

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.677/Bang/2018
Assessment Year : 2014-15

Orion Property Management Services Ltd., No.26/1, 30 th Floor, Brigade Gateway, World Trade Centre, Dr. Rajkumar Road, Malleshwaram, Rajajinagar, Bengaluru-560 055. PAN - AABCO 5307 J	Vs.	The Income-tax Officer, Ward-5(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri B.R Sudheendra, C.A
Revenue by	:	Shri S Sundar Rajan, Addl. CIT(DR)

Date of Hearing	:	03-09-2020
Date of Pronouncement	:	14-09-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 19/12/2070 passed by Ld.CIT(A)-5, Bangalore for assessment year 2004-15 on following grounds of appeal:

“General ground:

- 1. The learned Income-tax Officer, Ward-5(1)(2), Bengaluru (AO) has erred in passing the asst. order in the manner passed by him.*

and the learned Commissioner of Income tax, Bengaluru - 5 [CIT(A)] has erred in sustaining the additions made by the learned assessing officer. The order passed by the CIT(A) is bad in law and liable to be quashed.

2. The learned CIT(A) has erred in sustaining the addition of Rs.46,38,000/- being Sponsorship and Promotional income which was reduced from marketing cost in the Statement of Profit or loss under Note No. 24 - Other Expenses. On facts and circumstances of the case and law applicable, the impugned addition of Rs.46,38,000/- should be deleted in entirety.

Addition in respect of Reimbursement of security charges received amounting to Rs. 35,85,414 which was reduced from 'Security Charges' included under the head 'Operating cost' In the Statement of Profit or loss under Note No. 21 - Direct Expenses

3. The learned CIT(A) has erred in sustaining the addition of Rs.35,85,414/- being reimbursement of security charges received which was reduced from 'security charges' included under the head 'Operating cost' in the Statement of Profit or loss under Note No. 21 - Direct Expenses. On facts and circumstances of the case and law applicable, the impugned addition of Rs.35,85,414/- should be deleted in entirety.

Addition In respect of Reimbursement of HVAC I Power charges received amounting to Rs. 4,71,90,356 which was reduced from 'Power and Fuel Expenses' in the Statement of Profit or loss under Note No 21 - Direct Expenses

4. The learned AO has erred in sustaining the addition of Rs. 4,71,90,356 being reimbursement of H V A C/Power Charges received which was reduced from 'Power and Fuel Expenses' in the Statement of Profit or loss under Note No 21 - Direct Expenses. On facts and circumstances of the case and law applicable, the impugned addition of Rs. 4,71,90,356 should be deleted in entirety.

TDS Credit

5. The learned AO has erred in not allowing TDS credit to the extent of Rs. 33,829[74,53,492 - 74,19,663] On facts and circumstances of the case and law applicable, TDS credit should be fully allowed as claimed in the return of income.

Levy of Interest under section 234B and 234D

6. The learned CIT(A) has erred in confirming the levy of interest under section 234B and 234D of the IT Act, 1961. On facts and circumstances of the case and law applicable, interest under section 234B and 234D is not leviable. The appellant denies its liability to pay interest under section 234B and 234D.

Prayer

7. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned Commissioner of Income Tax (Appeals) - 5, Bengaluru to the extent prejudicial be quashed or in the alternative.

- (i) *The addition of Rs.46,38,000/- made for sponsorship and promotional income be deleted.*
- (ii) *The addition of Rs.35,85,414/- made for reimbursement received on account of security charges be deleted.*
- (iii) *The addition of Rs.4, 71,90,356/- made for HVAC charges collected from tenants be deleted.*
- (iv) *The interest under section 234B amounting to Rs. 35,02,884 and interest under section 234D amounting to Rs. 90,733/- be deleted.*
- (v) *The incremental tax deduction at source amounting to Rs.33,8291- be allowed."*

Brief facts of the case are as under:

2. Assessee is a company and filed its return of income for year under consideration on 22/09/2014, declaring total income of Rs.1,71,039/-. Company is engaged in business of mall management.

3. Case was selected for scrutiny and notice under section 143(2) was issued to assessee. Consequentially, representative of assessee appeared before Ld.AO and filed various details as called for. Ld.AO observed that assessee did not credit sponsorship and promotional income of Rs.46,38,000/- received as marketing cost. It was also noted that, assessee debited sum of Rs.2,91,27,360/- as marketing cost to P&L account. Ld.AO was of opinion that, assessee debited expenses towards marketing cost to P&L account, and failed to credit amount received as sponsorship and promotional expenses. Accordingly, Ld.AO disallowed sum of Rs.46,38,000/- to total income of assessee.

4. Ld.AO on verification of 26AS reconciliation statement observed that, assessee did not credit sum of Rs.35,85,414/- to P&L account, received as security charges, reimbursed from M/s.Brigade (holding company).

Ld.AO, thus disallowed sum of Rs.35,85,414/- as said amount escaped assessment.

5. Ld.AO further noticed from 26AS reconciliation that, assessee did not credit Rs.4,71,90,356/- received as HV AC charges to P&L account. Assessee submitted before Ld.AO that, the said charges were charged to the tenants and reduced from respective expenses and therefore not shown as part of revenue. Ld.AO observed that assessee has not specifically mentioned in its reply, what were the respective expenses charged to the tenants and neither furnished any documentary evidences to prove its claim of reducing from respective expenses. Ld.AO thus added the said sum to the total income of assessee.

6. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) upheld observations of Ld.AO, without considering evidences filed.

7. Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now.

8. Before us, Ld.AR submitted that, authorities below wrongly confirmed addition by holding that, the same were not been credited to profit and loss account. He submitted that, all grounds 2-4 relates to additions based on such assumption.

9. Ld.AR submitted that, mall provides certain facilities independently to tenants, based on area occupied by them. Ld.AR submitted that, assessee earns its income in the nature of common area maintenance charges from its tenants, management free from all mall owners for

maintenance of mall and receives reimbursements/sponsorship in respect of certain expenses incurred being reimbursement of security charges, reimbursement of HV AC and DG charges from tenants, sponsorship and promotional income. He submitted that, based on actual usage, tenants reimburses cost, based on invoices/debit notes raised by assessee on them. He submitted that, such reimbursements/payments are not in the nature of revenue to assessee and are being reduced from respective expenses incurred by assessee under respective head.

10. Ground No.2: Addition of sponsorship and promotional income received by assessee.

10.1 Ld.AR submitted that, during the year under consideration, sum of Rs.46,38,000/- was received from sponsors and advertisers for marketing and other events. Ld.AR drew our attention to page 32 of paper book, being statement of P&L account. In P&L account, sum of Rs.39,915,786 was debited under the category 'Other expenses'. The breakup of 'other expenses' is at page 48 is in Note 24. Marketing cost at page 48 is Rs.29,127,363. Ld.AR referring to page 119 of paper book submitted that, breakup of Marketing cost reveals sum of Rs.48,39,860/- stands reduced from marketing income, and at net marketing cost of Rs.29,127,363/- was arrived at, that appears in Note 24 at page 48 forming part of 'Other expenses'.

10.2 He thus submitted that, Marketing income has been considered under the head marketing cost and net of expenses is debited to P&L account under the head 'Other expenses'.

10.3 On the contrary, Ld.Sr.DR submitted that, all these clarifications were not filed before Ld.AO and therefore, it may be remanded to Ld.AO for verification. He placed reliance on orders passed by authorities below.

10.4 We have perused submissions advanced by both sides in light of records placed before us.

10.5 From relevant pages relied by Ld.AR, it appears that, said amount was considered while computing expenses under the head, 'Marketing Cost' before debiting it to P&L account. Ld.CIT(A) in para 5.3 of his order, notes that, clarification was provided by assessee in rectification petition under 154 of the Act before Ld.AO, regarding entries in P&L account.

10.6 We note that, authorities below failed to appreciate that marketing income been considered as net of expenses, and therefore does not appear separately having credited under the head income. Ld.AR submitted that, assessee has considered respective income under relevant heads before debiting expenses to profit and loss account. We therefore do not find any justification in confirming the addition by Ld.CIT(A), and the same is deleted.

Accordingly this ground raised by assessee stands allowed.

11. Ground No.3: Addition of reimbursement of security charges received amounting to Rs.35,85,414/-.

Ld.AR submitted that, security charges received, was reduced under the head 'Operating cost', forming part of 'Direct expenses' in Note 21 at page 32. The Ld.AR submitted that, breakup of 'Direct expenses' is at page 48, wherein, sum of Rs.83,417,076 is been shown as total Operating Cost. Ld.AR submitted that security charges amounting to Rs.2,54,81,85/- is net of Rs 35, 85, 414/-. Referring to page 154-157 of paper book, Ld.AR submitted that, security charges received from parties forms part of sum of Rs.45,12,061/-, that is credited in Ledger, under the head 'security charges'.

11.1 He thus submitted that, Security charges income has been considered under the head operating cost and net of expenses is debited to P&L account under the head 'Direct expenses'.

11.2 On the contrary, Ld.Sr.DR submitted that, all these clarifications were not filed before Ld.AO, and therefore issue may be remanded to Ld.AO for verification. He placed reliance on orders passed by authorities below.

11.3 We have perused submissions advanced by both sides in light of records placed before us.

11.4 Assessee has submitted that sum of Rs. 35, 85, 414/-is included in Rs. 45, 12, 061/-credited under the head 'Security Charges' at page 5157 in Ledger account. In our view, this aspect needs verification vis-a-vis debit notes/invoices raised. We direct assessee to file relevant

documents to establish its claim. Ld.CIT(A) is directed to verify the documents filed by assessee. In the event it is found that Rs.35,85,414/- is included, as submitted by Ld.AR, the addition may be deleted.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

12. Ground No.4: addition in respect of reimbursement of HVAC/Power charges received amounting to Rs.4,71,90,356/-.

12.1 Ld.AR submitted that, reimbursement is credited to related expenses incurred, and net expenses are considered in statement of P&L account as expenditure. The Ld.AR submitted that, sum of Rs.14,12,12,74/- was incurred towards HVAC/power charges, against which, assessee received sum of Rs.4,21,83,036/-, as reimbursement from tenants. Referring to page 48, Ld.AR submitted that, under the head, 'Direct expenses' at page 32 (P&L account), the said sum forms part of 'Power & Fuel', reflected in Note 21 at page 48. Referring to page 242-260 of paper book, Ld.AR submitted that, Ledger account is maintained by assessee for HVAC/Power charges received. He submitted that, at page 260, net of reimbursement received towards HVAC/power charges have been calculated as Rs.3,40,99,538/- that is debited to 'power and fuel' in Note 21 under the head, 'Direct Expense'.

12.2 He thus submitted that, reimbursement charges received has been considered under the head 'Marketing

Fuel' and net of expenses is debited to P&L account under the head 'Direct Expenses'.

12.3 On the contrary, Ld.Sr.DR submitted that, all these clarifications were not filed before Ld.AO and therefore the same may be remanded to Ld.AO for verification. He placed reliance on orders passed by authorities below.

12.4 We have perused submissions advanced by both sides in light of records placed before us.

12.5 From relevant pages relied by Ld.AR, it appears that, said amount was considered while computing expenses under the head, 'Power & Fuel' before debiting it to P&L account. Ld.CIT(A) in para 5.3 of his order, notes that, clarification was provided by assessee in rectification petition under 154 of the Act before Ld.AO, regarding entries in P&L account.

12.6 We note that, authorities below failed to appreciate that Reimbursement of expenses marketing income been considered as net of expenses and therefore does not appear separately having credited under the head income. Ld.AR submitted that, assessee has considered respective income under relevant heads before debiting expenses to profit and loss account. We therefore do not find any justification in confirming the addition by Ld.CIT(A), and the same is deleted.

Accordingly this ground raised by assessee stands allowed.

In the result appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 14th Sept, 2020.

Sd/-
(A.K GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 14th Sept., 2020.
/Vms/

Copy to:

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

By order

Assistant Registrar,
Income-Tax Appellate Tribunal.
Bangalore.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-09-2020		Sr.PS
3.	Draft proposed & placed before the second member	-09-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-09-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-09-2020		Sr.PS/PS
6.	Kept for pronouncement on	-09-2020		Sr.PS
7.	Date of uploading the order on Website	-09-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-09-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS