INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "G": NEW DELHI]

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITANo. 3136/Del/2018
(Assessment Year: 2010-11)

Tube Rose Estates Pvt. Ltd., Enkay House, 3&4, Malcha Marg Shopping Centre, Chanakyapuri, New Delhi – 110 021. **PAN: AAACT2687F**	Vs.	ACIT, Circle: 16 (1) New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri R. S. Singhvi, C.A. & Shri Satyajeet Goel, C.A.
Department by:	Shri Prakash Dubey, Sr. DR;
Date of Hearing :	01/03/2021
Date of pronouncement :	26/03/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

01 This appeal is filed by the assessee against the order of the CIT (Appeals)-33, New Delhi, dated 22.02.2018 wherein assessee filed an appeal before him against the order passed by the Assistant Commissioner of Income Tax, Circle 16(1), New Delhi, for assessment year 2010-11 passed under Section 143(3) of the Income Tax Act, 1961 (the Act) on 28.02.2013 determining the total income of the assessee at Rs.4,27,14,580/- against the returned income of the assessee filed on 9.10.2010 at Rs.3,23,72,809/- making an addition of Rs.1,03,41,773/- on account of maintenance income and reimbursement of income in that assessment order, was partly allowed.

02 The assessee is aggrieved with that order and, therefore, has effectively raised three grounds of appeal:-

"1 (i). That on facts and circumstances, the Id. CIT(A) was not justified in treating rental income from house property under the head 'Income from Business and Profession' as against 'Income from House Property' offered by the assessee in disregard to past history and judicial precedents.

(ii) That the order of Id. CIT (A) is highly arbitrary and without proper opportunity* appreciation of facts and against the principle of natural justice.

(iii)That the Id. CIT(A) having disregarded the order of Hon'ble ITAT for AY 2009-10 and order of CIT(A) for AY 2011-12 which have attained finality, the impugned order is arbitrary, misconceived and not in conformity with settled position.

2(i) That on facts and circumstances of the case, the Id. CIT(A) was not justified in rejecting claim of Standard Deduction u/s 24 in respect of income from letting of property by reclassifying the same under the head 'Income from business and Profession'.

(ii) That in any case, the income from letting of property having been consistently assessed under the head 'Income from House Property' in the preceding and subsequent assessment years, the order of CIT(A) is in total disregard to rule of consistency and order of Hon'ble ITAT in assessee's own case.

3(i) That the dispute being only with regard to computation of income from maintenance activities, the order of CIT(A) is wholly unjustified on facts and not sustainable under the law.

(ii) That claim of maintenance expenses is based on maintenance agreement with reference to let out properties, there is no valid basis for distorted working of income relating to maintenance services.

(iii)That working of AO with reference to income from House Property and income from business activities is highly arbitrary and unjustified and same is also not based on facts and past history and as such order of CIT(A) to this effect is not sustainable.

4. That orders passed by lower authorities are not justified on facts and same are bad in law.

5. That the appellant craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice."

03 Consequently, the fact shows that assessee is the company engaged in the business of real estate. It is a builder. During the course of assessment Assessing Officer noted that assessee is getting rent from the office premises let out as well as maintenance charges for building, reimbursement for air-conditioning charges and house-keeping. Assessee is providing services like

running and operation of lifts, cleaning of floors etc. The assessee is maintaining a total area of 1,50,619 sq. ft. out of which 52,101 sq. ft. is owned by the assessee and 97,960 sq. ft.is sold to others. As per the terms of the contract, assessee is providing maintenance services also to the parties to whom the area is sold out. Thus assessee owns area of 34.72% and 65.25% owned by assessee itself as well as owned by others respectively On these facts the assessee has shown income from house property of Rs.4,56,70,064/- and has also claimed deduction @ 30% on the same under Section 24 of the Act. It has also claimed deduction of interest expenditure of Rs.30,707/- related to the same.

04 The income from maintenance and other services including the reimbursement have been disclosed by the assessee as income from business and profession amounting to Rs.2,96,63,830/-. This income pertains to property owned by the assessee as well as others. The maintenance income and reimbursement charges were treated by the ld. Assessing Officer as rental income. It has been split by the assessee to claim the entire expense as business expenditure. Assessing Officer noted that under Section 24, 30% of the rental income is allowed as deduction to the assessee from income from house property and further such expenditure cannot be claimed as allowable under any other head of income. Therefore, the ld. Assessing Officer also treated the maintenance income of Rs.2,96,63,830/- as rental income. According to the Assessing Officer as assessee is holding 34.72% of the total area he proportionately worked out 34.72% of the income of Rs.2,96,63,830/- i.e. Rs.1,02,99,281/- as income from house property and the balance income is treated as income from business and profession. Thus, the expenditure claimed by the assessee under the head business income is to be disallowed.

05 The assessee stated that entire expenditure is allowable under the head income from business. The Assessing Officer held that it is not acceptable because assessee is collecting rental income of Rs.4,56,70,064/- by owning 34.72% of the total area. Assessing Officer held that out of the total gross receipt of Rs.7,53,33,894/- being Rs.4,54,70,064/- as rental income and Rs.2,96,63,830/- as maintenance income. Assessee has shown only Rs.24,84,568/- as interest. The Assessing Officer refused to accept the

claim of the assessee that under area of 52,101/- there are no expenditure incurred. The Assessing Officer noted that assessee has shown expenditure of Rs.4,42,00,476/- in the profit and loss account and has disallowed assessee himself Rs.55,18,715/-. Thus, against the income from maintenance and reimbursement expenses assessee has claimed expenditure of Rs.3,86,85,361/-. Since 34.70% of maintenance and reimbursement income is treated by the assessee as income from house property, he disallowed 34.72% of expenditure of Rs.3,86,85,361/- i.e. Rs.1,34,31,551/- as expenses related to the income from maintenance and reimbursement related to the property owned by the assessee. Out of this disallowance of Rs.55,18,715/- Assessing Officer further granted 30% of standard deduction of Rs.30,89,784/- and made the net disallowance of Rs.1,03,41,773/- in the hands of the assessee. Accordingly, he assessed the total income of the assessee at Rs.27,14,580/- against the returned income of Rs.3,23,72,809/-. Assessment order was passed under Section 143(3) of the Act on 28.12.2013.

06 The assessee preferred an appeal before the ld. CIT (Appeals). Claim of the assessee that for assessment year 2009-10 the ld. CIT (Appeals) allowed the appeal of the assessee for that year which was confirmed by the ITAT and, therefore, the issue is squarely covered in favour of the assessee. The ld. CIT (Appeals), however, did not accept the claim of the assessee and held that the ld. CIT (Appeals) for that year i.e. assessment year 2009-10 relied upon the decision of the co-ordinate bench in the case of the assessee for assessment year 2001-02. According to him the ld. CIT (Appeals) as well as ITAT did not consider the fact that there are several expenditure for which deduction @ 30% is allowed under the income from house property as well as the expenses claimed by the assessee under the head business income are over-lapping. He noted that major part of the income is earned by the assessee from the maintenance of the property is shown as business income. Further the statute cannot allow excess deduction of any expenditure. Consequently, he as per para 7 held as under:-

> **“** 7. **Decision**
>
> 7.1 Briefly, the facts of the case are that the Assessee is a builder in the business of real estate. During the year under consideration, it

has earned income from the letting out the office premises as well as maintenance charges for building, reimbursement of Air Conditioners, maintenances and housekeeping etc. The Assessee was providing services like running and operation of lifts, cleaning of floors, window panels and white wash etc. The Assessee was providing the maintenance services for a total area of 1,50,061 sq. feet., out of which 52,101 sq. feet was owned by it. The balance area had already been sold out. But the Assessee was providing maintenance services not only for the area owned by it but also for the sold area. The area owned by the Assessee was 34.72 % of total area. The Assessee declared house property income at Rs.4,56,70,064/- and claimed standard deduction of 30% u/s 24 of the Act, besides interest of Rs.30,707/-. Total income from maintenance, reimbursement and housekeeping charges was Rs.2,96,63,830/-.The Assessee showed this income as income from business or profession and claimed the whole of the income as the expense. The Assessing Officer worked out the income in respect of 34.72% of entire area (area owned by the Assessee) at Rs. 1,02,99,281/-. But the Assessing Officer treated this income as income from property instead of income from business or profession. Thereafter the Assessing Officer allowed standard deduction on this income and disallowed the expenses claimed under the head business or profession. Net expenses claimed by the Assessee were at Rs.3,86,85,361/-. After apportioning the expenses for 34.72% of the total area, the Assessing Officer worked out the expenses at Rs. 1,34,3 1,557/-. The Assessing Officer disallowed this amount and allowed standard deduction @ 30% on Rs.1,16,03,949/- treated as rental income. Thu^f the Assessing Officer disallowed Rs.1,03,4!,773/-.

7.2 Before me, the Assessee pleaded that its case is covered by the decision of the Ld. CIT (Appeal) and the same confirmed by the Income Tax Appellate Tribunal. I have gone through the decision of Ld. CIT(Appeal) in the case of the Assessee for AY 2009-10, in which he relied on the decision of' the Hon'ble ITAT in the case of the Assessee for AY 2001-02. I find that the Ld. CIT (A) and Hon. ITAT did not consider the facts, that the expenses allowed as deduction @ 30% and main other expenses claimed by \ the Assessee for maintenance are overlapping. The standard deduction @ 30% is allowed for various expenses like collection of rent, repair, & **maintenance** of **building** etc. The major part of the income earned by the Assessee, shown as business income, is from the maintenance of the property. The purpose of the statute cannot be to allow excess deduction of expenditure. It is also a fact that where the property cannot be exploited for earning the income without giving many other associated services, the income is assessed under the head 'income from business or profession'. In the case of **CIT vs. Goel Builders, Hon'ble** Allahabad **High Court** held that as a generaI rule, each year 's assessment is final only for that year and does not govern later years, because it

determines the tax for a particular period. It is, therefore, open to the revenue / taxing authority to consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or octroi on that basis in subsequent years. A decision taken by the authorities in the previous year would not stop or operate as res judicata for subsequent year. The revenue cannot act mechanically without applying its mind to earlier facts and circumstances under which a view was taken by the taxman and the facts and circumstances of the assessment year in question calling to depart from earlier view.

7.3 The Hon'ble Calcutta High Court in the case of CIT vs. Shamuh Investment Pvt. Ltd. (2001), 249 ITR 47 held that merely because income is attached to any immovable property that cannot be sole factors for assessment of such income as income from property. What has to be seen is what was the primary object of the assessee while exploiting the property. If it is found applying such test that the main intention is for Jetting out the property or any portion thereof the same must be considered as rental income or income from property'. In case it is found that the main intention is to exploit the immovable property by way of complex commercial activities in that event it must be held as business income.

7.4 In view of the above decision and many other decisions of the Courts, it is clear that if the income earned is complex i.e. it includes rental income as well as income from providing services and the property cannot be exploited without providing such services, the income earned has to be assessed under the head 'income from business or profession'. In the case at hand, the Assessee has shown income under the head 'income from house property' for the area owned by it. However, income from the services has been shown separately under the head 'income from business or profession', whereas the fact is that the property owned by the Assessee cannot be exploited without giving those services. Another fact is that the Assessee is a claiming standard deduction for maintenance of the property and repairs etc. On the other hand, the Appellant is claiming from its tenants charges for maintenance and other services. It cannot be denied that the purpose of allowing standard deduction and expenses claimed by the Assessee against business income are overlapping to a great extent. Therefore, considering all the facts and in the circumstances, I decide to assess the composite income in respect of the owned up property under the head 'business or profession'. This decision is taken in the light of powers given to the ClT(Appeal) which are co-extensive and co-terminus with the Assessing Officer. The rental income earned by the Assessee was Rs.4,56,70,064/-. In addition to this the Assessee has earned Rs. 1,02,99,28 1/- for providing the services in respect of the area owned

by it, as discussed above. The expenses allowable to the Assessee are house tax payments, depreciation and interest against property in addition to 34.72% of net expenses worked out by the Assessing Officer at Rs. 1,34,31,557/- (34.72% of Rs.3.86,85,361/-). Thus the expenses allowable are the following -

1.	House Tax	Rs. 52,98,032/-
2.	Depreciation	Rs. 9,55,927/-
3.	Interest against Property	Rs. 30,707/-
4.	Expenses worked out by the AO claimed in P&L Account	Rs. 1,34,31,557/-
	Total	**Rs.1,97,16,223/-**

7.5 The above expenses are deductible from the house property income at Rs.4,56,70,064/- plus Rs.1,02,99,281/- (rental income and income from maintenance etc.)

Gross business income	Rs. 5,59,69,341/-
Deductible expenses	Rs. 1,97,16,223/-
Balance	**Rs.3,62,53,122/-**

7.6 The above is taxable income worked out in respect of property owned by the Assessee. This is to be further enhanced by the net income earned by the Assessee from the maintenance, reimbursement and housekeeping charges in respect of sold out area. There is a simple arithmetical work to be carried out by the Assessing Officer to compute the total income of the Assessee. "

07 The learned authorised representative submitted that that this issue has arose in the case of the assessee for assessment year 2008 – 09 and 2009 – 10 dated 31st of January 2014 wherein in para number 11 onwards the coordinate bench has decided this issue in favour of the assessee. It was further stated that the learned and CIT – A in assessee's own case for assessment year 2011 – 12 dated 11/1/2016 has already accepted the contentions of the assessee and despite there being the order of the learned and CIT – A in this year has decided this issue in favour of the assessee. He referred to both these orders placed at paper book page number one – 15 and 16 – 23 respectively. He further referred to the same police deed dated six number 2007 and the copy of the simple maintenance agreement even dated placed at paper book page number 41 – 47 and 48 – 50 respectively.

He therefore submitted that this issue is squarely decided in favour of the assessee. He further submitted that the learned and CIT – A is not incorrect in stating that the coordinate bench in the earlier year in the case of the assessee has decided this issue without appreciating the facts and the law in proper manner. He further referred to the decision of the honourable Calcutta High Court in case of CIT versus Shambhu investment private limited (2001) 249 ITR 47 cited by the learned and CIT – A and stated that that merely because income is attached to any more property it cannot be the sole factors for assessment of such income as income from property in what has to be seen is what is the primary object of the assessee while exploiting the property. He further referred to the annual accounts of the company and computation of total income to justify the case of the company. He submitted that the assessee has shown rental income separately and maintenance income separately and the learned and CIT – A has considered all the income is a composite income in respect of the owned the property under the head business or profession. He submitted that the learned and CIT – A has done this without issuing any notice u/s 251 of the income tax act and therefore it is not valid.

08 The learned departmental representative vehemently supported the orders of the lower authorities and also stated that the learned and CIT – A given a detailed reason why he is deviating from the order of the coordinate benches in assessee's own case for the earlier years and therefore the order of the lower authorities needs to be upheld.

09 We have heard the rival contentions as well as perused the orders of lower authorities. The identical issue involved in this appeal has already been decided by the coordinate bench in case of the assessee in earlier years in I.T.A. Nos. 3482/DEL/2011 & 2609/DEL/2012 A.Yrs. : 2008-09 & 2009-10 dated 31/01/2014 which remains unassailed by revenue where in issue has been decided as under :

"11. Since the facts are common, we are adjudicating the issue with reference to the facts and figures of asstt. year 2008-09.

12 In this case the assessee is a builder who is in the business of real estate. AO observed from the assessee's document filed that the assessee is getting rent from the office premises let out as well as maintenance charges for building, reimbursement for air ITA NOS. 3482/DEL/2011 & 2609/DEL/2012 conditionings, maintenance, housekeeping etc. It was observed that the assessee is providing services like running and operation of lifts, cleaning of floors, window panels, white washing etc. It was also observed that the assessee is under contract to maintain total area of 150,061 squre feet out of which 51,101 sq.ft. is owned by the assessee itself while balance area of 97,960/- sqft is sold out area. However as per the terms of contract it is providing maintenance services to them as well. AO observed that thus area owned by the assessee worked out to 34.72% and 65.28% of the area is owned by others. In computation of income furnished by the assessee it has shown income from house property at Rs. 4,54,10,619/- and had claimed deduction of 30% on the same u/s. 24 of the Act besides interest expense of Rs. 41,752/- related to it. The income from maintenance and other services including reimbursements have been shown as income from business and profession and had claimed all the expenses against such income. The income broadly falls under the following heads: -

i) Maintenance income Rs. 2,74,58,525/-

ii) Reimbursement (Air Conditioner) Rs. 42,79,053/-

iii) Reimbursement (Maintenance) Rs. 2,07,493/-

iv) Housekeeping Charges Rs. 4,84,245/-

Total Rs. 3,24,29,316/-
3,24,29,316/-

AO observed that the income of Rs. 3,24,29,316/- is from the property which are owned by assessee as well from others. AO opined that the maintenance income and other reimbursement like air conditioners, housekeeping, maintenance are in the nature of rental income and are part and parcel of rental income. He further observed that this rental income has been splitted by the assessee to claim the entire expense as business expenditure. As per Section 24 of the IT Act only 30% deduction out of rent amount is to be allowed to the assessee in respect of house property for collection of rent, repair and maintenance of building and there is no separate provision for allowability of expense under any other head of income.

In view of above, AO held that the following income received by the assessee is being treated as income from house property:

i) Maintenance income Rs. 2,74,58,525/-

ii) Reimbursement (Air Conditioner) Rs. 42,79,053/-

iii) Reimbursement (Maintenance) Rs. 2,07,493/-

iv) Housekeeping Charges Rs. 4,84,245/-

Total Rs. 3,24,29,316/-
3,24,29,316/-

AO further held that however, since the assessee is owning only 34.72% of the entire area hence a proportionate income of Rs. 1,12,59,458/- (34.72% of 324,29,316) only is being treated as income from house property and the balance income is allowed to be treated as income from business and profession. AO observed that the assessee is also allowed to claim standard deduction of 30% of the aforesaid rental income comprising in Maintenance income and other reimbursements. However, the expenses for earning the aforesaid is to be disallowed.

13. Hence, the Assessing Officer did not accept the submission that entire expenditure as claimed by it relates only to maintenance business of the assessee. AO opined that the expenses is also pertaining to income which was earned under the house property. AO further found that the net expenses claimed against the income from maintenance and reimbursement income was Rs. 3,24,29,316/-. That since 34.72% of the maintenance and reimbursement income has being treated as income from house property, hence, the proportionate expenses of Rs. 1,12,59,458/- (34.72% of Rs. 324,29,316) was held to be relatable to income from maintenance housekeeping and reimbursement related to property owned by the assessee. The disallowance was thus worked out as under:-

Expenses allowed	Rs. 1,12,61,952/-
Less: 30% standard deduction allowed On treating maintenance income Of Rs. 1,12,59,458/-, as rental Income	Rs. 33,77,837/-
Net disallowance	Rs. 78,84,115/-

14. The AO added the above amount of Rs. 78,84,115/- to the business income of the assessee as per return.

15. Against the above order the Assessee appealed before the Ld. CIT(A). Ld. CIT(A) noted that these maintenance receipts have been treated as business income from Asstt. Year 2001-02 and it was approved by the ITAT vide its order dated 30.5.2008 in ITA No. 4530/Del/2004 for Asstt. Year 2001-02. The observation of the ITAT was as under:-

> "3.3 We have perused the records and considered the matter carefully. The issue raised in this ground is whether the brokerage paid by the assessee in connection with ITA NOS. 3482/DEL/2011 & 2609/DEL/2012 renting out of the premises can be allowed as deduction from the income received by the assessee from maintenance and furnishing charges. The assessee had entered into the agreement with the tenants as per which in addition to the rent payable for the use of the property, the tenants were also required to pay separately for the maintenance and furnishing of the property. The assessee has paid onemonth rent in respect of rent of the property and one month charges receivable in respect of maintenance and furnishing to the brokers, who had introduced the tenants. The income received from maintenance and furnishing has been assessed as business income of the assessee and there is no dispute about this fact. Once the income has been assessed under the head 'business', the scope of allowability of expenditure becomes quite wide. While computing the income from business, any expenditure incurred wholly and exclusively for business purpose is allowable as deduction U/S 37(1) provided the same is not the personal expenditure of the assessee and is not a capital expenditure. In this case, the brokerage has been paid to the party, which has brought income to the assessee in the form of maintenance and furnishing charges. It is like commission paid to the commission agents for procuring business order for the assessee. The expenditure incurred has not resulted into the creation of any capital asset or generation of any new source of income. The expenditure is of revenue in nature and is directly linked to the business of the assessee relating to maintenance and furnishing of the property. This has already been accepted by the A. O. as business income. Therefore, in view, the brokerage paid @ maintenance and furnishing charges for one month has to be allowed as deduction under the head business".

15. Ld. CIT(A) concluded as under:-

> "The AO also accepted that maintenance income is to be assessed as business income. It is further seen that maintenance receipts in entirety were assessed as business income as evident from the assessment order dtd. 23-11-09 passed under section 143(3) for A.Y. 2007-08. There is no change of facts. Rule of consistency is to be followed unless there is change of facts or law. The AO has made some theoretical exercise of bifurcating' maintenance receipts in the ratio of property owned vis-a.-vis the total property. There is no legal basis for treating a portion of business receipts as receipts assessable under the head income from house property without proving that

receipts totally fall in the category of income derived from property which is essential for classifying the income under the head 'income from house property'. The action of the AO is not approved."

16. Against the above order the Revenue is in appeal before us.

17. Ld. DR relied upon the orders of the AO. He submitted that the AO has rightly made the disallowance. He submitted that certain portion of the maintenance receipt were actually house property income and hence expense in relation thereto has been rightly restricted by the AO to 30%. Hence, he pleaded that the order of the AO may be sustained.

18. Ld. Counsel of the assessee on the other hand submitted that without any cogent basis, the AO has treated the business income in the shape of maintenance and other services including reimbursement as income from house property. He claimed that in the assessment order in the concluding computation the AO has treated the entire income as business income. Still he has proceeded to disallow expenditures in this regard by treating the certain portion of the income as income from house property. Ld. Counsel of assessee submitted that assessee has receipts from maintenance and other services including reimbursement. In this regard, proper agreement with the tenants and the recipients of the services are there on record. He claimed that these agreements were in the existence from preceding number of years and in all these years, this income has been treated as income from business and no disallowance has been made. Ld. Counsel of the assessee further referred to the Tribunal decision in assessee's own case for asstt. year 2001-02 wherein such receipts have been accepted as business income. In light of the aforesaid, Ld. Counsel of the assessee submitted that there is no reason for the AO to make a departure from the earlier consistent method. Hence, he pleaded that the order of the Ld. CIT(A) may be upheld.

19. We have carefully considered the submissions and perused the records. We find that in this case the assessee is a builder who is also in the business of real estate and assessee is getting rent from the office premises let out as well as maintenance charges for building, reimbursement of air conditioning maintenance, house keeping etc. Assessee was also providing services like running and operation of lift, cleaning of floors, windows panes, white washing etc. As per the contracts in this regard assessee is under a contract to maintain total area of 150061 sqft. Out of the above, 51101 sqft. Is owned by the assessee itself, while the balance area of 97960 sqft is sold out area.

The assessee in this regard has been receiving maintenance and other services receipts from its tenants as well as from parties to whom the space has been sold out. The total receipts against the maintenance charges and other services receipts amounted to 3,24,29,316/-.

20. In this regard, assessee has shown income from house property at Rs. 4,54,10,619/- and has claimed 30% deduction on the same under section

24. Hence, the AO observed that with respect to the proportionate maintenance receipt which can be stated to have been income from the house property assessee should not be allowed further expenses for earning the aforesaid. Hence, the AO has worked out proportionate expenditure of Rs. 1,12,59,458/- (34.72% of 324,29,316). AO held that this was relatable to income from maintenance, house keeping and maintenance related to property owned by the assessee. AO worked out following disallowance:-

Expenses allowed	Rs. 1,12,61,952/-
Less: 30% standard deduction allowed On treating maintenance income Of Rs. 1,12,59,458/-, as rental Income	Rs. 33,77,837/-
Net disallowance	Rs. 78,84,115/-

21. From the above, we note that AO has not specifically identified the expenses which is being disallowed. He has calculated 34.72% of maintenance receipt (of Rs. 324,29,316) amounting to Rs. 11261952 as the expenses disallowed. From the above he has allowed 30% as standard deduction and has thereafter arrived at disallowance of Rs. 78,84,115/-.

22. We find that the above working out of disallowance by the AO is not comprehendible. AO has done some theoretical exercise by bifurcating maintenance receipts in the ratio of property owned vis-a- vis the total property and accordingly, out of the income in this regard assessee has made disallowance amounting to 70% of income thereof. We find that the above disallowance by the AO is devoid of cogency and the same is not sustainable.

23. We find that the assessee has entered into the maintenance agreement with various parties. These parties included those which are assessee's tenants as well as those to whom the flats had been sold out. As per the maintenance agreement in this regard, the assessee is receiving maintenance charges for building, reimbursement of A/C maintenance and house keeping etc. The assessee is also providing services like running and operation of lifts, cleaning of floors, window panes, white washing etc. Now the above contracts are separate contracts, they are over and above the tenancy contracts. These contracts are in existence from preceding many years. In our considered opinion, these services being provided by the assessee are quite distinct from the Rent (tenancy) agreement. These services cannot be treated as part of the house rent receipts and hence, they cannot be taken as income from house property. Hence, any disallowance in this regard is totally uncalled for.

24. Furthermore, we note that assessee has been making similar returns of the above income from a number of preceding assessment years. In

assessee's own case for asstt. year 2001-02 ITAT vide order dated 30.5.2008 (Supra) has noted that assessee was receiving rent over and above income was received from maintenance and furnishing charges. The tribunal had noted that assessee had entered into agreement with tenants as per which in addition to the rent payable for the use of the property, the tenants were also required to pay separately for the maintenance and furnishing of property. The tribunal has also noted that the income received from maintenance and furnishing was assessed as business income of the assessee and there was no dispute about that fact.

25. Thus, we note that assessee's income from business in relationship to the maintenance and other service receipts as detailed above has not been disputed by the Revenue in earlier periods. The contracts are same which were there for earlier assessment years as well as for the impugned assessment year. In such circumstances, in our considered opinion, there is no change in the facts and law and hence, departure from earlier practice by the Revenue is not sustainable. This proposition is supported by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Dalmia Promoters & Developers P Ltd. 281 ITR 346. In this case it was expounded that for rejecting the view taken for earlier years, there must be change in facts, situation or law.

26. In this regard, we further place reliance upon the decision in the case of CIT vs. Excel Industries Ltd. 358 ITR 295. In this case the Hon'ble Apex Court has inter-alia held that when the Department has accepted the verdict of the Tribunal in some years, it cannot be allowed to challenge the verdict in other years. Thus, in our considered opinion in the background of the aforesaid discussion and precedents, there is no infirmity in the order of the Ld. CIT(A). Accordingly, we uphold the same.

27. In the result, both the appeals filed by the Revenue stand dismissed."

10 The learned departmental representative could not state that if the order of the coordinate bench in the earlier years are not in accordance with the law, why they have not been challenged before the higher forum. Further as per para number 7.2 of the order of the learned CIT – A he held that the learned and CIT – A and the ITAT in assessee's own case in the previous year did not consider the fact that the expenses allowed as a deduction at the rate of 30% and many other expenses claimed by the assessee for maintenance are overlapping. However he failed to exhibit that what are those expenses are overlapping. Even, the judicial discipline also requires us to follow the order of the coordinate bench. Even otherwise the learned departmental representative could not show us any reason to deviate from the order of the

coordinate bench in assessee's own case for earlier years where the identical issue has been decided. In the facts and circumstances of the case where the order of the coordinate bench was not shown to us is decided on incorrect facts or incorrect law, we are duty-bound to follow the same. Therefore respectfully following the decision of the coordinate bench in assessee's own case in earlier years, we hold that assessee has correctly offered the income as income from house property and it is not chargeable to tax as income from business and profession as held by the learned and CIT – A. The learned and CIT – A was not justified in rejecting the claim of the standard deduction u/s 24 in respect of income from letting out of the property by the classified the same Under the head income from business and profession. Further the maintenance and service income are backed by the agreement with reference to the left out properties, the characterization of the same cannot be disturbed without any cogent reasons. The learned CIT – A has also and hence the income of the assessee without giving a notice u/s 251 of the income tax act, which is not in accordance with the law. Thus, we reverse the orders of the lower authorities. In the result ground number one – three of the appeal of the assessee are allowed.

11 In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 26 /03/2021.

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 26 /03/2021.

MEHTA

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	26.03.2021
Date on which the typed draft is placed before the dictating member	26.03.2021
Date on which the typed draft is placed before the other member	26.03.2021
Date on which the approved draft comes to the Sr. PS/ PS	26.03.2021
Date on which the fair order is placed before the dictating member for pronouncement	26.03.2021
Date on which the fair order comes back to the Sr. PS/ PS	26.03.2021
Date on which the final order is uploaded on the website of ITAT	26.03.2021
date on which the file goes to the Bench Clerk	26.03.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	