

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 331/DEL/2021 [A.Y. 2017-18]

The A.C.I.T
Circle - 1, Meerut

Vs.

M/s IHDP Globals Pvt Ltd
219, Railway Road, Meerut

PAN: AADCS 4945 E

(Applicant)

(Respondent)

Assessee By : Shri Rohit Aggarwal, Adv

Department By : Shri Javed Akhtar, CIT- DR

Date of Hearing : 28.01.2025

Date of Pronouncement : 07.02.2025

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A), dated 24.08.2020 for A.Y 2017-18.

2. The ld. DR has filed an application for condonation of delay.

3. We have perused the application and find that there is a delay of on the side of the Revenue. For the reasons stated in the application filed by the Revenue, we condone the delay.

4. The sum and substance of the revised grievance of the Revenue is that the Ld. CIT(A) wrongly held that the rental income earned by the assessee was taxable under the head house property and not to be taxed under the head “profit and gains from business and professions.”.

5. Briefly stated, the facts of the case are that the assessee filed its Return of Income on 30.03.2018 declaring an income of Rs. 9,94,07,353/-. Return was selected for limited scrutiny assessment and accordingly, statutory notice u/s 143(2) of the Act was issued.

6. The assessee is a Private Limited Company carrying on the business of carpet fabrication, with the factory premises being situated at Rithani, Meerut. During the year under consideration the assessee also earned rental income from leasing out of the building situated at Plot no. 7, Sector-127, Taj Expressway, Noida, to various tenants.

7. During the course of assessment proceedings, the Assessing Officer noticed that the amount of Rs. 12,13,92,238/-, represents the amount of rent from M/s Alstom India Ltd, accrued during the year but not included in the income declared by assessee in its return of income. The AO further disallowed claim of deduction u/s 24(a) of Rs. 4,75,55,130/- holding that the income offered to tax as income from house property was taxable as 'Business income'.

8. Aggrieved, the assessee preferred an appeal before the CIT(A), Meerut, who vide order dated 24.08.2020, decided both the issues in favour of the assessee company and deleted all the additions so made by the A.O.

9. Now the department has filed this appeal before us against the second issue i.e. charging of tax on rental income under the head house property instead of business income.

10. The ld. DR vehemently argued that the ld. CIT(A) has incorrectly accepted that the rental income from leasing the premises is income from business.

11. Per contra, the ld. counsel for the assessee submitted that the assessee has been offering rent received to tax under the head house property since 2007. The rent is being offered under the head house property even presently. Copies of the ITR filling proofs and computations of income of the assessee company for A.Y 2011-12 to AY 2021-22 were furnished on record.

12. It is the say of the ld. counsel for the assessee that assessment of the assessee company for AY 2010-11 and 2011-12, have been completed u/s 143(3) in scrutiny assessment proceedings where the rental income has been assessed under the head House Property only. Copies of the assessment orders of the assessee company for A.Ys. 2010-11 and 2011-12 have been furnished for our perusal.

13. The ld. counsel for the assessee vehemently contended that since the assessee has been offering the rent received to tax under the head house property since 2007, the rule of consistency has to be followed in the income tax proceedings unless there are compelling/convincing reasons for deviating from the view consistently being held. In the present case nothing has been brought on record by the A.O. so to prove that there is any variation in the facts of the case as compared to the

earlier years wherein the rental income has been assessed to tax under the head House Property. Reliance was placed on the following judicial pronouncements. -

- a) Radhaswami Satsang vs. CIT (SC) 193 ITR 0321
- b) CIT vs. Excel Industries Ltd. (SC) 358 ITR 0295
- c) CIT (Exemptions) vs. Hamdard National Foundation (India) (Delhi HC) [443 ITR 0348]

14. The ld. counsel for the assessee further contended that the ld. CIT(A) has rightly reversed the order of the A.O. and held that the rental income is to be assessed under the head house property in view of no change in the facts of the case and the rule of consistency. Otherwise also the main business of the assessee is manufacturing and trading of carpets, and rental income is only a side activity. Hence, the rental income earned by the assessee is taxable under the head under the head House property.

15. In this regard reliance was placed on the following judicial pronouncement:-

- a) Raj Dadarkar & Associates vs. ACIT (SC) 394 ITR 0592.
- b) Shambhu Investments vs. CIT (SC) 263 ITR 0143

16. Without prejudice to the above, the ld. counsel for the assessee argued that if the income offered to tax by the assessee as house property income should be taxable under the head Business Income, then the department may be directed to allow the expenses relating to the rental income of Rs.30,85,405/-, as disallowed by the assessee in its computation of income and also allow depreciation on the leased out building. Therefore, the ld. counsel for the assessee prayed to dismiss the appeal of the revenue and uphold the order of the CIT(A).

17. We have heard the rival submissions and have perused the relevant material on record. It would be pertinent to extract the findings of the ld. CIT(A) at paras 7.27 and 7.28 which clearly explain the factual position and conclusion arrived at by the ld. CIT(A). The same reads as under:

"7.2.7 I have considered the finding of A.O., submission of Appellant as noted above and has observed that the assessee has been declaring the rental income under reference since 2007 under the head Income from House Property. Assessments of the appellant for A.Y.s 2010-11 & 2011-12 were subjected to scrutiny assessments under Sec 143(3) making assessment of Rental Income under the head Income from House Property. No change in facts as compared to earlier years has been brought on record by the A.O. and therefore I find substance in the submission of the appellant that there was no reason not to follow the rule of consistency by assessing the rental income of the

appellant under the head income from house property during the year under appeal also. I have also observed that the clauses in the rent deed allowing use of Lift, parking space, common areas of the building and lessee right to get building repair, structural maintenance would not make the rental income of the assessee to be the income from business. As no business activity is carried by the assessee in providing the stated amenities which are already installed in the building. I have also referred to the judgment in the case of Chennai Properties and Investments Ltd and is of the opinion that fact of that case are distinguishable with the facts of the assessee as in the case of Chennai Properties and Investments Ltd., the assessee was in the business of acquiring and letting out the properties on rent. In the case of the assessee its main business is manufacturing, and not the letting of properties. I find that the judgment of the Hon'ble Supreme Court in Shambhu Investment (P) Ltd. favors the assessee, where consolidated rent was charged for letting out furnished space with Furniture and fixture, Light, Air Conditioners, Watch and ward staff electricity, water (non is separately charged) and the assessment of such rental income has been up held by the Hon'ble Supreme Court under the head Income from House Property.

7.2.8 In view of above fact and respectfully following the judgment of Hon'ble Supreme Court in the case of Shambhu Investment (P) Ltd., I hold that the rental income of the assessee is assessable as Income from House Property, further hold that the action of the A.O., to assess the rental income of the appellant as business income during the year under appeal as against the assessment thereof as Income from House Property in earlier years, ignoring the rule of Consistency, as

has been laid down by the Hon'ble Supreme Court in above cited cases, is illegal for that reason too. I therefore direct the A.O: to assess the rental income under head Income from house property and to allow deduction under Sec 24(a) of IT Act. In the result, the above said grounds are allowed and the assessee gets relief of Rs.4,75,55,130/."

18. Under the facts and circumstances as discussed above, we find that the main business of the assessee is manufacturing and trading of carpets, and rental income is only a side activity. We also find that the contention of the ld. counsel for the assessee that since the assessee has been offering the rent received to tax under the head house property since 2007, the rule of consistency has to be followed in the income tax proceedings unless there are compelling/convincing reasons for deviating from the view consistently being held, has substance. Nothing has been brought on record by the A.O. or the ld DR before us to prove that there is any variation in the facts of the case as compared to the earlier or subsequent years wherein the rental income has been assessed to tax under the head House Property. We are therefore, of the considered view that since there is no change in the facts of the case, the rule of consistency applies in accordance with Hon'ble Supreme Court in the case of *Radhaswami Satsang vs. CIT* (supra).

19. In that view of the matter, we find no infirmity in the well-reasoned order of the Id. CIT(A) holding that the rental income is to be taxed under ‘Income from House Property’. We, therefore, dismiss the ground raised by the Revenue.

20. In the result, the appeal of the Revenue in ITA No. 331/DEL/2024 is dismissed.

The order is pronounced in the open court on 07.02.2025.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 07th FEBRUARY, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

| Sl No. | PARTICULARS | DATES |
|--------|--|-------------------|
| 1. | <i>Date of dictation of Tribunal Order...</i> | <i>04.02.2025</i> |
| 2. | <i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i> | <i>04.02.2025</i> |
| 3. | <i>Date on which the typed draft Tribunal Order is placed before the other Member</i> | |
| 4. | <i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i> | |
| 5. | <i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i> | |
| 6. | <i>Date on which the signed order comes back to the Sr. P.S./P.S</i> | |
| 7. | <i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i> | |
| 8. | <i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i> | |
| 9. | <i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i> | |
| 10. | <i>Date on which the file goes to the Supervisor (Judicial</i> | |
| 11. | <i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i> | |
| 12. | <i>Date of Despatch of the Order</i> | |