

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय जस्टिस श्री पी. पी. भट्ट, अध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य
BEFORE JUSTICE SHRI P. P. BHATT, PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.4428/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

ACIT-Circle-16(1), R. No. 439, 4 th floor Aayakar Bhavan, M. K. Road Mumbai-400 020	बनाम/ Vs.	Ms. Farah Khan A-3501/3601 Oberoi Sky Heights Lokhandwala Complex Andheri West, Mumbai-400 053
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AADPK-0664-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Dr. Shanteshwar Swami, Ld. DR
Assessee by	:	Shri Chetan Karia, Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	29/06/2021
घोषणा की तारीख / Date of Pronouncement	:	29/07/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income-Tax (Appeals)-4, Mumbai [CIT(A)], dated 12/04/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 29/03/2016. The grounds raised by the revenue read as under: -

- (i) Whether on the facts, in the circumstances of the case and as per law, the Ld.CIT(A) has erred in directing to delete the disallowance of expenses to the tune

of Rs.1,55,74,455/- relating to residential premises, without considering the fact that the said premises was not utilized by the assessee for carrying out her professional activities.

(ii) Whether on the facts, in the circumstances of the case and as per law, the Ld.CIT(A) has erred in directing to delete the disallowance of expenses to the tune of Rs.1,55,74,455/- relating to residential premises, ignoring the fact that the Ward Inspector who inspected the premises had categorically reported that the said premises was utilized only for residential purpose.

(iii) The appellant prays that the order of Ld.CIT(A) on the above grounds be set-aside and that of the assessing officer be restored.

As evident, the revenue is aggrieved by deletion of disallowance of Rs.155.74 Lacs as made by Ld. AO in assessment order dated 29/03/2016.

2. We have carefully heard the rival submissions and perused relevant material on record. The Ld. DR pleaded for restoration of assessment as framed by Id. AO while Ld. AR supported the order of learned first appellate authority. For this, Ld. AR drew our attention to the documentary evidences as well as photographs / audio-visual clips as placed on record. The audio-visual clips were displayed before us and the same were duly appreciated. The Ld. AR also raised a plea that similar expenses were allowed by revenue in earlier years and therefore, disallowing the same in this year would violate the rule of consistency. After due consideration of material facts, our adjudication to the appeal would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The material facts are that the assessee being resident individual is stated to be engaged as film director as well as professional choreographer. The return of income was filed for the year under consideration declaring income of Rs.99.19 Lacs. During the course of assessment proceedings, it transpired that the assessee owned 6 flats / units (A3501A, A3501B, A3501C, A3601A, A3601B & A3601C) on 35th &

36th floor of a Building namely Oberoi Sky Heights situated at Lokhandwala Complex, Andheri (West), Mumbai. All the units were stated to be used as office-cum-residence for the assessee. It was submitted that a specified part thereof was used by her as office and remaining part was used for the purpose of residence. For the specified part which was being used as office, the assessee claimed deduction of expenditure as per following details: -

No.	Particulars	Amt. (Rs.)
1.	Interest on Office Loan	51.52 Lacs
2.	Depreciation on office at Oberoi Heights	60.91 Lacs
3.	Depreciation on furniture & Fixtures at Oberoi Heights	23.80 Lacs
4.	Society Charges (50%)	17.15 Lacs
5.	Electricity Charges (50%)	2.36 Lacs
	Total	155.74 Lacs

The interest on loan borrowed by assessee to acquire office premises was claimed as deduction u/s 36(1)(iii), claim of depreciation was made u/s 32 whereas society charges and electricity charges were claimed u/s 37(1) of the Act. These expenses were claimed on the plea that half of the premises was used as assessee's offices whereas remaining half was being used as residence. The area of office and residence was stated to be clearly demarcated and having office next door to assessee's residence, would provide her comfort of not having to be in public spaces except where necessary.

3.2 The Ld. AO called for details of above expenditure in a specified format. However, in the absence of any satisfactory explanation forthcoming from the assessee, the expenditure so claimed was disallowed and added back to the income of the assessee. The Ld. AO also noted that the assessee was claiming depreciation on another office

space situated at Embassy Tower. Finally, it was concluded by Ld. AO that the assessee could neither produce documentary evidences nor provide any justification to substantiate her claim that the premises was being used as her office and the expenditure was allowable as business expenditure. Therefore, the aforesaid expenditure of Rs.155.74 Lacs was disallowed while computing the income.

Appellate Proceedings

4.1 During appellate proceedings, the assessee produced additional evidences to substantiate her claim that part of the premises was being used as her office. Accordingly, a remand report was sought from Ld.AO. In the remand report, it was reiterated that the assessee did not furnish the information in the suggested format and therefore, the expenses thus claimed by her could not be allowed. The Ld. AO also opposed admission of additional evidences.

4.2 However, the assessee controverted the findings of Ld. AO on the ground that necessary details / information as called were furnished during assessment proceedings and it was well demonstrated that part of the premises at Oberoi Sky Heights was being used for the purpose of profession. It was also explained that the assessee was professional choreographer and she could not perform / carry out professional activities without any office premises. The profession of choreographer would require continuous innovation and practice which, in turn, would require sufficient space and infrastructure. It was also submitted that there were no other office premises being used by the assessee for the same. The attention was drawn to the fact that the 6 units were acquired in AY 2012-13, the assessment of which was also framed in scrutiny

assessment u/s 143(3). During the course of assessment proceedings of that year, necessary details with respect to acquisition of units were furnished along with documents. The assessee had also demonstrated the utilization of 2 units viz. 3501B & 3601B for the assessee's profession. These facts as well as evidences were accepted by Ld. AO and similar expenditure including depreciation claimed in that year was duly allowed to the assessee after due verification. Therefore, Ld. AO was not justified in taking contrary view in this year. In fact, in the remand report, Ld. AO had observed that the assessee was eligible only for 10% of total expenses on the presumption that only unit no. 3501B was used for the purpose of office whose area was 10% of total area of six units. The observation was not correct since the assessee was using two units for the purpose of profession whose area was approx. 47% of total area.

It was further explained that up-to financial year 2011-12, the assessee was carrying on her profession from office premises situated at Embassy Tower (unit No.1101) and also had residence in Embassy Tower (Unit No.1001). These units were used as office-cum-residence and the expenses and depreciation claimed on office unit was allowed by Ld.AO in all the earlier years without any dispute. Since the assessee was renowned choreographer and film director in Hindi film industry, during 2011, she shifted to a new duplex apartment so as to meet the expanding professional assignments as well as to meet the need for bigger house as she was raising her three kids (triplets). Therefore, the assessee acquired six flats / units in a building called Oberoi Sky Heights. The units were spread over 2 floors. In the new house the

assessee kept unit nos. 3501B & 3601B exclusively for office / professional purpose whereas the remaining units were used for residential purposes. These two units were purchased for total consideration of Rs.539.83 Lacs including proportionate stamp duty and registration charges. The assessee had furnished complete details of acquisition of units during the course of scrutiny assessment proceedings for AY 2012-13 and demonstrated the utilization of these two units for the purpose of profession. The Ld. AO, after due verification / details of units, bifurcated the units into residential use and office use and allowed depreciation as claimed in the return of income with respect to unit nos. 3501B & 3601B. The Ld. AO also allowed proportionate electricity expenses & society charges with respect to these two units. The proportionate interest on loan taken to acquire these units was also allowed. Finally, entire expenditure as claimed in AY 2012-13 against two units was allowed. Therefore, facts being the same in this year, the claim was to be similarly allowed.

The assessee also controverted the allegation of non-furnishing of details in the specified format by submitting that details / information submitted before Ld. AO would cover the nature of details and information sought by Ld.AO and therefore, the disallowance was not justified. The assessee also drew attention to the fact that the interior of the two units was designed in such a way that these units would be used exclusively for the purpose of business.

In support of claim, the assessee also furnished Service Tax Registration certificate, copies of commercial contracts entered into with clients, professional fees / sales invoices raised by the assessee on third parties

etc. All these documents mentioned assessee's address as unit no. 3501 & 3601.

5. The Ld. CIT(A) after due consideration of remand report as well as assessee's submissions noted that the assessee was a well-known choreographer and earning significant income from professional activities. The earning of such huge professional income would not be possible without any specified business place. The Ld. AO, in earlier Assessment Year had verified the details and allowed deduction of depreciation and other expenses in scrutiny assessment u/s 143(3). Further, in this year, the assessee had furnished many documentary evidences like copy of Service Tax Registration along with copies of commercial contracts and invoices which bear the address of the assessee. The assessee also furnished the photographs of office set-up. Finally, in terms of decision of this Tribunal in **ACIT V/s M/s Krystal Colloids Private Ltd. (ITA No.3170/Mum/2016 dated 31/07/208)**, Ld. CIT(A) allowed the claim of the assessee and held that the expenses would be allowable expenditure. This decision of Mumbai Tribunal has held that once an asset is part of the block of assets and depreciation is granted on that block, it cannot be denied in subsequent year on the ground that one of the assets is not used by the assessee in some of the years. The concept "user" of assets has to apply upon block as a whole instead of an individual asset. The said decision, in turn, placed reliance on the decision in *Unitex Products Ltd. V/s ITO* (2008; 22 SOT 430 (Mum.)), *CIT v. Bharat Aluminum Co. Ltd.* (2010; 187 Taxman 111 (Delhi)), *CIT v. Oswal Agro Mills Ltd.* (2011) 197 Taxman 25 (Delhi), *Swati Synthetics Ltd. v. ITO* (2010) 38 SOT 208 (Mum). This decision

has also considered the ratio of decision of Hon'ble Bombay High Court in the case of **CIT v. Western Outdoor Interactive Pvt. Ltd. (2012) 349 ITR 309 (Bom)** wherein it was held that when the benefit / deduction is available for a particular number of years on satisfaction of certain conditions and under the provisions of the Act, then without withdrawing or setting aside the relief granted for the first AY in which claim was made and accepted, the AO cannot withdraw the relief for subsequent assessment years. Similar was the ratio in **CIT v. Arts & Crafts Exports (2012) 246 CTR 463 (Bom)**; **CIT v. Paul Brothers (1995) 216 ITR 548 (Bom)**, **Direct Information (P) Ltd. v. ITO (2011) 203 Taxman 70 (Bom)** which had taken the same view. Finally, the impugned additions / disallowances were deleted.

Aggrieved as aforesaid the revenue is in further appeal before us.

Our findings and Adjudication

6. As is evident from record, the assessee is a creative artist. The assessee was engaged as Choreographer and film producer. For the said purpose, the assessee would require creative space from where she could carry out professional engagements. It could be appreciated that as a Choreographer and a film producer, the assessee would need work space to practice dance moves and also for story sessions and other meetings. In this year, except for this space, she has not claimed any other office set-up. Another fact borne out of the record is that till 2011, the assessee was having similar units at Embassy Tower which were being used as office-cum-residence, in the same manner. The proportionate expenses relating to office in all the earlier years were allowed to the assessee. To meet expanding professional demands and

to meet the need for bigger house, the assessee moved to new duplex apartment. The said premises were stated to be similarly used by the assessee for office-cum-residence purposes. The assessee was having 6 units out of which 2 units are stated to be used for professional purposes. The assessee has claimed proportionate expenses relating to these two units.

7. It could also be gathered that the six units were acquired by the assessee in AY 2012-13. The assessment for that year was framed by Ld. AO in scrutiny assessment u/s 143(3). Apparently, all the requisite details as to acquisition of units as well as expenditure incurred therein were called from the assessee which were supplied as well as verified by Ld. AO. The units were split into two parts viz. units which were used as residence and units which were used for the purpose of profession. The depreciation on units as well as other proportionate expenditure with respect to units which were used for professional purposes was claimed as well as allowed by Ld.AO. Thus, it is quite clear that these units form part of the opening block of asset in this year. As per the scheme of the Act, under the concept of block of asset, the assets would lose individual identity and depreciation on asset is allowed on block concept notwithstanding the fact that few of the assets were not used for business / professional purposes. As long as the assets remain part of the block and are not parted with by the assessee, the same remain part of the block of asset and depreciation is allowable to the assessee. Since the depreciation on the block has been allowed to the assessee in earlier years, the same could not be denied to the assessee in this year since individual assets have lost their specific identity. The case laws as

cited by Ld. CIT(A) in the impugned order support this view and are quite applicable to the facts of the case. Hence, Ld. CIT(A), in our considered opinion, has clinched the issue in correct perspective.

8. Even otherwise also, as per the requirement of Sec.32, to be eligible to claim depreciation, the assessee must own the asset and the asset must be used for the purpose of business or profession. The assessee, in our opinion, has satisfied, both these conditions since building as well as furniture was owned by the assessee and the same was used for the purpose of profession. The assessee has claimed depreciation proportionately on that part only which has been used for the purpose of profession. Therefore, the deprecation claim on building and furniture would be an allowable allowance u/s 32. We order so. The grounds, thus raised by revenue, stand dismissed.

9. Regarding interest claim, we find that the provisions of Sec.36(1)(iii) provide for deduction of interest in respect of capital borrowed for the purpose of the business or profession. The interest paid on capital borrowed for acquisition of an asset after the date on which the asset is first put to use is also allowed as deduction. The assessee has borrowed loan from Standard Chartered Bank for acquisition of the said property at Oberoi Sky Heights. The interest paid on such loan has been bifurcated between residential portion and office portion and interest paid relating to office portion has been claimed as deduction. It was the submissions of the assessee that office has been acquired for the purpose of her profession and therefore, loan is borrowed for the purpose of profession. Further, the unit was put to use during financial year 2011-12 relevant to Assessment Year 2012-13. Therefore, proviso

to Sec.36(1)(iii) would not apply and whole of the interest would be an allowable deduction u/s 36(1)(iii). We concur with these submissions.

10. Regarding Society & electricity charges, the assessee submits that the unit being used as office is a multi-storeyed building being managed by a housing society. The society charges monthly compensation for providing various services. The appellant has bifurcated and claimed society charges relating to units used as office. Similarly, electricity charges relating to units used as office are claimed as deduction. The said claim is under section 37(1) which provide that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". We find that the assessee fulfils the prescribed conditions of Sec.37(1). More so, the rule of consistency would debar the Ld. AO to adopt different view, facts remaining the same. The usage of units for professional use was accepted in earlier years and similar expenditure claimed in that year was duly allowed to the assessee. Moreover, the assessee has already produced sufficient documentary evidences in the shape of copy of Service Tax Registration Certificate, copies of commercial contracts entered into with producers / third parties, professional fees / sales invoices raised by the assessee on third parties etc. All these documents mentioned assessee's address as unit no. 3501 & 3601 and support the claim of the assessee. The assessee has also produced the photographs of the office along with an affidavit affirming

the facts relating to her office at Oberoi Sky Heights. To overcome the deficiency in photograph as stated by the Assessing Officer, a video recording of the office and residence to prove that a clearly demarcated part is used as office, was furnished during the course of hearing. The same clearly support the case of the assessee. In other words, the assessee has proved that a clearly demarcated part of the premise was used by her as the office which is duly supported by various documents on record. There is nothing on record to disprove this claim. Therefore, we are of the considered opinion that the assessee has well substantiated her claim. This being so, our interference is not required in the impugned order, in any manner. The grounds, this raised by the revenue, stands dismissed.

11. Resultantly, the appeal stands dismissed.

Order pronounced on 29th July 2021.

Sd/-

(Justice P.P. Bhatt)
President

Sd/-

(Manoj Kumar Aggarwal)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 29.07.2021
Sr.PS, Jaisy Varghese

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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.