

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. No. 591/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2016-17)

Hind Musafir Agency Ltd. 39 th Floor, Sunshine Tower, Senapati Bapat Marg, Dadar (W), Mumbai-400013.	बनाम/ Vs.	ACIT-2(1)(2) Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH1250Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Parth Achwal (AR)
Revenue by:	Shri Gurbinder Singh (DR)

सुनवाई की तारीख / Date of Hearing: 14/07/2021

घोषणा की तारीख /Date of Pronouncement: 03/09/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 25.11.2019 passed by the Commissioner of Income Tax (Appeals)-04, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2016-17.

2. The assessee has raised the following grounds: -

“1. On the facts and in The circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding (he action of the Assessing Officer \n considering the income from letting out of office premises owned by the appellant under the head 'Profits and gains of business or profession' instead of the head 'Income from house property'.



2. *On the facts and in the circumstances of The case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in taxing the impugned rental income under the head 'Profits and gams of business or profession' merely on the ground that impugned property was a part of the business assets of the appellant on which depreciation had been claimed.*

3 *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not appreciating the fact that the impugned property was used till AY 2014-15 as the primary office premises of the Appellant company and has been a part of the block of assets on which depreciation has been claimed under section 32.*

Disallowance under section 14A in respect of expenditure attributable to earning of exempt income: Rs. 88,308:

4 *On the facts and in The circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the disallowance under section 14A in respect of expenditure attributable to earning of exempt income to the extent of Rs 86,306 under limb (iii) of Rule 8D(2)*

5 *On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer of not excluding investments aggregating to Rs.1,11,54,713 held in growth schemes of mutual funds which are no! capable of yielding exempt income.*

6 *On the facts and in The circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer of not excluding investments aggregating to Rs.2,93,360 held in equity shares of Baroda Industries Private Limited which have not yielded exempt income during The year under consideration*

7 *On the facts and in the circumstances of the case and in law. the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer of not excluding strategic investments in group companies (L e. Bajaj Electricals Limited and Baroda Industries Private Limited') aggregating to Rs 65,06,933 which are in the nature*



of long-term investments and do not require day-to-day monitoring Deduction in respect of education cess

8 On the facts and in the circumstances of the case and in law the appellant prays that the Assessing Officer be directed to allow deduction in respect of education cess on income-tax paid during the year.”

3. The brief facts of the case are that the assessee filed its return of income on 17.10.2016 declaring total income to the tune of Rs.93,74,670/- under the normal provisions of the Act and Book Profit in sum of Rs.2,05,60,222/- u/s 115JB of the Act. The case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee has shown the rental income in sum of Rs.32,54,624/- which was other than the business and profession. The assessee offered the House Property income in sum of Rs.22,78,237/-. The assessee claimed the depreciation upon the rented out asset. After the reply of the assessee, the income of Rs.32,54,624/- was treated as income from business and profession as against the House Property income of the assessee. The AO also assessed the expenditure to earn the exempt income in view of the provision u/s 14A r.w. Rule 8D in sum of Rs.3,32,785/-. The total income of the assessee was assessed to the tune of Rs.1,06,28,060/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the grounds which have been mentioned above, therefore, the assessee has filed an appeal before us.

ISSUE Nos.1



4. Under this issue the assessee has challenged the treatment of rented income under the head of 'Profit and Gains of Business' instead of income from House Property. At the very outset, Ld. Representative of the assessee has argued that the issue has duly been covered by decision of Hon'ble ITAT in the assessee's own case bearing ITA. No.247/Mum/2019 for the A.Y.2015-16 dated 15.09.2020, therefore, the issue is liable to be restored before the AO to decide afresh accordingly. Copy of order dated 15.09.2020 is on the file in which the Hon'ble ITAT has decided the issue in para no.7 which is hereby reproduced as under.:-

1. *"We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. We have also deliberated on the various case laws cited by ld AR for the assessee. There is no dispute that the office premises, which is let out by the assessee during the relevant year under consideration is part of block of asset and the assessee has claimed and availed depreciation on it in earlier years. The assessee claimed that they have shifted its office to Dadar and the business asset (office premises) for the first time was let out to DTDC and the assessee offered the said letting income under the head 'income from house property'. The assessing officer treated the said income under the head 'business income' in place of 'income from house property' by taking view that the assessee cannot claim the income from letting of property, as income from Housed Property on which depreciation has been claimed. The contention of the assessee that letting out of the property was not a business activity of assessee was also rejected by assessing officer as the assessee itself declared that they have claimed depreciation of Rs. 93,284/- independently on the asset. The ld. Commissioner (Appeals) affirmed the action of assessing officer by taking view that undoubtedly the property on which the assessee earned rental income is part of business asset and the assessee had claimed depreciation on it.*



2. *Before us the ld AR for the assessee raised two fold submissions, (i) that the letting out of the property is not the part of business activity of the assessee and that letting out of property was an isolated activity of the assessee and (ii) as per section 38(2), if any building used for the purpose of business is not exclusively so used for the purpose of business, the deduction under section 32 shall be restricted to a fair proportionate part, which may be determined by the assessing officer. We have noted that first contention of the assessee has been considered by the lower authorities and had already been rejected. We are in agreement with the finding of the assessing officer that the assessee cannot altogether claim depreciation on the business asset as well as income from the same business asset as income from the house property. The case laws relied by ld. AR for the assessee not applicable on the unique facts of the present case. In none of the case laws cited above, the same property was shown in the block of asset as shown in the present case. The assessee has declared its income from letting out of house properties under the head 'Income from House Property' which falls under Chapter IV-C of the 1961 Act containing Section 22 to 27. Thus, the assessee will be entitled only for deductions prescribed under sections 22 to 27 of Chapter IV-C of the Act, while computing 'income from house property' chargeable to tax. This chapter IV-C of the Act does not provide for depreciation on immovable properties as one of deductions from income earned by assessee from letting out of such house property. However, section 32 of the Act provides for depreciation and falls under Chapter IV-D which concerns itself with computation of income from Profits or Gains from 'Business or Profession'. Thus, there is no question of allowing any deduction as depreciation under section 32 for the period for which this property was let out and income thereof was offered for tax under the head 'income from house properties'. Thus, we concur with the finding of the assessing officer.*



3. *However, we have noted that in second contention by ld AR for the assessee that office house property (office premises) earlier used for the purpose of business is not used for the purpose of business during the year under consideration and that the assessee has let out the same for the first time on rent and assessing officer may restrict to a fair proportionate part of asset for the purpose of depreciation. We find convincing force in the contention of the ld. AR for the assessee and restore back this issue to file of assessing officer to examine the issue afresh on this contention and pass the order in accordance with law. Needless to order that before passing the order the assessing officer shall grant opportunity to the assessee as per the new procedure of assessment. The assessee is also directed to provide all information and evidence to the assessing officer.*
4. *In the result these grounds of appeal are allowed for statistical purpose.”*

5. We noted that the assessee has given the two fold submissions, (i) that the letting out of the property is not the part of business activity of the assessee and that letting out of property was an isolated activity of the assessee and (ii) as per section 38(2), if any building used for the purpose of business is not exclusively so used for the purpose of business, the deduction u/s 32 shall be restricted to a fair proportionate part, which may be determined by the AO.

6. The decision of ITAT in the assessee's own case for the A.Y.2016-17 has been discussed above in which the first plea has been rejected and the second plea has been remanded to the AO to decide the matter of controversy afresh by giving an opportunity of being heard to the assessee in accordance with law. Accordingly, we set aside the finding of the CIT(A) on this issue and restore the issue on similar lines before the AO to decide the matter of controversy afresh in accordance with law.



Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NOs.2 & 3

5. Under these issues the contention of the assessee is that the investment which did not yielded exempt income is liable to be excluded while calculating expenditure to earn the exempt income. The Ld. Representative of the assessee has placed reliance upon the decision in the case of **ACIT Vs. Vireet Investment (2017) 165 ITD 27 (Delhi-Trib SB)**. This issue has already decided by Hon'ble ITAT in the assessee's own case bearing ITA. No. 247/Mum/2019 for the A.Y.2015-16 dated 15.09.2020. The relevant finding is hereby reproduced as under:-

1. *"We have considered the rival submissions of the parties and gone through the orders of the tax authorities below. As noted above the ld AR for the assessee have confined his submissions to the extent that only those investment which yielded exempt income during the year should be considered for computing the average value of investment which yielded exempt income during the year as held by Special bench of Delhi Tribunal in Vireet Investment P. Ltd. (supra). After considering the submission of ld. AR of the assessee, we find convincing force in his submission that only those investments which yielded exempt income during the year be considered for computing the average value of investment. Therefore, the assessing officer is directed to re-compute the disallowance under Rule 8D(2)(iii) by following the decision of Special Bench of Delhi Tribunal in Vireet Investment P. Ltd. (supra). Needless to order that before re-computing the disallowance under Rule 8D(2)(iii), the assessing officer shall grant opportunity of*



hearing to the assessee. The assessee is also directed to provide necessary details and information to the assessing officer.”

6. Accordingly, the finding of the CIT(A) is hereby ordered to be set aside and the issue is hereby restored before the AO to decide the matter of controversy afresh and by following the decision of **Vireet Investment (supra)**. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NOS.4 to 6

7. Under these issues the assessee has challenged the deduction in respect of education cess paid of Rs.1,22,097/-. The Ld. Representative of the assessee has argued that the issue is duly covered by the decision of Hon'ble Bombay High Court in the case of **Sesa Goa Ltd. Vs. DCIT (2020) 107 CCH 376 (Bom)** and has also been decided by Hon'ble ITAT in favour of the assessee in ITA. NO. 247/Mum/2019 for the A.Y.2015-16 dated 15.09.2020. The relevant finding is hereby reproduced as under.:-

1. *“We have considered the rival submission of the parties and deliberated on various case laws relied by ld. AR of the assessee. We have noted that the assessee has raised this ground of appeal, for the first time before the Tribunal. The ld. AR for the assessee submitted that the ground of appeal is purely legal in nature. Considering the fact that the ground of appeal raised by assessee is purely legal in nature and no new facts are necessary to be brought on record for considering the relief claimed under this grounds of appeal and further, considering the decision of Hon'ble Bombay High Court in Sesa Goa (supra), we admit the ground of appeal and direct the AO to consider the claim of assessee and allow appropriate relief in accordance with the decision of Hon'ble*



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Bombay High Court in Sesa Goa Ltd. (supra) wherein it was held that Education Cess and Higher and Secondary Education Cess are liable for deduction in computing income chargeable under head of 'profits and gains of business or profession'. Hence, this ground of appeal is admitted and restored to the file of assessing officer to consider and allow appropriate relief to the assessee by following the decision of jurisdictional High Court in Sesa Goa Ltd. (supra). In the result, this ground of appeal allowed for statistical purpose."

8. Since the issue is duly covered by the Hon'ble ITAT in the assessee's own case ITA. NO. 247/Mum/2019 for the A.Y.2015-16 dated 15.09.2020, therefore, we set aside the finding of the CIT(A) on this issue and restore the issue before the AO to decide the matter of controversy in view of the decision of Hon'ble Bombay High Court in the case of **Sesa Goa Ltd. Vs. DCIT (2020) 107 CCH 376 (Bom)**. Needless to say that an opportunity of being heard is liable to be given to the assessee in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

9. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 03/09/2021

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 03/09/2021
Vijay Pal Singh, (Sr. PS)

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :



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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai