

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA. Nos.896, 917, 947, 948 & 949/PUN/2022

निर्धारण वर्ष / Assessment Years : 2013-14 to 2017-18

Marigold Premises Pvt. Ltd., S.No.15, Mariplex Parking Plaza, Vadgaon Sheri, Kalyani Nagar, Pune 411 014, Maharashtra PAN : AABCM2608J	Vs.	ITO (HQ)-6(1), Pune/ ITO, Ward-14(5), Pune/ ITO, Ward-14(3), Pune
Appellant		Respondent

Assessee by Shri Dharmesh Shah &  
Shri Akshay Garg  
Revenue by Shri Ramnath P. Murkunde  
Date of hearing 04-05-2023  
Date of pronouncement 04-05-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This batch of five appeals by the assessee involves assessment years 2013-14 to 2017-18. Since a common issue is raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The brief facts of the case for the A.Y. 2013-14 are that the assessee is a company deriving income from Rent and Business. The return was filed declaring total income at Rs.69,13,624/-.

During the course of assessment proceedings, the Assessing Officer (AO) observed that the Business income earned by the assessee consisted mainly from Renting of parking spaces, Table spaces and Games collection etc. The assessee was show caused as to why such income should not be treated as 'Income from house property' instead of 'Business income' claimed by it. The assessee submitted that such income from Canvassing, Space selling, providing Table space, Parking charges, Games collection, Maintenance charges amounting to Rs.1.65 crore was rightly offered as 'Business income', because that was its business activity, against which expenses of Rs.2.22 crore were incurred in addition to depreciation of Rs.96.29 lakh. The AO jettisoned the assessee's contention and treated the entire gross receipts of Rs.3.39 crore as 'Income from house property', which also included the income claimed by the assessee as 'Business income'. After allowing statutory deduction, the AO determined 'Income from house property' at Rs.2.34 crore, in addition to 'Income from other sources'. The Id. CIT(A) accepted the assessee's contention that income from Canvassing, Space selling, providing Table space, Parking charges etc. was liable to be

considered as 'Business income'. To this extent, the assessment order was overturned. It was, however, noticed by him that the assessee claimed Maintenance charges of Rs.1,17,67,484/- against the 'Business income'. The Id. CIT(A) opined that such Maintenance charges were required to be apportioned between 'Business income' and 'Income from house property'. In the absence of any details furnished by the assessee, he allocated such expenses in the ratio of House rent receipts to Business receipts at 51:49. As a result of that, 51% of such Maintenance expenses were disallowed as they pertained to the house property, income from which was subjected to the standard deduction u/s.24 of the Act. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard the rival contentions and gone through the relevant material on record. The AO treated income from providing services, such as, Canvassing, Space selling, providing Table space, Parking charges, Games collection, Maintenance charges etc. as 'Income from house property' in addition to certain income voluntarily offered by the assessee as 'Income from house property'. The Id. CIT(A) overturned the assessment

order to this extent, against which the Revenue has not preferred any appeal before the Tribunal. Thus, the treatment of such amount as 'Business income' has attained finality and the only issue which survives for consideration is to find out the portion of Maintenance charges of Rs.1.17 crore as relatable to the property used for Business and Renting.

4. The Id. AR was required to show the detail of expenses so as to ascertain if it pertained to business activity or of earning rental income. In this direction, he invited our attention towards pages 21 and 22 of the paper book, which are part of the assessee's Annual accounts. There is a detail of 'Society Maintenance expenses' totaling Rs.1,17,67,484/- comprising of Repair and Maintenance of Rs.35,59,108/-; Deejay expenses of Rs.92,166/-; Garbage expenses of Rs.60,000/-; Garden expenses of Rs.13,100/-; Housekeeping and maintenance expenses of Rs.24,92,445/-; Security charges of Rs.15,94,355/-; and Mali expenses of Rs.10,000/- etc. etc. The Id. AR was required to correlate such expenses with the earning of 'Business income' and/or the Rental income. It is quite natural that only the expenses pertaining to the business activity can be claimed as deduction against the

‘Business income’ and the other expenses which pertain to the Rental activity will fall for consideration under Chapter IV-C of the Act only. The AO has granted standard deduction under the head ‘Income from house property’. In that view of the matter, the expenses which pertain to the earning of rental income have to be disallowed.

5. The ld. AR could not correlate such expenses individually with the Business and Rental activities. In the absence of such details, no decision can be reached on the allocation of the expenses. The ld. CIT(A) has also recorded in para 5.4 of the impugned order that the assessee did not furnish any details, in the absence of which he proceeded to apportion the Maintenance charges on the basis of receipts. The ld. AR submitted that all the necessary details are now available with the assessee, which can be verified by the AO.

6. It was further submitted anent to the ‘Income from house property’ that the assessee, in addition to earning rental income, also received Maintenance charges for the portion let out, which were included in the ‘Business income’ and the same have also been assessed accordingly. It was, therefore, urged that even the

expenses pertaining to portion of the property let out should not be disallowed because the receipts in relation to Maintenance charges have been taxed as 'Business income'. We find that the fact of such receipts of Maintenance charges arising from the rented portion and having been clubbed with the 'Business income' is also not borne out from the record. In view of the foregoing discussion, we are satisfied that it would be just and fair if the impugned order is set-aside and the matter is remitted to the file of the AO. We order accordingly and direct him to allocate item-wise expenses to the requisite heads. The portion of the expenses pertaining exclusively to the business activity should be considered as business expenses and allowed as deduction against the income under the head "Profits and gains of business or profession". Expenses pertaining exclusively to the renting activity should be considered only under the head 'Income from house property'. The remaining common expenses should be allocated between the two heads on some rational basis, such as, area used for both the activities or revenue from both the activities on gross basis etc. The AO will also ascertain if the receipts of Maintenance charges from the let out portion have been

considered as 'Business income'. If yes, then the nature of expenses against which the Maintenance charges were received is required to be looked into. The nature of expenses, forming part of the expenses relating to the renting activity, against which Maintenance has been recovered from the tenants, should be considered under the Business head only and others to be disallowed as pertaining to the income falling under the head 'Income from house property'. Needless to say, the assessee will be allowed a reasonable opportunity of hearing.

7. The ld. AR fairly admitted that the facts and circumstances of the other four appeals under consideration are *mutatis mutandis* similar except for the fact that the details of expenses as shown for the A.Y. 2013-14 were available up to the first appeal stage only for the A.Y. 2014-15 and the details of such expenses for the remaining three years under appeal could not be produced before the AO or the ld. CIT(A).

8. In view of our decision of remitting the matter to the file of AO for the A..Y. 2013-14, we hold that such decision will hold good for other four years under consideration as well.

9. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 04<sup>th</sup> May, 2023.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 04<sup>th</sup> May, 2023  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune



		Date	
1.	Draft dictated on	04-05-2023	Sr.PS
2.	Draft placed before author	04-05-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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