

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1647/Bang/2017
Assessment Year: 2008-09

M/s. Shambala Properties Pvt. Ltd., No.7, Rest House Road, Bangalore – 560 001. PAN NO : AAHCS 1313 C	Vs.	ACIT, Circle – 12(3) (presently – DCIT – 7(1)(2)), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri. B. K. Manjunath, CA
Respondent by	:	Shri. Elamurusu G, JCIT (DR)(ITAT)

Date of Hearing	:	02.12.2020
Date of Pronouncement	:	03.12.2020

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is by the assessee directed against the order of CIT(A) dated 24.03.2017. The assessee raised the following grounds:

- 1. That the order of the CIT(A) in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity and all other known principles of law.*
- 2. That the total income computed and the total tax computed is hereby disputed.*
- 3. That the Learned CIT(A) erred in not following the binding decision of the Hon'ble Tribunal in the appellant's own case rendered for earlier year.*

4. *That the learned CIT(A) erred in overlooking the submissions and without appreciating the facts and law has summarily upheld the order of the AO.*
5. *That the Learned CIT(A) erred in treating the sum of Rs. 6,25,000/-received towards electricity deposit as rent and thereby taxing the same.*
6. *That the Learned CIT(A) erred in treating the entire amount of Rs. 1,93,75,823/- as rent and taxing the same under the head Income from House Property.*
7. *That the Learned CIT(A) erred in holding that Service tax is the liability of the lessees but failed to appreciate that it is the responsibility of the appellant to collect and remit the same.*
8. *That the Learned CIT(A) erred in not reducing the Service tax of Rs. 17,33,877/- from the total rent received.*
9. *That the Learned CIT(A) failed to appreciate that the rents received were for lease of property and host of other services and was not rent simpliciter.*
10. *That the Learned CIT(A) erred in upholding the Bescom and other charges amounting to Rs. 32,95,186/- under the head Income from House Property.*
11. *That the Learned Assessing officer / CIT(A) erred in not allowing the expenditure incurred by the appellant in providing power to the lessees.*
12. *That the Learned CIT(A) erred in rejecting the claim for expenditure shown under the head Income from other sources.*
13. *That the Learned CIT(A) erred in not allowing depreciation on lifts, generator, etc.,*
14. *For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.*

2. The assessee is owning a building and is in the business of real estate development. The assessee declared income from house property and income from other sources. The Learned Assessing officer has completed the assessment at a total income of Rs. 1,16,64,440/- as against the declared income of Rs. 73,17,890/-. The AO has taxed the entire rent received from the tenants under Income from House Property overlooking the fact that it was a composite rent towards the lease of the premises and for providing host of services by the assessee. The AO has not reduced the Service tax amounting to Rs. 17,33,877/- which is included in the rent received from the tenants by holding that as per the terms and conditions of leased deeds, the lessee shall pay the service tax. No doubt it is the lessees who have to pay the service tax but it is the responsibility of the lessor to collect the same and remit it to the Central Govt as per the provisions of Service Tax Act, this aspect has been completely overlooked/ignored by the AO. Hence the Service tax collected by the appellant amounting to Rs. 17,33,877/- requires to be reduced from the rent received.

The assessee had bifurcated rent received amounting to Rs. 1,76,41,946/- as under

Towards Rent	- Rs. 1,49,95,654/-
Towards Other services	- Rs. 26,46,292/-

The sum of Rs. 1,49,95,654/- was offered to tax under the head Income from House Property and the sum of Rs. 26,46,292/- towards providing of various services like lift maintenance, security charges, water charges, staff expenses, maintenance of common areas, providing of electricity etc., and offered it under the head Income from other sources. Further since the entire building was having only one electric connection, the power was supplied by the

assessee to all the tenants and depending on the consumption, it had collected charges from the tenants amounting to Rs. 32,95,186/- which was also offered under the head Other Sources. It had also installed Generator For providing uninterrupted back up power and depending on the consumption, charges were collected from the tenants in providing the above services, the expenditure incurred were claimed and the net result being loss of Rs.5,95,288/- was shown under the head Income from Other Sources.

The AO has treated the entire receipts including electricity charges as rent and taxed it under the head Income from House Property by relying on certain decisions and AO computed the income of the assessee as follows:

Income from House Property:

Rent received	2,03,54,601
Less Municipal tax paid	<u>12,64,655</u>
As provided u/s 23 of the Act	
Annual Value:	1,90,89,946

Less Deduction u/s 24 of the Act

i) 30% of annual value	: 57,26,983	
ii) Interest paid	: 15,65,010	
iii) Pre construction periods interest	: 1,33,509	_____
House Property or total income		<u>1,16,64,440</u>

3. Against this, the assessee went in appeal before CIT(A). The learned CIT(A) confirmed the order of AO. Against this, assessee is in appeal once again before us. After hearing both the parties, we are of the opinion that similar issue has come up before this Tribunal in assessee's own case in

ITA No.214/Bang/2014. For Assessment Year 2009-10, the Tribunal vide order dated 31.10.2014 held as under:

“10. We have duly considered the rival contentions and gone through the record carefully. Section 14 in Chapter - IV of the Income Tax Act provides heads of income namely (a) salary (b) (...) (c) income from house property (d) property and gains of business or profession (e) capital gains and (f) income from other sources. The determination of income from house property under ITA No.214 of 2014 Shambala Properties Pvt Ltd Bangalore the head (c) is being provided in sections 22 to 27 of the Income Tax Act. Section 22 provides that if the assessee is the owner of any property which is being not used by him for the purpose of any business or profession carried on by him, then the annual value of the property would be chargeable to Income Tax under the head income from house property. Section 23 provides method to determine the annual value of the property. The proviso appended to this section also contemplates that taxes levied by any local authority in respect of such property shall be deducted while determining the annual value. Section 24 provides the deduction from income from house property. There is no dispute that the assessee had earned income from house property. The determination of annual value or the rent is also not in dispute. The Assessing Officer had relied upon the decision of the Hon'ble Supreme Court in the case of Shambhu Investment Pvt Ltd (2003) 263 ITR 143 (SC). To our mind the dispute in the present case is not of the nature, whether income from letting out of the house property has to be assessed as a business income or an income from house property. The contentions of the assessee are that it is in the business of letting out of house property. Therefore, the incidental expenses incurred for maintaining the corporate identity and for exploring the prospective tenants or how to use the property at the optimum level for earning house property income, it had incurred traveling expenditure, salary expenses, audit expenses etc. In other words, apart from letting out the property, it has been earning income from other sources in the shape of providing power, security, lift maintenance etc. This income ought to be assessed separately under the head income from ITA No.214 of 2014 Shambala Properties Pvt Ltd Bangalore other sources. The learned CIT (A) in principle has accepted its stand, but failed to give any logic for directing the Assessing Officer to allow the expenses for earning these receipts in proportion to the rent receipt and the receipt for services rendered. The learned CIT (A) made observations in Para 3.14 about the administrative expenses and has also observed that no business is being carried out by the assessee, but failed to record any specific finding. The observations read as under:

"3.14 Further, the appellant received an amount from let out property and no other business is carried on by the appellant, therefore, administrative expenses viz., accounting charges, audit charges, misc. expenses, rent, telephone charges, traveling expense, salaries, depreciation on furniture and fixture etc. on the basis of receipts i.e. rental income and income from other sources".

4. Being so, taking a consistent view, we incline to remit the issue in dispute to the file of AO to reframe the assessment in the light of direction given by the Tribunal in its order for the Assessment Year 2009-10. Accordingly, assessee's appeal is partly allowed for statistical purposes.

5. In the result, appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(BEENA PILLAI)
Judicial Member

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated : 03.12.2020.
NS*

Copy to:

- | | | |
|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Asst. Registrar,
ITAT, Bangalore.