act. On the other hand, the income from maintenance services should be brought to tax under income from other sources after allowing benefit of deduction towards expenditure incurred on maintenance charges. Accordingly, we set aside the order of the Ld. CIT (A) and direct the Assessing Officer to charge only the rental income under income from house property and allow the statutory permissible deductions there from. The expenditure on maintenance services is not to be deducted from income from house property and neither the income from maintenance charges recovered is to be treated as income from house property. Thus, the appeal of the Department stands allowed to that extent. However, the gross income from

maintenance charges and the expenditure incurred thereon would have to be charged to tax under income from other sources and to that extent the assessee also gets relief and the Cross Objections stands allowed to that extent. However, the quantum of the maintenance charges received and the maintenance expenses incurred by the assessee, as claimed by the assessee, would have to be necessarily verified by the Assessing Officer and the computation under income from other sources would have to be made only after due verification of the income and expenditure by the Assessing Officer with respect to maintenance income and charges. Accordingly, this issue is restored to the file of the Assessing Officer who will recompute the assessee's income in terms of our directions after giving proper opportunity to the assessee to present its case.

5.1 We also note that in the Memorandum of Cross Objection, the assessee has also raised a ground bearing no. 4 that the Ld. CIT(A) had not adjudicated the assessee's ground against disallowance of expenditure of Rs.1,43,91,119/- incurred on brokerage and legal and professional services. However, this ground was not argued by the Ld. Authorized Representative and accordingly the same is dismissed as not pressed.

6.0 In the final result, the appeal of the Department stands allowed and C.O of the assessee stands partly allowed for statistical purposes.

Order pronounced in the Open Court on 19/05/2020.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated:19/05/2020

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI