

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.6936/Del./2017
Assessment Year: 2013-14

M/s. Discovery Estates Pvt. Ltd., 17-B, MGF House, Asaf Ali Road, New Delhi	Vs.	ACIT, Circle-7(2), New Delhi
PAN :AABCD4163D		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Rajesh Kumar, Sr.DR

Date of hearing	18.03.2021
Date of pronouncement	26.03.2021

ORDER

PER O.P. KANT, AM:

This appeal is directed against the order dated 31st August, 2017 passed by the learned Commissioner of Income-tax (Appeals)-43, New Delhi [in short "the learned CIT(A)"] for assessment year 2013-14 raising the following grounds:

Ground No. 1:

The Ld. Commissioner of Income Tax (Appeals)-32, New Delhi [hereinafter referred to as 'CIT(A)'] has erred on facts and in law in passing the order dated 31.08.2017 under section 250 of the Income Tax Act, 1961(hereinafter referred to as 'the Act')

Ground no. 2:

The Ld. CIT(A) erred on facts and in law in holding that the Assessing Officer is correct in treating the rental income earned of by the appellant from commercial properties as income under the head 'House Property' instead of Income from Business Income.

Ground No. 3:

The appellant prays that he may be allowed to add, amend, alter or forego any of the above grounds of appeal as the circumstances may warrant.

Ground 4:

The above grounds are without prejudice to each other.

2. The facts in brief of the case are that the assessee was engaged in the business of construction of the commercial complex and also earning rental income. The return of income was filed by the assessee for the year under consideration on 13.09.2014, declaring income of Rs.2,67,02,200/-. The case was selected for scrutiny and assessment under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed after treating the rental income under the head 'Income from House Property' instead of income under the head "Profit and Gains of Business or Profession' offered by the assessee in the return of income.

2.1 In further appeal, the learned CIT(A) following the finding of the Hon'ble Delhi High Court in the case of assessee itself passed in earlier years, upheld the finding of the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, none represented on behalf of the assessee despite informing the date of the hearing in the open court on 16.03.2021. No adjournment application was also filed, in view of

the fact, the case was heard ex-parte qua the assessee after hearing the learned DR.

4. We have heard the learned DR and perused the relevant material on record. In the case, the issue in dispute is regarding the head under which rental income is to be taxed. The assessee is earning rental income from commercial malls and offered the same under the head 'Profit and Gains of Business or Profession'. The rental income has been generated from commercial units which remained unsold and were held as stock in trade in desire of acceptable sale price. The Assessing Officer has taxed the said rental/lease income under the head "income from house property".

4.1 Identical issue was raised by the Assessing Officer in Assessment years 2006-07 and 2007-08. The issue further travelled up to the Hon'ble Delhi High Court. The Hon'ble Delhi High Court in its judgment dated 18.02.2013, reported in 356 ITR 159, in ITA No. 1089/2011 and ITA No. 1090/2011, has directed to treat the rental income earned by the assessee from commercial properties as income under the head 'House Property' instead of Income from business or profession. The learned CIT(A) has extracted the decision of the Hon'ble Delhi High Court in the impugned order in paras 4.5.6, which is reproduced as under:

"2. The appeals are by the Revenue. ITA Nos.1089/2011 and 1090/2011 relate to the same assessee i.e. Discovery Estates Pvt. Ltd. and ITA NO.1097/2011 relates to another company of the same group by name Discovery Holdings Pvt. Ltd. On 13.02.2012, the following substantial questions of law were framed by this Court in all the three appeals:

"(i) Whether the Income Tax Appellate Tribunal was right in holding that the rental income should be assessed under the head "income

from business" and not under the head "income from house property"?

(ii) Whether the Income Tax Appellate Tribunal was right in holding that the sale consideration disclosed by the assessee on sale of shops should be accepted?

(iii) Whether the findings recorded by the Income Tax Appellate Tribunal in respect of the question number (ii) are perverse?"

3. It is common ground that the first substantial question of law is to be answered in the negative, in favour of the Revenue and against the assessee in view of the judgment of this Court in CIT Vs. M/s Ansal Housing Finance and Leasing Co. Ltd. &Ors. decided on 31.10.02012 in ITA 18/1999."

4.2 As the learned CIT(A) has followed the binding precedent in the case of the assessee itself, we do not find any error in the order of the learned CIT(A) on the issue in dispute and accordingly uphold the same. The grounds of the appeals are dismissed.

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

Order pronounced in the open court on 26th March, 2021

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 26th March, 2021.

RK/-(DTPDS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi