

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM

I.T.A. No. 3451/Mum/2014
(Assessment Year: 2010-11)

M/s. Knight Raj Properties Pvt. Ltd. 43-B/207, Manish Co-operative Housing Society, Versova, Andheri (West), Mumbai-400 058	Vs.	Income-tax Officer-8(2)(2) Room No. 216A, 2 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAACK 3957 H		
(Appellant)	:	(Respondent)
Appellant by	:	Shri K. Gopal & Ms. Neha Paranjape
Respondent by	:	Shri M. C. Omi Ningshan
Date of Hearing	:	04.04.2018
Date of Pronouncement	:	11.06.2018

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals)-17, Mumbai dated 18.02.2014 and pertains to the assessment year 2010-11.

2. The grounds of appeal read as under:

1. The Learned Commissioner of Income Tax (Appeal)-17, Mumbai (herein after referred to "Ld. CIT(A)") erred in passing the order dated 18.02.2014 without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the order passed by Ld. CIT(A) is without any basis and the same may be quashed.

2. Treating the 'Business Income' as 'Income from House Property'

(a) The Ld. CIT(A) erred in confirming the action of the Ld. A. O. in treating the income derived from letting out of the properties as 'Income from House

Property' as against 'Business Income' offered by the Appellant without appreciating the facts and circumstances of the case.

(b) The Ld. CIT(A) failed to appreciate that the Appellant is in the business of letting out of the properties. Hence, the income received from letting out of the properties is to be assessed as 'Business Income' only. Thus, the Ld. CIT(A) is not justified in upholding the action of the Ld. A. O. in treating the amount of Rs.25,84,281/- received for letting out of the House Property as 'Income from House Property' and the same may be deleted.

(c) Without prejudice to the above the Ld. CIT(A) failed to appreciate that the actual rent received by the Appellant amounting to Rs.25,84,281/- is taxable under section 23(1)(b) and not under section 23(1)(a) as the same is higher than the municipal retable value.

3. Disallowing the entire expenses debited to the profit and loss account

(a) The Ld. CIT(A) erred in confirming the action of the Ld. A. O. in disallowing the expenses debited to the profit & loss account without appreciating the fact that the same was incurred for earning of the income credited to the profit & loss account. Thus, the expenses are inextricably linked with the income earned during the year. Hence, disallowance of entire expenditure debited to the profit & loss account is not at all justified and the same may be deleted.

4. Disallowance under section 40(al)(ia) - Rs.8,35,000/-

(a) The Ld. CIT(A) further erred in confirming the action of the Ld. A. O. in disallowing the amount of Rs.8,35,000/- incurred during the year as management consultancy fees under section 40(a)(ia) of the Act without appreciating the facts and circumstances of the case. The Appellant prays that disallowance of management consultancy fees under section 40(a)(ia) is not at all justified and the same may be deleted.

(b) Without prejudice to the above the Ld. CIT(A) erred in confirming the action of the Ld. A. O. in making disallowing under section 40(a)(ia) of the Act without appreciating the fact that the management consultancy fees was already paid during the year and nothing was outstanding at the end of the relevant Assessment Year. Thus, the disallowance under section 40(a)(ia) is not at all justified and the same may be deleted.

5. Treating the loan borrowed as unexplained cash credit under section 68 of the Act -Rs.5,00,000/-

(a) The Ld. CIT(A) further erred in upholding the action of the Ld. A. O. in making addition of Rs.5,00,000/- treating the same as unexplained cash credit under section 68 of the Act without appreciating the fact and circumstance of the case. The Appellant prays that treating the amount of Rs.5,00,000/- as unexplained justified and the same may be deleted.

(b) The Ld. CIT(A) failed to appreciate that the Appellant has discharged the primary onus cast upon it to prove the identity, capacity and genuineness of the loan creditor by furnishing the loan confirmation. Thus, the treating the amount of Rs.5,00,000/- as unexplained cash credit under section 68 of the Act is not at all justified and the same may be deleted.

6. Treating the cash deposited in the bank account as unexplained cash credit under section 68 of the Act -Rs.8,08,000/-

(a) The Ld. CIT(A) further erred in confirming the action of the Ld. A. O. in making addition of Rs.8,08,000/- being cash deposited in the bank account of the Appellant treating the same as unexplained cash credit under section 68 of the Act without appreciating the facts and circumstances of the case. The Appellant prays that the addition of Rs.8,08,000/- under section 68 of the Act is not at all justified and the same may be deleted.

7. The Appellant denies any liability to pay interest under section 234B and 234C. Hence, the same is not leviable.

Apropos ground relating to treatment of business income as income from house property:

3. Brief facts on this issue are as under:

The Assessing Officer observed that the assessee is earning income by letting out house properties on rent and during the previous year total credits to the Profit and Loss were shown at Rs.25,84,281/-. After claiming book profit tax of Rs.4,61,392/- was shown. The assessee has earned income in the form of rent by letting out of house properties and the entire income credited to the P&L account is in the form of rent. The assessee offered the above income under the head 'Business Income' after claiming host of expenses. The Assessing Officer asked the assessee to show cause as to why the rent income should not be assessed under the head 'Income from House Properties', but the assessee did not file explanation in this regard. As per the provisions of sec. 22 of the Act, the Assessing Officer thus assessed the rent received by the assessee from the activity of letting out of house properties as 'income from house proper', initiating penalty proceedings u/s. 271(1)(c) of the Act.

4. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) placing reliance upon the order of the Id. Commissioner of Income Tax (Appeals) to the previous year upheld the action of the Assessing Officer.

5. Against the above order, the assessee is in appeal before the ITAT.

6. We have heard both the counsel and perused the records. We find that for the assessment year 2012-13 in assessee's own case in ITA No.3326/Mum/2017 vide order dated 05.02.2018, this Tribunal has decided the issue in favour of the assessee by holding as under:

5. I have heard both the counsel and perused the records. Learned counsel for the assessee submitted that assessee company's only source of income is from letting of the properties and the rental income derived from the same and it should be treated as business income. In this regard, he referred to the decision of Hon'ble Supreme Court in the case *Rayala Corporation (P) Ltd. vs. ACIT 72 taxmann.com 149 (SC)*.

6. Per contra learned Departmental Representative relied upon the orders of the authorities below. He further referred to the decision of Hon'ble Supreme Court in the case of *Raj Dadarkar & Associates vs. ACIT 81 taxmann.com 193*.

7. On careful consideration I note that it is undisputed that assessee company's only source of income is from letting out of properties. This is duly supported by the profit and loss account submitted by the assessee. Even the Assessing Officer has accepted that the entire receipt of the assessee consists of rentals for letting out of property. In these circumstances, I find that Hon'ble Apex court decision in the case *Rayala Corporation (P) Ltd. vs. ACIT (supra)* duly covers the issue in favour of the assessee. In the said decision Hon'ble Apex court has expounded as under"

"9. Upon hearing the learned counsel and going through the judgments cited by the learned counsel, we are of the view that the law laid down by this court in the case of *Chennai Properties (supra)* shows the correct position of law and looking at the facts of the case in question, the case on hand is squarely covered by the said judgment.

10. Submissions made by the learned counsel appearing for the Revenue is to the effect that the rent should be the main source of income or the ITA No.3326//Mum/2017 *Knight Raj Properties P. Ltd* purpose for which the company is incorporated should be to earn income from rent, so as to make the rental income to be the income taxable under the head "Profits and

gains of business or profession". It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning rent therefrom. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue.

11. The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income.

12. In view of the law laid down by this court in the case of Chennai Properties (supra) and looking at the facts of these appeals, in our opinion, the High Court was not correct while deciding that the income of the assessee should be treated as income from house property.

13. We, therefore, set aside the impugned judgment and allow these appeals with no order as to costs. We direct that the income of the assessee shall be subject to tax under the head "Profits and gains of business or profession"

8. The decision relied upon by the learned counsel for the Departmental Representative in the case of Raj Dadarkar & Associates vs. ACIT (supra) has been rendered on different set of facts. In the said decision the Hon'ble Supreme Court has held as under:

"Reliance placed by the appellant on the judgments of this Court in Chennai Properties & Investments Ltd (supra) and Rayala Corporation (P) Ltd. (supra) would be of no avail. In Chennai Properties & Investments Ltd. (supra) where one of us (Sikri J.) was a part of the Bench found that the entire income of the appellant was through letting out of the two properties it owned and there was no other income of the assessee except the income from letting out of the said properties, which was the business of the assessee. On those facts, this Court came to the conclusion that judgment of this Court in Karanpura Development Co. Ltd. v. CIT [1962J 44 ITR 362 (SC) was applicable and the judgment of this Court in East India Housing & Land Development Trust Ltd. v. CIT [1961] 42 ITR 49 CSC) was held to be distinguishable"

9. In accordance with aforesaid discussion, having found the issue to be covered in favour of the assessee by the Supreme Court decision in the case Rayala ITA No.3326//Mum/2017 Knight Raj Properties P. Ltd Corporation (P) Ltd, I set aside the orders of authorities below and hold that the assessee's receipts should be considered as business income and the consequences would follow.

7. Since facts are the same, following the above precedent, we set aside the order of the authorities below and hold that the income is to be treated as business income and the consequences will follow.

Apropos ground no. 3 above relating to disallowance of expenses debited to profit and loss account:

8. This issue is consequential to our decision on the issue decided above. In view of our decision as above, this issue is remitted to the file of the Assessing Officer to decide the issue in accordance with our decision hereinabove.

Apropos ground no. 4 – disallowance u/s. 40(a)(ia):

9. On this issue, the Assessing Officer noticed that the assessee has debited the management consultancy expenses of Rs.8,35,000/-. The Assessing Officer asked the assessee why the same should not be disallowed u/s. 40(a)(ia) of the Act. In absence of assessee's response, the Assessing Officer disallowed the expenditure.

10. Upon the assessee's appeal, the Id Commissioner of Income Tax (Appeals) confirmed the addition.

11. Against this order, the assessee is in appeal before us.

12. We have heard both the counsel and perused the records. The Id. Counsel of the assessee submitted that the above payment is in fact been made by its sister concern M/s. Knight King Inn's Pvt. Ltd. on behalf of the assessee and TDS was duly deducted. In this regard, the Id. Counsel of the assessee submitted that the issue may be remitted to the file of the Assessing Officer where the assessee would submit the necessary details.

13. Upon careful consideration, we deem it appropriate to remit the issue to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh in

light of the additional evidence now being sought to be submitted by the Id. Counsel of the assessee. Needless to add, the assessee should be granted adequate opportunity of being heard.

Apropos ground no. 5- addition u/s. 68 of the Act – Rs.5,00,000/- and ground no. 6 addition on account of cash deposits – Rs.8,08,000/-:

14. In this regard, in connection with the afore-said additions, the submission of the Id. Counsel of the assessee is that reasonable opportunity has not been granted to the assessee to file detailed explanation. Further, the assessee has submitted additional evidences seeking admission of the same and made following submissions:

The Applicant is moving this application under rule 29 of the Income Tax Appellate Tribunal Rules, 1963 to admit the additional evidence, compiled in Paper Book at Serial Nos. 12 to 18 at Pages 128 to 141. The Applicant requests your Honours to admit the same after considering the following facts:

1. The returns for the year under consideration was filed on 14.10.2010 declaring total income of Rs.23,440/-. The assessment was finalized vide assessment order dated 14.03.2013 passed under section 143(3) of the Act. While passing the assessment order the Ld.A.O. made following additions/disallowances:

Sr. No.	Particulars	Amount (Rs.)
1	Addition by treating the business income as House property income	25,84,281/-
2	Disallowance of expenses debited to Profit & Loss account	21,22,889/-
3	Disallowance of Management Consultancy charges	8,35,000/-
4	Addition on account of loan u/s.68	5,00,000/-
5	Addition on account of cash deposits	8,08,000/-

2. The Applicant submits that during the course of assessment proceedings the Ld.A.O. after perusing the Profit and Loss accounts asked the Applicant to explain the nexus of expenditure (Rs.21,22,889/-) debited to Profit and Loss Accounts. In reply to the said query it was explained that the Applicant is engaged in the business of letting and subletting of the premises along with various services. The

expenditure incurred during the year are exclusively related to the business activity of the Appellant. In spite of giving explanation the Ld.A.O. disallowed entire expenses debited to Profit and Loss account. The Ld.A.O., further, proposed to disallow the management consultancy fees amounting to Rs.8,35,000/- paid during the year under section 40(a)(ia) of the Act.

3. Further, the Ld.A.O. made addition of Rs.500,000/- under section 68 of the Act by treating the same as loan received from M/s. Knight King Inn's Pvt. Ltd. without appreciating that no such amount of loan is appearing in the balance sheet of the Appellant. The Ld.A.O., further, went on making addition amounting to Rs.8,08,000/- on account of unexplained cash credit. The Applicant submits that it has not been provided the reasonable opportunity to file detailed explanation.

4. The Applicant submits that the issues mentioned at serial no. 3, 4 and 5 are interrelated to each other. The Applicant submits that during the year under consideration the Director of the Appellant, Mr. Naresh Rajwani received a sum of Rs.4,60,000/- and Rs.3,40,000/- from his aunts Smt. Kamla Serai and Smt. Durupati Serai respectively. The said money was specifically utilized for the purpose of business of the Applicant since there was financial need. The affidavits confirming the same are being provided in the paper book II at pages 128 to 136.

5. The Appellant, further, submits that the same funds were deposited in Dena Bank Account on 22.04.2009. The details of Bank statement showing deposits is enclosed at page 23 of the paper book I. The Applicant submits that the said affidavits are going to the root of the issue pertaining to the cash deposits of Rs.8,08,000/- and substantiated the genuineness of the transactions. Thus, the addition under section 68 of the Act is unjustified.

6. The Applicant being aggrieved by the assessment order preferred the appeal before the Ld. CIT (A). However, the Ld. CIT (A) without providing the reasonable opportunity to adduce relevant details confirmed the action of the Ld.A.O.

7. The Applicant being aggrieved by the above appellate order preferred the present appeal before Hon*ble Appellate Tribunal.

8. The Applicant strongly objects to the addition made by the Ld. A.O. and confirmed by Ld. CIT(A). The Applicant submits that the additional evidences produced by it at serial no. 12 to 18 have got direct bearing on the present appeal filed before your Honours. The Applicant submits that the Hon'ble Bench has been vested with the discretion to admit the additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963.

9. The Applicant prays that your Honours may be pleased to admit the additional evidence as the same substantiates the legality of the case and this evidence go into the root of the issues. It is therefore, respectfully submitted that the aforesaid additional evidence may kindly be admitted in the interest of justice. The Applicant relies on the ratio laid by Bombay High Court Smt. Prabhavati Shah vs. CIT 231 ITR 1 (Bom) and Patna Tribunal in the case of Abhay Kumar 63 ITD 144 (Pat.)(TM) for admission of Additional evidence.

15. We have heard both the counsel and carefully considered the submissions and perused the records. Upon careful consideration, we are of the considered opinion that these issues need to be sent to the file of the Assessing Officer. Accordingly, these issues are also remitted to the file of the Assessing Officer. The Assessing Officer is directed to consider the same afresh in light of the additional evidences and submissions being made by the Id. Counsel of the assessee. Needless to add, the assessee should be provided adequate opportunity of being heard.

16. In the result, this appeal by the assessee stands allowed for statistical purpose.

Order pronounced in the open court on 11.06.2018

Sd/-

(Ravish Sood)
Judicial Member

Mumbai; Dated : 11.06.2018
Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai