IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-2 (HEARING THROUGH VIDEO CONFERENCING), NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.5352/Del./2019
Assessment Year: 2012-13

M/s. Telekon Media India Pvt. Ltd., S-316, Ground Floor, Panchsheel Enclave, Malviya Nagar, Delhi	**Vs.**	ITO, Ward-25(2), New Delhi
PAN :AABCT5785B		
(Appellant)		**(Respondent)**

Appellant by	Shri Rajeev Saxena, Adv.
Respondent by	Shri R.K. Gupta, Sr.DR

Date of hearing	14.07.2020
Date of pronouncement	21.07.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 20/03/2019 passed by the Ld. Commissioner of Income-tax (Appeals) -27, New Delhi [in short 'the Ld.CIT(A)'] for assessment year 2012-13 raising following grounds:

1. *That, the Ld. CIT(A) has erred in law as well as on facts in confirming the disallowance of Rs.6,75,000/- made by Ld. AO, as claimed by the assessee u/s 24(a) of the Act treating the income earned from property along with facilities under the head of income from other source.*

2. That, the appellant reserves the right to add, alter, amend and delete any/all grounds of appeal either before or at the time of hearing of appeal.

2. Briefly stated facts of the case are that the assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') in the case of the assessee was completed on 12/12/2014. The said assessment order was subjected to proceedings under section 263 of the Act by the Commissioner of Income-Tax and it was set aside by the Commissioner of Income Tax vide order under section 263 of the Act dated 08/03/2017 holding the order of the Assessing Officer to be erroneous and prejudicial to the interest of the revenue on multiple issues including the issue that standard deduction under section 24(a) of the Act was wrongly allowed by the Assessing Officer. Consequently, the Assessing Officer taken up the proceedings and found that assessee has shown rental income from following parties under the head "income from house property" as under:

1. Rental income of ₹ 2,50,000 per month/- from M/s Professional Management Counseltant Ltd. for leasing of 50 workstations, at the rate of ₹ 5000 per workstation in the building located at W-23, Sector 11, Noida
2. Rental income of ₹ 1,60,000 per month from M/s Key Electronics and System Private Limited in respect of leasing of ground and first floor of building located at W-23, sector-11, Noida

2.1 According to the Assessing Officer, in case of the rental income from M/s. Professional Management Counseltant Ltd., the letting of workstation i.e. machinery, plant or furniture was

inseparable from the letting of the building and therefore he rejected the submission of the assessee that the business of the assessee was closed and building with furniture was lying vacant for long and so assessee gave the same on rent/lease. The Learned Assessing Officer rejected the contention of the assessee that leasing of plant, machinery furniture was incidental to the letting of the building in view of the decision of the Hon'ble Supreme Court in the case of Sultan Brothers (P) Ltd. versus CIT (1964) 51 ITR 353(SC). The Learned Assessing Officer accordingly disallowed the standard deduction claimed under section 24 (a) of the Act at the rate of the 30% i.e. amounting to ₹ 6,75,000/- from the rental income of ₹ 22,50,000/- and assessed the rental income of Rs.22,50,000/-under the head "income from other sources" as against claim of the assessee under the head "income from house property". On further appeal, the Learned CIT(A) upheld the action of the Assessing Officer relying further on the decision of the jurisdictional High Court in the case of Garg Dyeing and Processing Industries versus ACIT(supra). Aggrieved with the finding of the Learned CIT(A) in the impugned order, the assessee is in appeal before the Tribunal raising the sole ground of the appeal of denying the standard deduction of ₹ 6,75,000/- which was claimed by the assessee under section 24(a) of the Act.

3. Before us, the Learned Counsel of the assessee appeared through videoconferencing facility and filed a paper-book containing pages 1-60. The paper-book contains copy of lease agreements between the assessee and M/s professional management Counseltant Ltd available on page 1-13 of the paper-book. The Learned Counsel referred to the said agreement

and submitted that primary object of the agreement was to rent out the building consisting of basement, ground floor, first floor and second floor with terrace. He submitted that in addition to this additional rights were given to take on 50 workstations in the building. He submitted that Annexure-1 of the agreement has described portion of the furniture lying in the building at the groundfloor and first floor. The Learned Counsel further submitted that the intention of the assessee was to rent out the demised premises and the building i.e. superstructure but not the furniture. The Learned Counsel relied on the decision of the Hon'ble Supreme Court in the case of M/s Shambhu investment private limited versus CIT 263 ITR 143 (SC) and submitted that only intention and privacy object is required to be looked into. According to him the present case the prime object was to let out the building and not to exploit the property for commercial business activities, and therefore the rental income received from M/s. Professional Management Consultant Ltd must be assessed under the head "income from house property" and the deduction under section 24(a) should be allowed to the assessee.

4. On the contrary, learned DR relied on the order of the lower authorities and submitted that intention of the assessee was of leasing of workstation only, which is evident from various clauses of the agreement placed on pages 1 to 13 of the paper-book of the assessee and therefore, learned CIT(A) has correctly upheld the action of the Assessing Officer.

5. We have heard rival submission of the parties advanced through videoconferencing and perused relevant material available on record.

5.1 As per section 22 of the Act, any annual value (rental income from leasing) of building or lands appurtenant thereto is chargeable under the head "income from house property" and during relevant period, deduction against such income under section 24(a) of the Act is allowable for a sum equal to 30% of the annual value. Further, the section 56(2)(iii) provides that where an assessee lets on hire machinery, plant of furniture belonging to him and also the building, and the letting of the building is inseparable from the letting of the said machinery, plant of furniture, the income from such a letting, if it is not chargeable under the head"profit in gains of business or profession", then it shall be chargeable to the head "income from other sources".

5.2 In the case of Sultan Brothers P. Ltd (supra), under similar provisions of the 1922 Act, the Hon'ble Supreme Court held that when a building and plant, machinery or furniture are inseparably let, the Act contemplates the rent from the building as a residuary head of income. The Hon'ble Court then analysed the meaning of the word "inseparable letting" as under:

> *"What, then, is inseparable letting? It was suggested on behalf of the respondent Commissioner that the sub-section contemplates a case where the machinery, plant or furniture are by their nature inseparable from a building so that if the machinery, plant or furniture are let, the building has also necessarily to be let along with it. There are two objections to this argument. In the first place, if this was the intention, the section might well have provided that where machinery, plant or furniture are inseparable from a building and both are let etc. etc. The language however is not that the two must be inseparably connected when let but that the letting of one is to be inseparable from the letting of the other. The next objection is that there can be no case in which one cannot be separated from the other. In every case that we can conceive of, it may be possible to dismantle the machinery or plant or fixtures from where it was implanted or fixed and set it up in a new building. As regards furniture, of course, they simply*

rest on the floor of the building it,. which it lies and the two indeed are always separable. are unable, therefore, to accept the contention that inseparable in the sub-section means that the plant, machinery or furniture are affixed to a building. It seems to us that the inseparability referred to in sub-s. (4) is an inseparability arising from the intention of the parties. That intention may be ascertained by framing the following questions: Was it the intention in making the lease-and it matters not whether there is one lease or two, that is, separate leases in respect of the furniture and the building-that the two should be enjoyed together? Was it the intention to make the letting of the two practically one letting? Would one have been let alone a lease of it accepted without the other? If the answers to the first two questions are in the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable. This view also provides a justification for taking the case of the income from the lease of a building out of s. 9 and putting it under s. 12 as a residuary head of income It then becomes a new kind of income, not covered by s. 9, that is, income not from the ownership of the building alone but an income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it."

5.3 In view of above test of inseparable letting, the Hon'ble court examined the lease agreement and decided the issue of taxability of leasing income as under:

"That takes us to the question, was the letting in the present case of the building and the furniture and fixtures inseparable in the sense contemplated in the sub-section as we have found that sense to be ?

It is true that the rent for the building and the hire for the furniture were separately reserved in the lease but that does not, in our view, make the two lettings separable. We may point out that the Tribunal has taken the same view and the High Court has not dissented from it. In spite of the sums payable for the enjoyment of two things being fixed separately, the intention may still be that the, two shall be enjoyed together. We will now refer to the provisions in the lease to see whether the parties intended that the furniture, fixtures and the building shall all be enjoyed together. Clause 1 of the lessee's covenant, in our opinion, puts the matter beyond doubt and it is as follows:-

1. (a) To use the demised premises and the said furniture and fixtures for the purpose of running hotel, boarding and lodging house, restaurant, confectionary and such other ancillary businesses as are usually or otherwise can be conveniently carried on with the said business in the said premises such as providing show-cases show windows, newspaper stall, dancing and other exhibition of arts, meeting rooms etc., and not for any other purpose without the previous permission in writing of the Lessors.

It is clear from this clause that the building and the fixtures and furniture were to be used for one purpose, namely, for the purpose of running a hotel with them all together. Again cl. 1(h) of the lessee's covenant provided that the lessee is not to remove any article or thing from the premises except for the purposes of and in the course of the hotel business which latter would be for effecting repairs to them or for replacing them where it was the duty of the lessee to do so under the lease. We think, therefore, that the lease clearly establishes that it was the intention of the parties to it that the furniture and fixture and the building should be enjoyed all together and not one separately from the other.

Before we conclude we think we should refer to two other covenants. First, there is a lessor's covenant No. 11 (b) to renew the lease of the demised premises which term, it may be conceded, means the building only, for a further term of six years. This clause says nothing about the renewal of any lease in respect of furniture or fixtures. Likewise, cl. III(2) provides that if the demised premises, that is to say,the building, be destroyed or damaged by fire it shall be the option of the lessee to determine the lease and in any event the rent shall be suspended until the premises shall again be rendered fit for occupation and use. Here also there is no mention of the furniture. It was said on behalf of the respondent that these two clauses indicate that the building and the furniture were being treated separately and there- fore the lettings of them were not inseparable. We are unable to accept this contention. As regards renewal of the lease of the building, there is cl. (II)d making substantially a similar provision in respect of the furniture and fixtures. it requires the lessor to provide at all times during the continuance of the lease and the renewal thereof, the furniture and fixtures mentioned in the lease. Therefore, though the renewal clause in cl. 11(b) does not mention the lease of furniture or fixtures being renewed, cl. II(d) makes it incumbent on the lessor to supply and maintain them during the renewed term of the lease of the building. Clause II(d) would also cover a case where by fire the furniture was destroyed. In such a

case the lessee could under that clause require the lessor to provide and if necessary to replace, the destroyed furniture. To the same effect is cl. 1(e) which says that the major repair to or replacement of the furniture, shall be made by the lessor. Such repair or replacement may, of course, be necessitated in a case where the furniture or fixtures are damaged by fire. We, therefore, think that the clauses in the lease on which the respondent relies do not indicate that the letting of the building was separable from the letting of the furniture and fixtures. We think that the lease satisfies all the conditions for the applicability of s. 12(4) and is covered by it.

In the result we answer the question framed thus: The rent from the building will be computed separately from the income from the furniture and fixtures and in the case of rent from the building the appellant will be entitled to the allowances mentioned in sub-sec. (4) of s. 12 and in the case of income from the furniture and fixtures, to those mentioned in sub-s (3), and that no part of the income can be assessed under s. 9 or under s. 10. The judgment of the High Court is set aside. The appellant will be entitled to the costs here and below."

5.4 In the case of **CIT vs. Shambhu Investment Pvt. Ltd's** case (249 ITR 7), which was approved by Hon'ble Supreme Court in judgment reported at 263 ITR at page 143, their Lordships concluded as follows:

"Taking a sum total of aforesaid discussions, it clearly appears that merely because income is attached to any immovable property cannot be the sole factor 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 main intention is for letting out the property, or any part 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."

5.5 In background of the legislative and judicial position, on examination of facts of the instant case, we find that in the lease agreement between the parties, the demised premises have been

mentioned as "workstations in the building". The relevant clauses of the agreement are reproduced as under:

> *"A. The Lessor is absolute, legal owner and in physical possession of leasehold rights of industrial plot no. W-23 Sector-11 Noida, measuring 800 sq.mtr along with superstructure standing thereupon comprising of basement, ground floor, first floor and second floor with terrace, (hereinafter referred to as the "Building").*
>
> *B. The Lessee has now approached the Lessor to take on 50 Workstations on lease in the building (hereinafter referred to as the "Demised Premises"), and on request of Lessee the Lessor has agreed to grant on lease the Demised Premises on "as is where is basis" with easements and rights which the Lessor has in common areas, for use by the Lessee for carrying out its business of IT Enabled Services, ("services") on the mutually accepted terms and conditions, as hereinafter recorded."*

5.6 From the above, it is evident that clause A has only reference of the industrial plot in the building. In clause B, the demised premises have been mentioned as 50 workstations "as is where is basis" along with easements and rights which the lessor has in the common areas. Thus, by way of the agreement interest has been created in workstations as property only and not in the building. The assessee has also provided certain amenities and facilities for exploitation of the demised premises as specified in clause 3 of the term of the lease as under:

> *"3. The Lessor has also provided .certain, amenities and facilities/fixtures/fittings .A- (in short "Amenities & Facilities") in the Demised Premises to the Lessee under the Lease as details/specified in the Annexure I, which the Lessee confirms and acknowledges."*

5.7 A list of such other amenities has been provided in Annexure-I (available on page 29 to 34 of the paper book), includes reception desk in the reception area, executive chairs in

directors room, chairs and tables in halls, on the ground floor. Similar facilities and amenities including conference room, managers room and server room on first floor have been provided to the second party.

5.8 We further find that rent of the demised premises has also been fixed in terms of the workstation and not as area of the building. The relevant clause of the lease agreement is reproduced as under:

> *"1. In consideration of the Lessor leasing the Demised Premises to tire Lessee, the Lessee shall pay to the Lessor monthly rent of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only) for 50 workstations @ Rs. 5,000/- per workstation, plus Service Tax & Cess amount as may be applicable on Rent from time to time as per prevailing Act from time to time in that regard, subject to deduction of tax at source (TDS), as applicable, payable by the Lessee monthly on or before the 7'" day of each month."*

5.9 On analyzing various terms of the lease agreement, we find that use of the building is incidental to the main object of leasing of workstation by the assessee. We have also noted from the brief facts of the case that the assessee has given ground and first floor of the building on the rent to another party separately and income from which has been offered by the assessee under the head "income from the house property" and which has not been disturbed by the Assessing Officer. Thus, in the instant lease under reference, the prime objective is exploitation of asset in the form of workstations installed by the assessee and not the building or any part thereof. The use of easement and common areas by the second party is incidental to the lease of exploitation of workstation. The workstation in the form of plant and machinery are inseparable from the building and for exploitation or use of the workstation, the use of the building is incidental. We

find that Ld. CIT(A) has also relied on the decision of the jurisdictional High Court in the case of Garg Dyeing and Processing Industries versus ACIT(supra). In the said decision also the Hon'ble High Court has held that where the letting was inseparable, section 56(2)(iii) was rightly invoked. In the case of Shambhu Investment (supra) the issue of taxability of the rental income under the head "income from house property" vis-à-vis income under the head "profit and gains of business and profession", whereas in the present case dispute between the parties regarding the lease rental income should be taxed under the head "income from house property" or under the head "income from other sources".

5.10 In view of the above discussion, we do not find any error in the finding of the Learned CIT(A) on the issue in dispute and accordingly we uphold the same. The sole ground raised by the assessee is dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21st July, 2020.

Sd/-	***Sd/-***
(BHAVNESH SAINI)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21st July, 2020.
RK/-(D.T.D.S.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi