



IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT

ITA No.553/LKW/2016
Assessment Year: 2012-13

Sushil tuli Loha Mandi, Bahadurganj Shahjahanpur	v.	Income Tax Officer 1(5) Shahjahanpur
TAN/PAN:AAKPT6658D		
(Appellant)		(Respondent)

Appellant by:	Shri A. R. Shukla, Advocate		
Respondent by:	Smt. Alka Singh, D.R.		
Date of hearing:	22	05	2019
Date of pronouncement:	23	05	2019

ORDER

This is assessee's appeal against the order of the Id. CIT(A), Bareilly, dated 30/6/2016 for the assessment year 2012-13, taking the following grounds of appeal:

1. Because the learned CIT (Appeals) Bareilly erred in passing the Order u/s 143(3) of the I.T. Act 1961, without considering the clause of the Rent Deed dated 15.6.2005 and the fact that the assessee has Sublet the Building (Ware House) on Rent which he took on Rent with the very purpose of subletting it.
2. Because the learned CIT (Appeals) Bareilly erred in accepting the intention of assessee for taking the ware house on rent and to sublet it on a higher rent and earn some profit & showing the Rent received from subletting out the warehouse as Business Income & not as H.P Income which is highly unjustified.
3. Because the learned CIT (Appeals) Bareilly erred in passing the Order u/s 143(3) of the I.T Act 1961, without considering the fact that the basic two conditions of Section 22 are must for treating Rental Income as Income from House property which it do not satisfy, 1) That the assessee must be the Owner of the Property (whereas the assessee was not the

Owner of property let out but was just a Tenant) 2) That the Property let out must be for Residential Purposes (whereas the Property let out was not a Residential Property but a Commercial Property), the fact that was open to verification, by evidences produced and placed on file hence making it liable to be treated as Income from Business and not Income from House Property Income which is highly unjustified .

4. Because the learned CIT (Appeals) Bareilly erred in passing the Order u/s 143(3) of the I.T Act 1961, without considering the fact that the assessee took into account only Rent for eight months of Rs.18,00,000 (225,000*8) and not all the Rent Paid for nine months Rs 20,25,000 (225000 *9) as shown in 26AS, Lying the year under consideration as the Rent paid was disputed & violated the Clauses of Lease Deed that an increment of 10% in Rent will be applicable after every 3 years As the Rent was not enhanced the clause was violated hence the disputed amount and TDS on it were not accepted as Income and accordingly not shown in Return for the year.
5. Because the disallowance & addition of (14,17,500 - 7,38,000) Rs.6,79,500/- as Taxable Income was wrong and highly unjustified.
6. Because the assessment Order on facts & law was not legally sustainable.

2. At the outset, the Id. A.R. of the assessee states at the bar that he does not wish to press ground No.4. Ground No.4 is, accordingly, rejected as not pressed.

3. As per the assessment order, a lease agreement has been made by two lessors, namely, Shri Sushil Tuli, the present assessee, and Shri N.P.S. Bhandari with the lessee, M/s Safexpress Private Limited. The A.O observed that as per clause 2 of the lease agreement dated 30.8.2008, the rent for the leased premises (situated at A-12, Phase-2, Noida) shall be paid by the 5th of each month in advance for the respective month, according to English calendar month, by cheque of Rs.2,25,000/- each in favour of Mr. Sushil Tuli and Mr. N.P.S.

Bhandari separately, after deduction of TDS as per income tax law. The assessee was required to furnish the details of income from other sources with details of investment. In this regard, the assessee stated that the assessee took the warehouse on lease to sub-let it on a higher rent. The A.O observed that however, neither in the above lease agreement was there any mention about subletting, nor any documentary evidence in support of the claim was submitted. The assessee was specifically required to explain as to why the above income may not be treated/computed under the head "Income from House Property", as the property was under the assessee's possession since 30/8/2008.

4. The assessee replied that:

"the assessee do not own the property at A-12, Phase 2, Noida as this is the property of M/s Bhandari Fibertech Pvt. Ltd. having Regd. HO at IInd Floor, 9009/11, Desh Bandhu Gupta Road, Paharganj, Delhi. A proof in this regard is enclosed from the NOIDA authority sending a Demand Proof of Annual Fees in its name along with Possession Certificate, thereby confirming the ownership of the Property by M/s Bhandari Fibertech Pvt. Ltd."

5. The A.O observed that:

"Possession certificate of NOIDA Authority shows possession of the property w.e.f. dated 13/10/1995 which is very old. There is no proof regarding present owner of the property. It may be that the property had been transferred for which rent agreement has been made on 30/8/2008 with Safexpress Pvt. Ltd."

6. On the above basis, the A.O rejected the assessee's claim for treating the rental income as income from other sources, the assessee having, in the view of the A.O, failed to furnish proof of having sub-let the property, rather than having let-out the same as owner thereof. The addition of Rs.14,17,500/- was made in this regard, treating the amount as income from house property.

7. The Id. CIT(A) has confirmed the addition, holding as under:

10. The Id. D.R. has contended that as observed by the authorities bellow, no evidence was produced by the assessee regarding the ownership of the property in question being of someone else, and not of the assessee.

11. In his written submissions (reproduced at pages 2 to 4, the relevant portion at page 3, of the impugned order), the assessee submitted as follows before the Id. CIT(A):

"The assessee is enclosing the documentary evidence (outstanding demand on property as on 31/12/2015) to prove that the property is still in the name of Bhandari Fibre Tech, Noida. This is with reference to point No.6 & 7 of page 3 & 4 of the order of the A.O."

12. Thus, the above Demand Notice was before the Id. CIT(A). However, the Id. CIT(A) has confirmed the addition in disregard/oblivion thereof.

13. Section 22 of the Act reads as follows:-

"The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property"."

14. Thus, there are two pre-conditions for charging the income as income from house property under section 22 of the Act. Firstly, the assessee must be the owner of the property. Also, the property must not be occupied by the assessee for the purposes of his business or profession. In other words, the property should be a residential property.

15. In the present case, neither of the above conditions of section 22 of the Act stands satisfied. The assessee, as discussed, is not the owner of the property in question. Too, the property is commercial in

nature. Therefore, the provisions of section 22 of the Act are not at all applicable. Hence, the addition made as 'income from house property' is not sustainable. Accordingly, the order under appeal is reversed and the addition is deleted.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 23/05/2019.

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:23/05/2019

JJ:2205

Copy forwarded to:

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

By order
Assistant Registrar