IN THE INCOME TAX APPELLATE TRIBUNAL"A" BENCH, CHENNAI

BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

ITA No.2997/Chny/2019 (Assessment Year: 2012-13) &
ITA No.2998/Chny/2019 (Assessment Year: 2014-15)

Flotherm Engineers Private Limited 14/20, Chari Street T.Nagar, Chennai – 600 017.	Vs.	**DCIT** Corporate Circle 2(1), Chennai.
PAN/GIR No. AAACF-0425-B		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri Murugaboopathy (Advocate) & Shri L T Anand (Advocate) – Ld. ARs
Respondent by	:	Shri AR V Sreenivasan (Addl. CIT)–Ld. DR

Date of Hearing	:	04-07-2022
Date of Pronouncement	:	03-08-2022

O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2012-13 & 2014-15 have common issues. The appeal for AY 2012-13 arises out of the order of the learned Commissioner of Income Tax (Appeals)-6, Chennai [CIT(A)] dated 23.07.2019 in the matter of assessment framed

by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30.01.2015. The assessee has filed revised grounds of appeal which read as under:

> *1.* The Learned CIT(A) erred in confirming the conclusion of the A.O. that rental income from letting out of the factory building as Income from Other Sources.
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> *2.* The Learned CIT(A) and the A.O. erred in not appreciating the expression " if it is not chargeable to income tax under any of the heads specified in section 14, items A TO E" of Sec.56(1).
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> *3.* The Learned CIT(A) and the A.O. erred in not appreciating the import and meaning of Sec.22 of the I.T. Act,1961.
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> *4.* The Learned CIT(A) and the A.O. failed to appreciate the fact of letting out of factory building was ONLY after complete Cessation of the business carried on by the Assessee.
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> *5.* The Learned CIT(A) and the A.O. failed to appreciate the fact of the letting out of plant & machinery and that of factory building were through separate Lease Deeds concluded at different points of time.
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> *6.* The Learned CIT(A) and the A.O. failed to appreciate that the split-up of rental income is possible under different heads as held in several judicial decisions.
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> *7.* The Assessing Officer erred in law by changing the head of income solely for the reason that the Assessee is entitled for a higher sum of deduction u/s. 24 (1), as against the depreciation eligible to him if brought to tax under the head other sources.
>
> *8.* The Assessee may please be permitted to add, or modify or withdraw any grounds of appeal till the disposal of the appeal.
>
> In the light of the incorrect application of the provisions of law and the judicial precedents governing the same, to the facts of the case, the order of both the Ld. Assessing Officer and the Ld. Commissioner of Income tax(Appeals) are not maintainable and the appeal of the assessable allowed.

The Ld. AR advanced arguments assailing the assessment framed by Ld. AO. The same has been controverted by Ld. Sr. DR. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

2.1 The assessee being resident corporate assessee is stated to be engaged in the business of die-casting. The assessee started operations in the early 1990's and acquired land and constructed a building which was used for fabrication business. However, due to slump in business, the assessee shut down its operations and entered into two agreements to lease out machinery as well as factory building. The rental income

from factory building was offered as 'Income from house property' against which the assessee claimed statutory deduction of 30%. The rental income from Machinery was offered as business income against which various business expenditures were claimed. The assessee reflected loss of Rs.44.76 Lacs in the return of income.

2.2 The Ld. AO held that income under both streams would be assessable as Income from other sources. In the process, all the other expenditure except travel, vehicle maintenance, audit fees and consultancy charges were disallowed since the same could not be allowed u/s 57(iii). The depreciation on factory building as well as Machinery was allowed to the assessee while arriving at income of Rs.83.97 Lacs. In other words, the income from both the streams was assessed as income from other sources. Against the same, depreciation, audit fees, consultancy charges, part of travelling and vehicle maintenance expenses was allowed to the assessee.

Appellate Proceedings

3.1 During appellate proceedings, the assessee, inter-alia, submitted that leasing of plant and machinery was totally independent from the letting out of factory building. Though both the assets were leased out to the same party, however, the lessee was not under obligation to continue with both. The lessee could terminate any one of these agreements and can still continue with the other agreement. The assessee's submissions were subjected to remand proceedings.

3.2 The Ld. CIT(A), in terms of the decision of Hon'ble Supreme Court in the case of **Sultan Brothers (P.) Ltd. V/s CIT (51 ITR 353),** noted that agreement dated 22.02.2010 to let out factory building and agreement dated 01.03.2010 to let out building were entered as separate

agreement. However, the tenures as well as lease incremental were exactly on the same line indicating that the two agreements were to be continued together. The intention of the assessee was to lease out both the assets together to the same person and for the same period. The separate agreements could only be considered as the deeds of convenience deigned to suit the requirements. The Machinery might have just been housed in the factory building and could also be easily dismantled and moved to other premises. Thereafter, the factory building could be used for other purposes independently. However, as long as the Machinery was housed in the factory building and that too in operational condition, the building could not be let out to some other person. Considering the factual matrix, Ld. CIT(A) held that the letting of the two assets was inseparable and rent received would be assessable to tax as Income from other sources as provided u/s 56(2)(iii) of the Act. Therefore, the action of Ld. AO was upheld.

5.3 Regarding allowance of expenditure, Ld. CIT(A) held that Ld. AO was not right in disallowing the expenses including depreciation on car. Accordingly, Ld. AO was directed to allow these expenses.

5.4 Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. The undisputed facts that emerge are that the assessee has ceased its business operations and leased out factory building and Plant & Machinery to one lessee under two separate agreements. However, the terms and conditions of both the leases are pari-materia the same. The terms of the lease agreements led to formation of belief that the intention of the assessee was to lease out both the assets together to the same person and for the same period. The separate agreements

could only be considered as the deeds of convenience deigned to suit the requirements. As long as the Machinery was housed in the factory building and that too in operational condition, the building could not be let out to some other person. Considering this factual matrix, Ld. CIT(A) reached a conclusion that the letting of the two assets was inseparable. In para 4.2.6 of the impugned order, the Ld. CIT(A) has tabulated the lease tenure and lease rental to the received under the two agreement. The perusal of the same would show that the terms and conditions go hand-in-hand which would support the conclusion that the intention of the assessee was to lease out both the assets to the same lessee and the usage of the two assets was inseparable. Therefore, the conclusion of Ld. CIT(A) could not be faulted with. The income earned by the assessee, under both the streams, have rightly been held to be assessable u/s 56(2)(iii) which provide for assessment of income as Income from other sources where the assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income- tax under the head" Profits and gains of business or profession". Therefore, we confirm the stand of Ld. CIT(A) in the impugned order. The appeal stand dismissed.

Assessment Year 2014-15

7. It is undisputed fact that the facts are pari-materia the same in this year. The impugned order is on similar lines and the grievance of the assessee is substantially the same. Therefore, taking the same view, we dismiss this appeal also.

Conclusion

8. Both the appeals stand dismissed.

Order pronounced on 03rd August, 2022.

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(MANOJ KUMAR AGGARWAL)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Chennai; Dated : 03-08-2022
JPV

Copy of the Order forwarded to :

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