

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.6067/DEL/2019  
Assessment Year: 2016-17**

<b>RVM Education (P) Ltd. 65, Ring Road, Lajpat Nagar, Part-III, New Delhi- 110024 PAN No.AAFCR1010B</b>	<b>Vs</b>	<b>ACIT Circle -20 (2), New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. KVSR Krishna, CA
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	02/02/2023
Date of Pronouncement:	06/02/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the CIT(A)-7, New Delhi dated 08.05.2019 pertaining to A.Y.2016-17.

2. The solitary grievance of the assessee read as under :-

*1. That the learned CIT(A) and the AO have erred in assessing the income which is shown under the head business being (leave and license income) by the assessee,*

*under the head House Property and disallowing the expenses claimed against them there by reducing the claim of loss by Rs.84,77,476/-. The Total loss assessed at Rs.1,14,40,865/- whereas the same is shown in the return income at Rs.1,99,18,341/-.*

3. Briefly stated the facts of the case are that the assessee filed its return of income electronically on 14.10.2016 declaring loss of Rs.19918341/-. The return was selected for scrutiny assessment under CASS and accordingly statutory notices were issued and served upon the assessee.

3. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has claimed rental income and licensing fees as main source of income. The AO found that the assessee has debited / claimed various business expenses like salary and wages, legal and professional expenses, travelling expense, freight charges, depreciation etc in the P & L account against licensing fees and rental income. The assessee was show caused to explain the allowability and justification of various expenses. The assessee replied as under :-

*“9. Please note that the electricity expenses of RS.11,95,832/- have been debited in the profit A/c of business income and have been claimed against the premises in which the assessee is carrying the business as per the Leave & License agreement enclosed here-in above. :So these expenses are against the Business income and NOT against the house property income. So these electricity expenses are not a fit case for disallowance and no disallowance is called for in the present circumstances;*

*Sir, this fact was especially highlighted & established that Income receive*

*under Leave and License Agreement is Business Income. The Mumbai bench of the Income Tax Appellate Tribunal (IT AT), in DCIT v. M/s. Tierra Landpro LLP, held that the income received under a Leave & License Agreement constitute "Profit and Gains from Business or profession" and not "Income from House property". The Revenue contended that the income arising to the assessee was to be assessed under the head income from house property and that no expense was to be allowed in that regard. The FAA granted relief to the assessee on the first appeal' Allowing the contention's of the assessee, the Tribunal held that the assessee was carrying on business. Therefore, the order of the FAA needs no interference. The expense incurred by the assessee under various heads were incurred wholly and exclusively for its business. Further, The Kolkata bench of the Income Tax Appellate Tribunal in a recent decision further made a clear distinction between the terms 'lease' and 'license' and held that a 'licensee' is not a deemed owner for the purpose of determining liability under the head 'income from house property' and the income derived therefrom is Business income only.*

*Sir, without prejudice to above, we further submit that even if your good self-differs from the opinion & the accounting treatment made by the company for License fees. We would like to draw your attention that still the assessee would be eligible for the deduction u/s 24 as under:-*

*a) a sum equal to thirty percent of the annual value:*

*the amount of any interest payable on borrowed capital.*

*10. Bank interest of Rs. 1,74,65,930/- is paid by us on secured loan. The bank interest have been paid to State Bank of India' New Delhi' The loan was taken in the year 2011 for running of business from the building / premises after the construction of the building at the site. The construction of the building was already completed in earlier years and company was successfully running the business from the said premises in the current financial year. This statement is also evident from the fact and from the documents enclosed that the maximum loan disbursement was already completed and there is hardly any fresh loan disbursement in the current year and hence the interest payment during the year rerates to the business only run by the assessee during the year.*

*We request you to kindly allow some extra time to provide the requisite details of expenditure;"*

4. The reply of the assessee did not find any favour with the AO. The AO found that the assessee has been getting only income from house property and the property bearing No.D-196, Sector -51, Noida which was bifurcated by the assessee in two parts 1) Rental income, 2) Licensing fees the AO discarded the

bifurcation and treated the entire receipts under the head income of house property.

5. The assessee challenged the assessment before the CIT(A) but without any success.

6. Before us the Counsel for the assessee reiterated what has been stated before the lower authorities. The Counsel drew our attention to the financial statements of the assessee in support of his contention that licensing fees is part of the business of the assessee. It is the say of the Counsel that rental income has been shown as income from house property and only the licensing fees has been considered as business receipts by the assessee. The Counsel referred to some judicial decision in support of his claim.

7. Per contra the DR strongly supported the findings of the lower authorities.

8. We have given a thoughtful consideration to the orders of the authorities below. At the very outset we would like to refer to the judgment of Hon'ble Supreme court in the case of Chennai Properties and Investment 373 ITR 673 wherein the Hon'ble observed as under :-

8. Before we refer to the Constitution Bench judgment in the case of *Sultan Brothers (P.) Ltd.*, we would be well advised to discuss the law laid down authoritatively and succinctly by this court in *Karanpura Development Co. Ltd. v. CIT* [1962] 44 ITR 362 (SC). That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its

activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing

Page No : 678

out of the coal fields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be

thus, clear that in similar circumstances, identical issue arose before the court. This court first discussed the scheme of the Income-tax Act and particularly six heads under which income can be categorised/classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under another head. Thereafter, the court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities.

In support of the aforesaid proposition, a number of judgments of other jurisdictions, i.e., Privy Council, House of Lords in England and the US Courts were taken note of. The position in law, ultimately, is summed up in the following words (page 377 of 44 ITR):

"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The dividing line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."

After applying the aforesaid principle to the facts, which were there before the court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the aforesaid judgment in *Karanpura Development Co. Ltd.*'s case squarely applies to the facts of the present case.

10. No doubt in *Sultan Brothers (P.) Ltd.*'s case, a Constitution Bench judgment of this court has clarified that merely an entry in the objects clause showing a particular object would not be the determinative factor to arrive at a conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words :

Page No : 679

"We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A

commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that

*a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred to support the proposition that certain assets are commercial assets in their very nature."*

*11. We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee, therefore, rightly disclosed the income under the head "Income from business". It cannot be treated as "Income from the house property". We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income-tax Appellate Tribunal. No orders as to costs.*

9. In our understanding the Hon'ble Supreme Court has laid-down the ratio that in case letting of the properties is the business of the assessee then the income has to be taxed under the head income from business it cannot be treated as income from house property.

9. Now, let us examine the applicability of the ratio of the facts of the case in hand. The relevant main objects emphasized by the Counsel read as under :-

- 1. To provide consultancy services to establish private university, engineering and information technology collage, management colleges, medical colleges, dental colleges, paramedical colleges and allied health science colleges and other healthcare institutions, research centers that impart medical, dental, paramedical education and any other type of education, teaching and training programmes and to provide any other services which relates to education on royalty/ commissions / retain ship basis ancillary to the main object.*
- 2. To provide educational services to individuals (students, trainees, parents, teachers, education administrators, employees of Central*

*Government / State Government / Public Sector undertakings / companies / corporation / trade / commerce / business, private persons etc.) educational institutions (school, colleges, universities, coaching centre, society/ trust running or relating to some educational institutions etc.) firm, companies, corporations, trade commerce, industry, public sector undertaking, state Govt. Central Govt, etc in India and abroad including consultancy and setting up its educational institutions providing various kind of educational courses / programmes post graduate/ doctoral level in various specializations including but not limited to engineering and technology, management, computer application, medicine, dental science, health science, therapies, humanities, commerce, pure and applied science design, mass communication, media etc. on chargeable basis charging fees, royalty, consultancy charges etc.*

11. On the strength of these two objects income from consultancy has been treated as business income of the assessee. In our considered opinion the rental income cannot be bifurcated in two parts on the strength of such objects, these objects are vague and general in nature and cannot justify bifurcation of the revenue from operations into two parts namely rental income and consultancy services fees.

12. Considering the facts in the light of the ratio laid down by the Hon'ble Supreme Court (supra) we do not find any error or infirmity in the findings of the CIT(A).

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

Order pronounced in the open court on 06.02.2023.

Sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

\*NEHA\*

Date:- .02.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI