

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2480/DEL/2018
Assessment Year 2014-15

Swar Maya Infotech P. Ltd. B-203, Rose Wood Apartment Mayur Vihar Phase-1, Delhi	Vs.	ITO, Ward-22(4) New Delhi
TAN/PAN: AAHCS6835P		
(Appellant)		(Respondent)

Appellant by:	Shri Ved Jain, Adv. Ms. Supriya Mehta, CA		
Respondent by:	Shri Vivek Kumar Upadhyay, Sr.DR		
Date of hearing:	25	07	2023
Date of pronouncement:	25	07	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-XXX, New Delhi ('CIT(A)' in short) dated 28.02.2018 arising from the assessment order dated 21.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. The grounds of appeal raised by the assessee read as under:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in enhancing the income of the assessee

without following due procedure as prescribed under the law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in holding that rental income earned by the assessee to be assessed as 'income under the head business & profession' as against 'income under the head house property' declared by the assessee.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making enhancement of income by disallowing an amount of Rs. 58,15,220/- claimed by the assessee under section 24(a) of the Income Tax Act.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making enhancement of income by disallowing an amount of Rs. 31,47,481/- claimed by the assessee under section 24(b) of the Income Tax Act treating the same to be prior period expenses.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not allowing the set-off of current year business loss of Rs.41, 19,061/- incurred by the assessee with income from house property as per section 71 of the Act.

7. Without prejudice to the above and in the alternative, Ld. CIT(A) has erred both on facts and in law in not allowing an amount of Rs.1,33,46,497/- suo motto disallowed by the assessee while computing income under the head business and profession.”

3. Briefly stated, the assessee-company is engaged in the business of facility management service and business support service. Additionally, the assessee-company has derived rental income by leasing of commercial space. The assessee-company filed return of income for Assessment Year 2015-16 in question wherein the assessee declared rental income under the head 'income from house property' whereas the income derived by way of facility management services were declared under the head 'business income' and subjected to expenses and deductions as available under law. Resultantly, the assessee has shown income from house property at Rs.71,40,062/- whereas business loss of Rs.41,19,061/- was claimed for the Assessment Year 2015-16 in question. The Assessing Officer while framing the assessment

order under Section 143(3) of the Act *inter alia* disallowed the business loss at Rs.41,19,061/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A). After considering the submissions made on behalf of the assessee, the CIT(A) concluded that the assessee is carrying on the activities of facility management etc. in a systematic manner year after year and the buildings used as business assets are shown as business assets of the assessee-company. The CIT(A) concluded that the rental income declared under the head 'income from house property' also should be assessed under the head 'business income. The CIT(A) thus after giving show cause notice etc. re-characterized the entire income as business income and also denied deduction claimed under Section 24(a) as well as interest relating to prior period claimed under Section 24(b) of the Act. Certain deductions were allowed towards repair and maintenance etc. In essence, the CIT(A) re-characterized the nature of income as well as denied several expenses claimed as incurred for the purposes of business. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

“The appellant was given the requisite notice for enhancement as reproduced above. The reply of the appellant has been duly considered. I have examined the reply and the facts at hand. It is established that the main activity of the appellant is earning income from giving out property on lease. The appellant is carrying this activity in a systematic manner, year after year. The appellant is also rendering facility management services, in connection with properties that have been leased out. The main activity of the appellant and the main income earned by the appellant is from leasing out properties on rent. The appellant, in his balance sheet, is showing these buildings as business assets. The incomplete buildings have been shown as Work in Progress. Since the substantive activity of the appellant company is giving out property on lease (and giving facility management services connected with the buildings), I hold that the appellant's income

(sought to be shown under the head income from house property) should be assessed income under the Head Income from Business and Profession.

Since the income hitherto shown under the head Income from House Property is held by me to be Income from Business and Profession, the deduction claimed u/s. 24(a) amounting to Rs. 58,15,220/- is disallowed. The appellant will be allowed repair and maintenance expenses only to the extent that have been actually incurred. The interest relating to prior period will be disallowed. However, the appellant will be free to treat the same as part of capital value of assets. Depreciation will be allowable only to the extent allowable under the IT. Act. Accordingly, income of the appellant gets enhanced to the extent as detailed above."

5. Aggrieved by the action of the CIT(A) resulting in enhancement of taxable income, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the Id. counsel for the assessee at the outset submitted the computation of income as per return of income filed for Assessment Year 2014-15 in question and also furnished alternative computations for two situations (i) where the whole of the income derived by way of rental income and facility management income are treated as taxable under the head 'income from house property (ii) where such rental income is re-characterized as business income of the assessee. On the basis of computations, the Id. counsel submitted that it will not make any fundamental difference to the Revenue if one of the courses is adopted. The Id. counsel in the same vein submitted that the CIT(A) has committed fault not only in re-characterizing the income but also arbitrarily refused to allow several expenses claimed as per Profit & Loss Account without giving any justifiable reasons for denial of claims against business income as re-characterized by the CIT(A) himself. The Id. counsel thereafter submitted that the assessee in the past has been

declaring the rental income under the head 'income from house property' whereas facility management services income were claimed under the head 'business or professional income'. The Id. counsel thus submitted that having regard to doctrine of consistency, the method of determination of taxable income should not be disturbed without showing any compelling justification for doing so. The Id. counsel thus submitted that the matter may, at best, be remitted back to the file of the Assessing Officer for computation of total income consistent with the method adopted in the earlier years and in accordance with law.

7. The Id. DR for the Revenue, on the other hand, relied upon the order of the CIT(A).

8. We have carefully considered the rival submissions. The controversy revolves around taxability of rental income and facility management services income under the appropriate head and allowability of deductions and expenditure in accordance with law.

9. After perusal of the assessment order and the first appellate order and on appraisal of the financial accounts and also the different methods of computation demonstrated on behalf of the assessee, we are inclined to agree with the arguments canvassed on behalf of the assessee. Having regard to the claim of the assessee that income offered in the past in the similar circumstances has been apportioned under the head 'income from house property' and 'business income' and the taxable income has been computed after claim of deductions statutorily available and expenses incurred for the purpose of business in accordance with law, there does not appear to be any justification to depart

therefrom in the present case in the Assessment Year 2014-15 in question based on surmises and fleeting observations. We thus set aside the action of the CIT(A) and restore the matter to the file of the Assessing Officer for redetermination of taxable income under the appropriate head and after allowing the statutory and other deductions and claim towards expenses under the respective heads of income in accordance with law.

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

Order dictated and pronounced in the open Court on 25/07/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /07/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**