



ITA.No.2886/Mum/2016
Prakash Datta Samant
Assessment Year-2011-12

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.2886/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Prakash Datta Samant 1, Sundara Narayan Niwas Padmavati Road IIT Gate, Powai Mumbai-400 076	बनाम/ Vs.	Assistant Commissioner Of Income Tax Central Circle 20 Room No.401, 4 th Floor Aaykar Bhavan, M.K.Road Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAEPS-0065-P		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Hari Raheja, Ld. AR
Revenue by	:	T.A.Khan, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	10/08/2017
घोषणा की तारीख / Date of Pronouncement	:	01/11 /2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2011-12 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-51 [CIT(A)], Mumbai, *Appeal No. CIT(A)-51/IT-83/14-15* dated 07/01/2016. The assessment for impugned AY was framed by Ld. *Assistant Commissioner of Income Tax, Central Circle-20 u/s 143(3) of the Income Tax Act, 1961* on 30/03/2014. The effective grounds raised in the appeal reads as under:-

1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner Of Income Tax (Appeals) erred in confirming the enhancement to the taxable income by Rs.1,99,256/- merely on the basis of agreements mentioning 5% increase every year to the consideration receivable for renting out of property without appreciating the fact that such increment was never realized by the appellant.*
2. *On the facts and in the circumstances of the case and in law, the learned Commissioner Of Income Tax (Appeals) erred in treating the compensation of Rs.1,40,000/- per month received by the appellant for providing amenities to the occupant of his property as "Income from Other Sources" instead of "Income from House Property".*
3. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) ought to have appreciated that two different agreements i.e. leave and license agreement and amenities agreement executed by the appellant for the purpose of letting out of his property were having common intention of earning income out of property owned by the appellant."*

2.1 Facts leading to the dispute are that the assessee being resident individual deriving income under various heads was assessed for impugned AY u/s 143(3) on 30/03/2014 at Rs.57,10,650/- as against returned income of Rs.50,25,320/- filed by the assessee on 30/09/2011. The main dispute of the present appeal is head under which amenities charges received by the assessee from certain property would be assessable to tax.



2.2 During assessment proceedings, it was noted that the assessee derived *rental income* aggregating to Rs.36.60 Lacs from two properties. The rental income of Rs.24 Lacs received against Property No. 1 comprised of rental *income* of Rs.60,000/- per month and *amenities charges* of Rs.1,40,000/- per month. However, upon perusal of respective agreements, Ld. AO noted that the assessee was entitled for enhanced rental as well as enhanced amenities charges as per contractual terms. Accordingly, rental income & amenity charges were re-worked as Rs.7,79,776/- & Rs.18,19,480/- respectively as against Rs.7.20 Lacs & Rs.16.80 Lacs reflected by the assessee. Further, the *amenity charges*, in the opinion of Ld. AO, were assessable under the head *Income from other sources* as against *Income from House Property* as claimed by the assessee and therefore, statutory deduction of 30% was not available against the same.

3. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 07/01/2016 where the assessee contended that increased rent was never received by the assessee and both income, being derived out of house property, were assessable as *Income from House Property*. However, not convinced, Ld. CIT(A) while upholding enhancement of income concluded that the *amenity charges* were rightly taxed as *Income from Other Sources* against which the assessee was entitled to claim security charges of Rs.1.20 Lacs provided the nexus thereof with amenity charges could be established by the assessee before Ld. AO. Aggrieved, the assessee is in further appeal before us.



4. The Ld. Counsel for Assessee [AR] while drawing our attention to the documents placed in the *paper book*, contended that the *rent and amenity charges* could not be increased as per contractual terms and the assessee has received only an amount of Rs.36.60 Lacs from the tenants towards *rental charges / amenity charges*. To support the said contention, our attention is drawn to *Form 26AS-Annual Tax Statement under Section 203AA of the Income Tax Act, 1961* for the impugned AY which is placed on record. Further, the Ld. AR placed reliance on the decision of this Tribunal rendered in *ACIT Vs. H&M Housing Finance & Leasing Pvt. Ltd. [ITA No. 821 & 822/Mum/2010 order dated 15/06/2011]* for the contention that amenity charges, being part and parcel of the house property, were assessable under the head *Income from House Property*.

5. *Per Contra*, Ld. Departmental Representative [DR] contended that the onus was on assessee to establish that *rental income / amenity charges* could not be increased as per contractual terms. The Ld. DR further contended that *amenity charges* received by the assessee does not *partake* the character of *rental income* so as to be assessed under the head *Income from House Property*.

6. We have carefully heard the rival contentions and perused relevant material on record. The perusal of contractual terms of respective agreements placed on record reveals that the assessee was entitled for certain increase in the charges every year. At the same time, it is also noted that the receipts of the assessee were subjected to *Tax Deduction at Source*, the details of which are reflected in *Form 26AS*. The perusal of *Form 26AS* reveals that the assessee has received total rental income



of Rs.36.60 Lacs from two entities against which tax has been deducted at source u/s 194-I for Rs.3.66 Lacs. *Prima facie*, the assessee has not received any other *rental income* during impugned AY. The revenue has nowhere controverted the entries of *Form 26AS*. Therefore, we find strength in the arguments of Ld. AR that the assessee has received only an amount of Rs.36.60 Lacs towards *rental income & amenity charges* as against Rs.38.59 Lacs as computed by Ld. AO. Therefore, we delete the additional income being computed by the Ld. AO since no addition could be made merely on the basis of doubts, conjectures or surmises without bringing on record any cogent material to substantiate the same. Resultantly, Ground No. 1 of the assessee's appeal stands allowed.

7. Ground No. 2 & 3 is related with head under which *amenity charges* received by the assessee would be assessable to tax. A perusal of *Clause-1 of Amenities Agreement* dated 21/08/2008 reveals that this agreement was to run *concurrently* and was to be *co-terminus* with the *Leave & License Agreement* of same date. As per *Clause-3*, the assessee was required to provide services of *maintenance, upkeep, cleanliness, security services and other general services that may be required by the user*. As per *Clause-4(c)*, the assessee could terminate the agreement in the event of non-payment of amenity fees for two consecutive months and in that event, *lease and license agreement* was also liable and considered to be terminated. Upon perusal of these clauses, we find that the two agreements were linked together and part and parcel of the same transactions. The prescribed amenities could not be provided by the assessee independently to the tenants and was *co-terminus* with lease and license agreement. Further, a bare perusal of



ITA.No.2886/Mum/2016
Prakash Datta Samant
Assessment Year-2011-12

nature of services, *prima facie*, reveals that the said services were of general in nature which is usually provided by the landlord to the tenant. Therefore, *amenity charges*, in our opinion, being part and parcel of same transaction, were assessable as *Income from House Property*. Our view is further fortified by the cited order of the Tribunal where similar view has been taken and which has nowhere been controverted by the Ld. DR before us. Therefore, we hold that the *amenity charges* earned by the assessee were assessable under the head *Income from House Property* against which the assessee was entitled for statutory deduction of 30%. Resultantly, this ground of assessee's appeal also succeeds.

8. In nutshell, the assessee's appeal stands allowed.

Order pronounced in the open court on 01st November, 2017.

Sd/-
(D.T. Garasia)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01.11 .2017
Sr.PS:- Thirumalesh

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai