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श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आअसं. 6325/मुं/2019 (नि.व. 2012-13)

ITA NO. 6325/MUM/2019(A.Y.2012-13)

DCIT-1(2)(2),
Room No.535, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai - 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. N.V.Developers Pvt. Ltd.
G-4, Ground Floor, Khetan Bhavan,
198, Jamshedji Tata Road,
Churchgate, Mumbai -400 020
PAN: AACCN-4828-J

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S /Shri Pankaj Kumar and B.K.Bagchi

प्रतिवादी द्वारा/Respondent by : S/Shri Mehil Golvala and Darshit Naik

सुनवाई की तिथि/ Date of hearing : 27/05/2022

घोषणा की तिथि/ Date of pronouncement : 22/08/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Mumbai (in short 'the CIT(A) ') dated 25/07/2019 for the assessment year 2012-13.

2. The solitary issue in this appeal is; Whether rental income received by the assessee from Information Technology Park is to be assessed as "Income from House Property" or "Income from Business".

3. The brief facts of the case as emanating from records are: The assessee is engaged in developing, operating and maintaining Information Technology Park(IT Park). The assessee received income of Rs.11,83,86,181/- from letting out, operating and maintaining of IT Park named G-Corp Tech Park and offered the same to tax under the head 'Business Income'. In scrutiny assessment proceedings the Assessing Officer did not concur with the assessee's claim with respect to income from IT Park as 'Business Income'. The Assessing Officer held that rental income from IT Park is assessable under the head 'Income from House Property'. Aggrieved against the assessment order dated 29/03/2015, the assessee carried the issue in appeal before the CIT(A), assailing the findings of Assessing Officer in treating the income from operating and maintaining G-Corp Tech Park as income from 'house property'. The CIT(A) after considering the facts and various decisions reversed the findings of Assessing Officer and held that the receipts from operation and maintenance of G-Corp Tech Park is to be assed under the head 'Income from Business'. Hence, the present appeal by the Revenue.

4. Shri Pankaj Kumar representing the Department vehemently defending the assessment order prayed for reversing the findings of CIT(A) and upholding the findings of Assessing Officer.

5. Per contra, Shri Mehil Golvala appearing on behalf of the assessee supported the findings of CIT(A). The Id. Authorized Representative for the assessee referred to the Memorandum of Association of the assessee company at page 14 of the paper book. The Id. Authorized Representative for the assessee pointed that the main objects of the assessee company is to develop and operate technological parks, software parks, electronic and hardware technology park, etc. The Id. Authorized Representative for the assessee

referred to CBDT Circular No.16/2017 dated 25/04/2017 to contend that lease rent from letting out the building, developing space along with amenities in an industrial park/SEZ is to be considered as 'business income'. The Id. Authorized Representative for the assessee placed reliance on the decision rendered in the case of CIT vs. Magarpatta Township & Development Construction Co. Ltd. in Income Tax Appeal No. 318 of 2015 decided on 19/12/2017. The Id. Authorized Representative for the assessee further pointed that in the immediate preceding Assessment Year and in the succeeding Assessment Year the CIT(A) has accepted the plea of assessee and held the income from operating and maintaining G-Corp Tech Park assessable under the head 'Business Income'. The Revenue has accepted the findings of CIT(A) as no appeal was filed by the Department against the said orders. The Id. Authorized Representative for the assessee furnished copy of the order passed by CIT(A) in assessee's own case for Assessment Year 2011-12 at pages 24 to 38 of the paper book and order of CIT(A) for Assessment Year 2013-14 at pages 39 to 60 of the paper book.

6. Both sides heard, orders of authorities below examined. It is an undisputed fact that the assessee is operating and maintaining IT Park- G-Corp Tech Park. The issue in present appeal is in narrow compass i.e. Whether the income from operating and maintaining of IT Park is to be assessed under the head 'Income from House Property' or under the head 'Income from Business'. It is an unrebutted fact that in the preceding Assessment Year i.e. Assessment Year 2011-12 and in immediate succeeding Assessment Year i.e. Assessment Year 2013-14, the CIT(A) has held the income from operating and maintaining the same IT Park as income assessable under the head 'Business Income'. No material has been placed on record to show that any appeal was

filed by the Revenue against the order of CIT(A) for Assessment Year 2011-12 or Assessment Year 2013-14. Thus, the Revenue has accepted the same. Following the principle of consistency, appeal of the Revenue is liable to be dismissed.

7. Be that as it may, the CBDT vide Circular No.16/2017 (supra) in the light of decision rendered in the case of CIT vs. Velankani Information Systems Pvt. Ltd. reported as 218 Taxman 88 (Kar) and CIT vs. Information Technology Park Ltd. reported as 47 taxmann.com 239 (Kar) has clarified that in the case of an undertaking which develops and operates, or maintain and operate an industrial park/SEZ notified in accordance with scheme framed and notified by the Government, the income from letting out of the premises/developing space along with other facilities in an industrial park, SEZ is to be charged to tax under the head 'profits and gains of business'. The Hon'ble Jurisdictional High Court in the case of CIT vs. Magarpatta Township & Development Construction Co. Ltd. (supra), after considering the aforesaid circular has reiterated this position. We find no merit in the appeal of Revenue, hence, dismissed.

Order pronounced in the open court on Monday the 22nd day of August, 2022.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 22/08/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) /
Sr.Private Secretary
ITAT, Mumbai