

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No.5300/DEL/2016  
[A.Y 2013-14]

The Dy.C.I.T  
Circle - 3(1)  
New Delhi

Vs.

M/s Arham IT Infrastructure Pvt Ltd  
H-334, Ground Floor  
New Rajendra Nagar, New Delhi

PAN: AAACA 7413 Q

[Appellant]

[Respondent]

Assessee by : Shri Sudesh Garg, Adv

Revenue by : Shri Jagdish Singh, Sr. DR

**Date of Hearing : 27.07.2021**

**Date of Pronouncement : 27.07.2021**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

With this appeal, the Revenue has challenged the correctness of the order of the CIT(A) - I, New Delhi dated 22.07.2016 pertaining to A.Y 2013-14.

2. The grievances of the Revenue read as under:

1. The Ld. CIT(A) erred in law and facts in directing the Assessing Officer to treat Rs. 2,99,57,551/- being common area maintenance charges as business income for "House Property" as held by the Assessing Officer.

2. The Ld. CIT(A) erred in law and facts in directing the Assessing Officer to allow lease rental of Rs. 6,47,130/- paid to Noida authority in respect of property as revenue expenditure."

3. Briefly stated, the facts of the case are that the assessee is the owner of a multi-stories properties comprising of ground plus six floors named as 'Tapasya Corps Height in Sector 126, Noida. The assessee has shown revenue from operation of Rs. 2,99,57,551/- and miscellaneous income of Rs. 13,67,06,889/-. It was explained that miscellaneous income corresponds to the rental income of Rs. 13,47,68,214/- and income from other sources Rs. 19,36,852/-.

4. During the assessment proceedings, it was explained that income from revenue operation is from common area maintenance charges received from the tenants. The assessee was asked to justify treating income from revenue operation as 'income from business',

5. In its reply, the assessee explained that it is working as contractor for providing repair and maintenance only at the common area and in contracts, these are based on cost plus method, which may fluctuate. The assessee also referred to the relevant clause of the agreement which is as under:

"The Lessee shall pay to the Less or the maintenance charges on the basis of actual cost plus 20% thereon which is currently worked out as Rs. T5/- (Rupees Fifteen Only) per sq. ft. on super built up area of 2808 sq. ft., which calculation is based on the presumption that the Lessee shall use the said Premises for 72 hours per week based on average 12 hours per day. Further, the Lessee shall also pay Rs. 5000/- per hour for every extra hour beyond the above said time period. For extra hours of operations, the Lessee shall give prior information in writing at least 12 hours before its requirement. Maintenance Charges shall be payable from the Rent Commencement Date. However for rent free period of one month."

6. The Assessing Officer dismissed the contention of the assessee by observing as under:

"The assessee contention of treating common area maintenance charges as income from Business and Profession cannot be accepted because of the following reasons:-

(i) The common area maintenance charges are derived from same set of persons to whom the property had been given on rent.

(ii) The charges are variable. Variableness of the charges does not intend to change the character of the income received.

(iii) The method of calculation of the charges also does not intend to change the character of the income received.

(iv) The common area maintenance charges form part of the same agreement, on the basis of which rent had been received.

(v) If there are no tenants, from whom the common area maintenance charges would have been received, this means thereby there is full dependence of the common area maintenance charges as income on "the income from house property"

(vi) The stream of income of common area maintenance charges cannot stand on its own. It is fully dependent on "the income from house property"

7. After referring to various judicial decisions, the Assessing Officer treated the receipt from common area maintenance charges as 'income from house property'. The Assessing Officer disallowed the claim of payment of lease rental to Noida authority amounting to Rs. 6,47,130/-.

8. The assessee assailed the matter before the Id. CIT(A) and vehemently contended that the stand taken by the Assessing Officer is not correct and distinguished the decisions relied upon by the Assessing Officer in reaching his findings. It would be pertinent to extract the submissions made before the Id. CIT(A) which read as under:

"At the outset, this is to be submitted that the appellant owns property which has let out to various persons. The income from letting out from the property has been offered to tax under the head *"Income from house property"*. The appellant has also undertaken maintenance of the common area as well as other infrastructure facilities like providing security services, maintenance of lift, house-keeping of common area, providing uninterrupted electricity and water supply. For this purpose the appellant has to maintain complete infrastructure and man power. Undoubtedly expenses are required to be incurred for maintenance of infrastructure and man power. The appellant has to receive maintenance charges separately from tenants and the expenses incurred are debited from the maintenance charges received. It is pertinent to point out that the maintenance charges are worked out and charges on the basis of cost plus method. The income derived under this head is offered as *"income from business and profession."* The offer of income under different heads i.e Rental Income under the head income from house property and the income from maintenance under the head income from business and profession had been continuously offered and being accepted by

the department except for the year under consideration. The assessing officer has rejected the claim of the appellant for the reasons reproduced above. The Ld. AO has not appreciated the facts of the case while giving the findings and abruptly passed the assessment order without giving proper opportunity to the appellant.

S. No.	Reasons Given by the Ld. AO	Remarks
1.	<i>The common area maintenance charges are derived from same set of persons to whom the property had been given on rent.</i>	<i>This cannot be reason for denying the claim of the appellant because maintenance charges has to be recovered from the tenants only. It is not understood as to how the maintenance charges can be recovered from the persons who are not tenants in the building.</i>
2.	<i>The charges are variable. Variableness of the charges does not intend to change the character of the income received</i>	<i>The charges have to be variable as the maintenance is to be charged on cost plus basis depending on the area let out.</i>
3.	<i>The method of calculation of the charges also does not intend to change the character of the income received</i>	<i>Method of calculation is relevant as the maintenance charges are for common area and common services. The maintenance charges have not been collected for the area occupied by the tenant but for common area and services which are available to all the tenants as well as their visitors.</i>
4.	<i>The common area maintenance charges form part of the same agreement, on the basis of which rent had been received</i>	<i>The stand taken by the AO clearly is in favour of the appellant as maintenance charges have been separately defined which are not for the area let out but for the common services.</i>
5.	<i>If there are no tenants, from whom the common area maintenance charges would have been received, this means thereby there is full dependence of the common area maintenance charges as income on "income from house property"</i>	<i>Common area maintenance charges has to be borne by all the tenants. It cannot be a case that some of the tenants would pay for the maintenance charges whereas others will not.</i>

6.	<p>The stream of income of common area maintenance charges cannot stand on its own. It is fully dependent on "income from house property".</p>	<p>Of-course, the stream of Income of common area maintenance charges cannot stand on its own and fully dependent on Income from house property but the nature of income is different. In respect of maintenance charges received, the appellant has to incur day to day expenses for providing such services whereas for receipt of rent, only some portion of the building has been allowed to be used by the tenant.</p>
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Further the Ld. AO has referred the case laws as reproduced above. None of the case laws are applicable to the facts of the case as discussed below:-

S. No.	Cases laws relied upon by Ld. AO	Remarks
1.	<i>East India Housing and Land Dev. Trust Ltd. vs CIT (SC) 42 ITR 49</i>	In this case, the company was engaged in the development & construction of shops. The income was received from let out of such shops. There were no separate receipts for maintenance of common facilities as in the case of the appellant.
2.	<i>Tinsukia Development Corporation Ltd. vs CIT (Cat) 120 ITR 466</i>	The company obtained leasehold land from government and set up bastis thereon. Income purely from let out of structures. There were no separate receipts for maintenance of common facilities as In the case of the appellant.
3.	<i>CIT vs Mithlia Properties Publication &amp; Contractor Enterprises P. Ltd. (Pat) 228 ITR 713</i>	The company constructed godowns for FCI on leasehold land and claimed the rent received as business income. In the case of the appellant, rent received is separately offered as income from house property. There were no separate receipts for maintenance of common facilities as In the case of the appellant.

4.	<i>Shambu Investment P. Ltd vs CIT (SC) 263ITR 143</i>	<i>Prime object of the company under agreement was to let out portion of said property to various occupants for giving them additional right of using furniture and fixture. In the case of the appellant, rent received is separately offered as income from house property. There were no separate receipts for maintenance of common facilities as in the case of the appellant.</i>
5.	<i>CIT vs Indian Metal &amp; Metallurgical Corporation (Mad) 215 ITR 424</i>	<i>The company had given on rent along with fixtures and common facilities. In the case of the appellant, rent received is separately offered as income from house property. There were no separate receipts for maintenance of common facilities as in the case of the appellant.</i>
6.	<i>AC IT vs Farida Begum Tazudeen (ITAT, Mad) 63ITD 298</i>	<i>The assessee let out five storey building on fixed rent after providing amenities like light etc. In the case of the appellant, rent received is separately offered as income from house property. There were no separate receipts for maintenance of common facilities as in the case of the appellant.</i>
7.	<i>Neelam Cable Mfg. Co. vs. ACIT (ITAT, Del) 63 ITD 1</i>	<i>The assessee let out property which included incidental charges. The ITAT has allowed the security services charges claimed by the assessee as deductible. It amounts to allowing the expenses incurred in respect of services rendered.</i>
8.	<i>K. Bhaskaran Nair Vs CIT (Ker) 177 Taxman 478</i>	<i>The assessee let out lodging house charging separate rent for building and furniture. It is not a case of simple let out property or providing other services as in the case of the appellant.</i>
9.	<i>Chennai Properties and Investments Ltd. 265 ITR 685 (Mad.)</i>	<i>Income was purely from let out of properties. There were no separate receipts like maintenance charges as in the case of the appellant.</i>



10.	J.K. Investors (Bom.) Ltd. (2012) 211 Taxman 383 (Bom.)	In this case, the land lord has not provided any service except giving the property on rent. In the case of the appellant, services are provided for which agreement has been executed.
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9. After considering the facts and submissions, the Id. CIT(A) held as under:

*"In all the above mentioned cases, the receipts received from providing amenities and services were held to be either income from business or profession or under the head income from other sources, therefore, the ratio of the above stated judgments is squarely applicable to the facts of the appellant's case and the receipts received by the appellant from common area maintenance charges and for providing other services are to be assessed as income from business and profession. The Assessing Officer was not justified in treating such receipts as income from house property. Assessing Officer is therefore, directed to treat the charges received from common area maintenance and providing other services as income from business and profession."*

10. Since the charges received from common area maintenance was treated as 'income from business and profession', the Id. CIT(A) also directed to allow lease rental payment to Noida authority as revenue expenditure.

11. Before us, the ld. DR strongly relied upon the findings of the Assessing Officer and read the relevant findings of the Assessing Officer and through his written submissions placed reliance on the following decisions:

- a) J.K. Investors Ltd 25 Taxmann.com 12
- b) Indian Metal & Metallurgical Corpn 84 Taxmann.com 481
- c) Shambu Invesetment Ltd 263 ITR 143
- d) K. Bhaskaran Nair 177 Taxmann.com 478
- e) Niagara Hotels & Builders Pvt Ltd 263 ITR 143

12. Per contra, the ld. counsel for the assessee reiterated was has been stated before the lower authorities.

13. We have given thoughtful consideration to the orders of the authorities below and have also considered the judicial decisions relied upon by both the parties. It is not in dispute that the appellant had agreement with the tenants and in such agreement, there was specific clause in respect of common area maintenance charges and in the agreement it has been specifically mentioned that maintenance charges shall be payable from rent commencement date.

14. In all the cases relied upon by the Assessing Officer/ld. DR, none of the cases had such agreement for maintenance of common area and providing other facilities. In none of the cases relied upon by the ld. DR, no separate expenses were incurred by any of the landlord and none of the cases had mixed income like income from house property and business and profession.

15. The Hon'ble High Court of Delhi in the case of Abhishek Govil ITA No. 19/2016 and ITA 21/2016 has held that contractual receipt received by the assessee, being owner of house property, after deducting TDS pursuant to maintenance agreement cannot be treated as rental income in the hands of the assessee.

16. In this case also, the assessee claimed that receipts on account of rent as well as maintenance charges were liable to be taxed under the head 'Income from house property'. The Assessing Officer rejected the claim of the assessee to treat the receipts on account of maintenance agreement as rental income and taxed the same under the head 'Income from other sources'. In the case in hand the assessee is showing receipt as 'Business income'.

17. The Hon'ble High Court of Bombay in the case of Runwal Developers Pvt Ltd 115 Taxmann.com 196 has held that maintenance charges received were towards maintenance and promotion of common area and the amounts received towards maintenance charges were business receipts liable to be assessed under the head 'Income from business'.

18. The Hon'ble Supreme Court in the case of Karnani Properties 82 ITR 547 has held that services rendered by the assessee to its tenants were result of its activities carried on continuously in an organized manner with a set purpose and with a view to earn profit and hence those activities were business activities and income arising therefrom was assessable as 'business income'.

19. Considering the totality of the facts in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the findings of the Id. CIT(A). Both the grounds taken by the Revenue are accordingly dismissed.

20. In the result the appeal of the Revenue in ITA No. 5300/DEL/2016 is dismissed.

The order is pronounced in the open court in the presence of both the rival representative on 27.07.2021.

Sd/-

**[K.N. CHARY]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 27<sup>th</sup> July, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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