IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI R.C.SHARMA, AM AND SHRI RAVISH SOOD, JM

ITA No. 4259/Mum/2015
(**निर्धारण वर्ष** / Assessment Year: 2011-12)

ITO 14(1)(1) R. No. 431, 4th Floor, Aayakar Bhavan, M.K. Road, Mumbai: 400 020.	**बनाम**/ Vs.	M/s Altitus Managment Advisors P. Ltd. Metropolitan Building Block E, 5th Floor, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051
स्थायी लेखा सं./जीआइआर सं./PAN No. AAFCA2213B		
(अपीलार्थी /**Appellant)**	**:**	**(**प्रत्यर्थी / **Respondent)**

अपीलार्थी की ओर से / **Appellant by**	:	Shri Rajesh Kumar Yadav, D.R
प्रत्यर्थी की ओर से**/Respondent by**	:	Shri Niraj Kumar Sheth A.R

सुनवाई की तारीख / **Date of Hearing**	**:**	06.12.2017
घोषणा की तारीख **/** **Date of Pronouncement**	**:**	28.02.2018

आदेश / **O R D E R**

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-22, Mumbai, dated 27.04.2015, which in itself arises from the assessment order passed by the A.O under Sec. 143(3) of the Income tax Act, 1961 (for short 'Act'), dated 25.03.2014.

The revenue assailing the order of the CIT(A) had raised the following grounds of appeal:-

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the sinking fund is not income of the assessee without appreciating the fact that the assessee by incorporating a clause in the rental agreement collecting the additional rent in the garb of maintenance of building which is not the responsibility of the tenant.*
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> *1.1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on the decision of the Hon'ble ITAT in the case of Mukesh D. Ambani vs. ACIT , SpI. Cir-18(1), Mumbai (7 SOT 521) (Mum) as this decision was on account of determination of ALV while in this case assessee is claiming deduction u/s.24(a) on account of repairs and reducing contribution to sinking fund from its income.*
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> *1.2 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the contribution to sinking fund is not income of the assessee without appreciating the fact that the tenants has deducted tax at source on the payment u/s. 194I treating the payment as rent.*
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> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deduction of interest of Rs.33,86,952/- without appreciating the fact that the assessee has taken loan for the working capital requirements and not for the purpose of acquiring/constructing the property in question.*
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> *3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.57,20,603/- relying on the judgement in the case of CIT vs. J.K. investors (Bombay) Ltd. dealing with the provisions of Sec.23(1)(b) and not 23(1)(a) of the Act.*
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> *4. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*
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> *5. The appellant prays that the order of the CIT(A) on the above ground be set-asideous be set aside and that of the assessing officer be restored."*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of buying of properties and leasing the same had e-filed its return of income for A.Y 2011-12 on 29.09.2011, declaring total income of Rs.13,99,982/-. The case of the assessee was taken up for scrutiny assessment and a notice under

Sec. 143(2), dated 10.09.2012 was issued and duly served on the assessee. The A.O during the course of the assessment proceedings observed that the assessee had received contribution of Rs.33,86,952/- sinking fund from its tenants. The A.O holding a conviction that the part recovery of sinking fund by the assessee from the tenants was liable to be brought to tax as the income of the assessee under head income from house property, therefore, called upon the assessee to put forth an explanation as regards the same. The assessee in support of its contention that the part recovery of the sinking fund from the tenants was not to be assessed as its income from house property submitted before the A.O, as under:-

"4.2 Vide letter dated 28.02.2014 the assessee submitted as under:

"A Sinking Fund is fund established by an entity to fund future capital expenditure or repayment of a debt. This does not form part of any income earned by the entity. AS per the agreement between Altitus Management Advisors Pvt. Ltd ("Altitus") and Information Technology Park Limited ("ITPL"), Altitus, being part owner of the building, will have to contribute in the form of Sinking Fund for replacement of the assets. Accordingly, the tenants of Altitus, as part of their rental agreements with Altitus, are responsible for such contribution of Sinking Fund directly to the ITPL. Alternatively, as per the rental agreement, Altitus is authorized to collect such Sinking Fund contribution from its tenants on behalf of ITPL and transfer the same to ITPL.

During the year, company has collected a part of sinking fund from 5 tenants as per the agreement entered into with them. Any shortfall in the liability to contribute to ITPL for Sinking Fund is borne by Altitus. The intention of the company is to collect sinking fund from its tenants on behalf of ITPL as per the rental agreement with its tenants, for the space teased out to them. Wherever the company is not able to recover from its tenants or in respect of the space not leased out, the unrecovered amount is borne by the company and charged to its Profit & Loss. Account as an expense.

The rebate of 30% of revenue given under the head "Income from House Property" is solely meant for regular repairs and maintenance to keep the assets functioning. Such expenses are always revenue in nature. However, Sinking Fund is created to meet capital expenditure for replacing an asset and not to meet any routine running and maintenance expenses.

Therefore, any collection of Sinking Fund on behalf of ITPL does not form part of income of Altitus.

Further, the provision of section 23(1) of the Income Tax Act, 1961 defines the annual value of a rented property as higher of reasonable expected rent of the property and rent actually received or receivable after excluding unrealized rent and then deducting loss due to vacancy.

The rental charged to the tenant is as per commercial negotiation. The terms of the agreements are clear that the tenants are under an obligation to bear the sinking fund in addition to the rentals paid by them. In various cases it has been held by the judicial Authorities that until there is enough evidence that the rental received is low compared to the prevailing market rent for similar premises in the same locality, nothing can be added to the annual value of the property. Few cases are cited below:

In the case of Mukesh D. Ambani Vs. Assistant Commissioner of Income-tax Circle 18(1), Bombay Tribunal has held that where the tenant has agreed to pay the maintenance charges or accepted to bear the cost of repairs, the same should not be ground for holding that the stipulated rent does not represent the annual letting value specially when there was no evidence or finding to show that the rent received was low compared with the prevailing rent for similar premises in the same locality.

We further submit that in the decision of CIT Vs. Sathya Co., it was held that no notional interest could be added to calculate the rental income and it was also held that the presumption of Assessing Officer that the notional interest is integral part of rent was ultra vires the provisions of section 23 of I.T Act.

In another case of CIT Vs. Prabutt Chaurn Law, it was held that the bona fide annual value had to be determined in accordance with section 9(1)(i) and not under section 9(1)(i). It was also held that there was no justification for adding a particular sum to the stipulated rent merely because the tenant had undertaken to bear the cost of repairs.

We further refer to the decision in CIT Vs. Smt. Nayeema Momen, where it was held that where the tenant had agreed to pay the maintenance charges or accepted to bear the cost of repairs the same should not be a ground for holding that the stipulated rent does not represent the annual letting value, specially when there was no evidence or finding to show that the rent received was low compared to the prevailing rent for similar premises in the same locality.

However, the A.O not being persuaded to accept the contentions of the assessee, concluded that as the tenants had actually made sinking fund payment on behalf of the assessee company to ITPL, therefore, the same was to be treated as the rental income of the assessee and liable to be assessed as the income of the assessee from house property under Sec.24 of the Act. The A.O in the backdrop of his aforesaid conviction added the contribution of Rs.33,86,952/- made

by the tenants towards sinking fund to the rental income of the assessee.

3. The assessee assailed the aforesaid treatment of the contribution by the tenants to the sinking fund as its rental income by the A.O before the CIT(A). The assessee submitted before the CIT(A) that as the sinking fund was a fund collected to undertake carrying out of repairs of the building and was usually spent for the upkeep of the property, therefore, the same could not be considered as part of the rental income. The assessee in support of its aforesaid contention relied on the order of the coordinate bench of the Tribunal, viz. ITAT, Mumbai Bench, "J", Mumbai in the case of Mukesh D. Ambani Vs. ACIT, Special Circle 18(1), Mumbai, (7 SOT 521) (Mum). The CIT(A) after deliberating on the contentions of the assessee was persuaded to be in agreement with same. The CIT(A) being of the view that as the issue as to whether the amount collected for sinking fund for maintenance or other works cannot form a part of the annual value of the property and hence be brought to tax as the income of the assessee under the head of 'income for house property' was deliberated upon and adjudicated in favour of the assessee by the jurisdictional Tribunal in the case of **Mukesh D. Ambani Vs. ACIT (2006) 7 SOT 521 (Mum)**, therefore, following the same decided the issue in favour of the assessee and deleted the addition of Rs.33,86,952/- made by the A.O on the said count.

4. The A.O during the course of the assessment proceedings further observed that the assessee had claimed interest expenditure under Sec. 24(b) of Rs.6,08,41,889/- while computing its income from house property. The A.O observed that during the year under consideration the assessee had shifted its loan with UCO Bank to Standard Chartered Bank and had claimed interest expenditure in respect of the

same. The A.O observed that his predecessor while framing the assessment in the hands of the assessee for the immediately preceding year, viz. A.Y 2010-11 had disallowed the interest element pertaining to the loan which was taken by the assessee from its holding company, viz. M/s TCG Urban Infrastructure Holdings Ltd for the reason that the said loan was not advanced for the acquisition or construction of the property, but rather, for the purpose of meeting the need of finance for day to day operations and the working capital requirements. The A.O observed that though the appeal filed by the assessee on the said issue was allowed by the CIT(A), but however, the department had not accepted the order of the CIT(A) and had carried the matter in further appeal before the Tribunal. Thus, the A.O being of the view that as the issue pertaining to allowability of the interest expenditure under Sec. 24(b) was pending adjudication before the Tribunal in the assessee's own case for A.Y 2010-11, therefore, for the said reason the claim of interest expenditure of Rs. 33,10,656/- raised by the assessee under Sec. 24(b) of the Act was liable to be disallowed.

5. That on appeal the CIT(A) observed that the issue in respect of allowability of interest on borrowed capital had been decided by his predecessor in the assessee's own case for the A.Y 2010-11 by observing as under:

> *"3.3 I have considered the facts and circumstances of the case. Appellant's main business is acquiring the property and leasing them on rent. For acquiring the property appellant had borrowed the amounts from TCG Urban Infrastructure. This borrowal was mentioned as unsecured loan in balance sheet and also in the clauses of agreement it is stated that borrowal is for the working capital purposes of the appellant. However, if we consider the main activity of the appellant it is only purchase of properties and letting them on rent. Appellant has also offered the whole income from house property. For borrowal of the amount purchase of any property is u/s. 24(b) of the I. T. Act. Sec. 24(b) of the I. T. Act reads as-under:*
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> *"Sec. 24(b) - Income chargeable under the head Income from house property shall be computed after making the following deductions namely:*

(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.

In Sec. 24(b) it is clearly stated that where the property has been acquired, constructed, repaired, renewed or reconstructed with the borrowed capital, any interest payable on such capital is allowable as deduction. Here in the appellant's., case also as its only activity is purchasing the property and leasing them on rent, the sec.24(b) allows for the deduction if property is acquired from borrowed capital. There is no evidence in the A.O's order that this property was not acquired from the capital borrowed from TCG Urban Infrastructure. Neither any cogent material was brought on the record by the A.O. to show that appellant is carrying any other activity and utilizing these funds for the working capital purposes. Hence appellant's main business is for the purchase of property through borrowal and income from rent. As sec. 24(b) provides that any property acquired with borrowed capital is eligible for deduction. In this case also appellant had acquired this property from the borrowed capital. ;:in sec.24b) it is not required that purpose mentioned in the agreement denies any benefit which 'is available to the appellant if a property is acquired from borrowed capital, deduction of interest is allowable, hence, appellant's deduction of Rs. 1,48,34,926/- for interest paid for the borrowings from TCG Urban Infrastructure is to be rightly allowed and deduction is to be allowed to the appellant. A.O's addition is deleted. Relief granted to the appellant Rs.1,48,34,926/-. This ground of appeal is allowed.

3.4 Following the above decision of the CIT(A), the A.O's addition is deleted and ground of appeal is allowed."

The CIT(A) followed the view taken by his predecessor on the issue under consideration and deleted the addition of Rs.33,10,656/- made by the A.O on the said count in the hands of the assessee.

6. The A.O further while framing the assessment observed that the assessee had accepted interest free refundable deposits aggregating to Rs.9,53,43,395/- from the parties from whom it was in receipt of rent of Rs.10,01,68,146/-. The A.O being of the view that as the assessee had received the aforesaid deposits in respect of the leased premises, therefore, the reasonable expected interest on the said deposits would form part of the reasonable expected rent for the property under consideration. The A.O on the basis of his aforesaid conviction worked out the notional interest @ 6% per annum on the aforesaid deposits of Rs.9,53,43,395/-and made an addition of the consequential interest

element of Rs.57,20,603/- to the income of the assessee from house property.

7. The CIT(A) during the course of the appellate proceedings observed that the A.O had made an addition of the notional interest of Rs.57,20,603/- by relying on the decision of ITAT, Delhi in the case of Fizz Drinks (2005) 95 ITR 429 (Del). The CIT(A) observed that a similar issue had came up in the assessee's own case for A.Y 2010-11 before his predecessor, wherein the latter relying on the following judicial pronouncements:-

(i) Gagan Trading Company Ltd. Vs. ACIT-5(2), Mumbai (2012) 28 taxman.com 78 (Mum).
(ii) ACIT, 19(3) Vs. Monisha R. Jaysingh (2012) 21 taxman.com 9 (Mum).
(iii) DCIT-10(1), Mumbai Vs. Reclamation Realty India (P) Ltd. (2011) 9 taxman 35 (Mum).
(iv) J.K. Investor Ltd. Vs. DCIT (2000) 74 ITD 274 (Mum).

, had concluded that if the income was offered by the assessee under Sec. 23(1)(b) then the notional interest on the interest free deposits received from the lessees cannot be added to the income of the assessee. The CIT(A) observed that the order passed by the Tribunal in the case of J.K. Investor Ltd. (supra) was confirmed by the **Hon'ble High Court of Bombay** in the case of **J.K. Investors Ltd. (2001) 248 ITR 723 (Bom)** and the appeal of the revenue was dismissed. The CIT(A) further observed that the order of the ITAT, Delhi in the case of Fizz Drinks (supra) was distinguishable on facts and thus would have no bearing on the adjudication of the issue involved in the case before him. The CIT(A) distinguishing the facts involved in the aforementioned case, observed that in the said case the property was let out by the assessee at a rent of Re. 1 per month and interest free security deposits of Rs.1,63,36,000/- was taken. It was thus in the

backdrop of the aforesaid facts that the Tribunal had concluded that as the rent received by the assessee was not only very low, but rather, was even lower than the annual lettable value, therefore, the interest on the aforesaid deposit had to be considered as the rent. The CIT(A) pitting the facts involved in the case before him as against those involved in the case of Fizz Drinks (supra) relied upon by the A.O, observed that as in the case of the present assessee the rent was higher than the annual lettable value, therefore, the view arrived at by the Tribunal in the said case would not have any bearing on the adjudication of the issue involved in the case before him. The CIT(A) on the basis of his aforesaid deliberations deleted the addition of Rs.57,20,603/- made by the A.O.

8. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Departmental Representative (for short 'D.R') at the very outset of the hearing of the appeal submitted that the CIT(A) while vacating the additions/disallowances made by the A.O had failed to deliberate on the facts and had rather deleted the additions by merely referring to certain judicial pronouncements. The ld. D.R in order to fortify his aforesaid contention took us through the observations recorded by the CIT(A) at Page16 Para 5.3, wherein the disallowance of Rs.33,10,656/- made by the A.O in respect of interest on borrowed capital was deleted by the CIT(A) by merely referring to the order of his predecessor. It was thus the contention of the ld. D.R that the CIT(A) by way of a non speaking order had most arbitrarily set aside the additions/disallowances which were made by the A.O by way of well reasoned order. Per contra, the ld. Authorized Representative (for short 'A.R') for the assessee submitted that the CIT(A) following the order of the jurisdictional Tribunal in the case of Mukesh D. Ambani

Vs. ACIT Special Circle 18(1), Mumbai (2006) 7 SOT 521 (Mum) and the judgment of the Hon'ble High Court of Bombay in the case of J.K. Investors (Bom) Ltd. (2000) 112 taxman.com 107 (Bom) and CIT-12 Vs. Tip Top Typography (368 ITR 330) (Bom), had deleted the addition of Rs.33,86,952/- made by the A.O in respect of the sinking fund reimbursement recovered by the assessee from its tenants. It was thus submitted by the ld. A.R that as the issue involved was squarely covered in favour of the assessee, therefore, no infirmity did emerge from order of the CIT(A), who by following the aforesaid judicial pronouncements had decided the issue in favour of the assessee and deleted the addition so made by the A.O.

9. The ld. A.R further adverting to the deletion of the addition of Rs.33,10,656/- (wrongly mentioned in the ground of appeal as Rs.33,86,952/-) in respect of interest on borrowed capital claimed as deduction under Sec. 24(b) of the Act by the assessee, submitted that the CIT(A) observing that a similar disallowance of interest expenditure involving the same facts was deleted by his predecessor in the assessees own case for A.Y 2010-11, therefore, finding no reason to take a different view had rightly deleted the aforesaid addition so made by the A.O in the hands of the assessee.

10. The ld. A.R adverted to the addition of Rs.57,20,603/- made by the A.O towards notional interest in respect of the interest free refundable deposits received by the assessee from its tenants, which on appeal was deleted by the CIT(A). It was submitted by the ld. A.R that the CIT(A) after deliberating on the facts of the case had observed that the similar issue involving the same facts was decided by his predecessor in the assessees own case for the immediately preceding year, viz. A.Y 2010-11. The CIT(A) observed that his predecessor by placing reliance on the various orders of the coordinate benches of the

Tribunal had deleted the addition made by the A.O. The Ld. A.R submitted that the CIT(A) finding himself to be in agreement with the view taken by his predecessor while disposing of the assessees appeal for AY: 2010-11, had rightly followed the same. It was submitted by the ld. A.R that as no infirmity did emerge from the order of the CIT(A), therefore, the appeal filed by the assessee being devoid of any force was thus liable to be dismissed.

11. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal had been sought to adjudicate the validity of the additions/disallowances made by the A.O in the hands of the assessee, which thereafter on appeal had been deleted by the CIT(A), viz. (i) taxability of the sinking fund reimbursement received by the assessee from its tenants; (ii) disallowance of the interest on borrowed capital under Sec.24(b) of the Act; and (iii) addition of the notional interest on the interest free refundable deposits to the income of the assessee. We shall first take up the addition of Rs.33,86,952/- made by the A.O in respect of contribution by the tenants to the sinking fund, which however was deleted by the CIT(A). We find that the A.O being of the view that the contribution by the occupants of the property towards sinking fund was to be construed as the income of the assessee, therefore, added the same to its rental income. We find that the CIT(A) after deliberating on the facts of the case had relied on the order of the coordinate bench of the Tribunal, viz. **ITAT, Mumbai Bench "J", Mumbai** in the case of **Mukesh D. Ambani Vs. ACIT, Special Circle-18(1), Mumbai (2006) 7 SOT 521 (Mum)**, wherein the Tribunal being of the view that as the contributions of the occupants

of the property towards sinking fund cannot be treated as the rental income of the assessee, had observed as under:

"2. In brief the facts as enumerated by the Assessing Officer are that the appellants are owners of their respective flats in a building known as Usha Kiran, let out on leave and licence basis to M/s Aveshesh Mercantile Ltd. by Smt. Kokila D. Ambani and other appellant namely Shri Mukesh D. Ambani has let out his flat to M/s. Averan Textiles Ltd. on a monthly rent of Rs. 5,000 per month. So the rent was declared at Rs. 60,000 per month. The dispute is in respect of the following payments made by the said tenants to the said co-operative housing Society, reproduced by Assessing Officer as follows:

Sr. No.	*Nature of payment*	*Amount (Rs.)*
1.	*Contribution for plumbing, rectification, painting and structural repairs*	*3,868/-*
2.	*Pest treatment charges*	*5,144/-*
3.	*Repair fund*	*18,100/-*
4.	*Special contribution to structural repair as per resolution passed to special general body meeting held on 15.03.1990*	*60,000/-*
5.	*Terrace water proofing*	*4,000/-*
6.	*External Plaster and gunting work*	*5,000/-*
7.	*Additional Water Benefit charge*	*34,200/-*
8.	*Sinking Fund*	*3,304/-*
9.	*Non-occupancy charge*	*60,000/-*
10.	*Mis. Charge*	*2,900/-*
11.	*Other outgoings*	*33,480/-*
12.	*Taxes*	*7,374/-*
	Total	*2,37,370/-*

(Figures as per the file of Shri Mukesh D. Ambani)

Further the Assessing Officer has observed that the bills were in the name of the appellant, however, the payments were made by the sub-tenant. According to him the nature of expenditure listed above revealed that the same were incurred for repair and renovation of the said flat. Further, according to Assessing Officer the non-occupancy charges pertained liability of the owner. One more fact has also been recorded by the Assessing Officer that the said fiat was finally rented out to Reliance Industries. After observing all these factual findings the Assessing Officer was of the opinion that the said -sum paid by the tenant with on behalf of the assessee, therefore, it was part of rent receivable in the hands of the

assessee under section 23(1)(b), of I.T Act. He has also mentioned that the expenditure were capital expenditure being incurred for long-term benefit hence not entitled for any deduction as claimed under section 37 or under section 57 of I.T Act. The computation of annual rent as worked out by Assessing Officer of Rs. 2,37,370/- is as under:

The benefit of Rs. 2,37,370/- arising out of payment by Averan textiles Ltd. the tenant, on behalf of the assessee is considered as Actual rent receivable under section 23(1)(b) of the I.T Act and added to Rs. 60,000/-, the Actual rent received during the gear. As taxes have been paid to the extent of Rs. 7,374, deduction of the, same is given and the annual value is determined as Rs. 2,37,370 + 60,000 - 7,374 = Rs. 2,89,996/-.

Name of Property	Annual Value
(i) Usha Khan	Rs.2,89,996/-
Less:	
Deduction:	
Under Sec. 24(1)(i) of the IT Act:	Rs.57,999/-
For repairs = 1/5th of ALV	
Income from house property as determined:	Rs.2,31,997/-
Less: Income from house property as returned:	Rs.48,000/-
Difference by which returned income needs to be increased:	Rs.1,83,997/-

(Figures as per file of Shri Mukesh D. Ambani)

3. Being aggrieved the issue was carried before the first appellate authority and after reiterating the facts as referred hereinabove ld. CIT(A) has concluded that the reimbursement incurred by the licensee on behalf of the licensor were nothing but indirect rent paid by the licensee to the licensor. According to him as well for the purpose of calculating any rent received or receivable as per the provisions of section 23(1)(b) have to be considered hence, upheld the view of the Assessing Officer that the sum paid by M/s. Aveshesh Mercantile Ltd., the tenant, to the housing society on behalf of the appellant was in fact rent receivable in the hands of the appellant under section 23(1)(b) of IT Act. He has also rejected the alternate clam in respect of the said income to be taxed under the head "Other sources" under section 56 of I.T Act on the ground that the rental income was earned by virtue of being the owner of the house property hence to be taxed under the head Income from house property.

4. We have heard the submissions of both the sides and also examined the facts as well as law applicable in the present appeal. The appellants have identically given on leave and licence their flats situated in Usha Kiran Co-operative Housing Society to a tenant known as Aveshesh Mercantile Ltd. as per terms and conditions laid down in an agreement dated 3-9-1990 on a

monthly rent of Rs. 5,000. As pert the statement of facts and the assessment order it is not in dispute that as per clause (8) of the said agreement, it .was the responsibility of the tenant to bear all the expenses related the said tenanted property, such 'as maintenance of the flat, society charges, etc. so the tenant has paid the aforesaid sum to the society as maintenance charges in respect of the bills raised for the relevant period. Now the question is that whether the expenditure paid directly by the tenant to the, housing society formed a part of the rent receivable in the hands of the owner in terms of section 23(1)(b) of IT Act. Clause (2) of the agreement provides that the licensee shall be fully responsible for maintaining the said premises without being the licensor i.e. the appellant to cost on this account. Clauses (8) has also revealed that during the period of licence the licensee shall bear or reimburse to the licensor the proportionate share in respect of the monthly outgoings payable in respect of the said premises including water and maintenance charges. In the light of these specific clauses of the agreement we have examined the provisions of section 23(1)(b) alongwith Explanation 1 of the said section this section provides the method for determination of annual value of property. The annual value of any property shall be deemed to be, (a) the sum for which the property might reasonably be expected to let from year to year or as per clause (b) where the property is let and the actual rent received or receivable by the owner is in excess of the sum referred in clause (a) the amount so received or receivable. Explanation 1 has defined annual rent means the actual rent received or receivable by the owner in respect of such year. In terms f the above clauses of I.T. Act we have examined the factual aspect and have found that there is no finding by the Assessing Officer about any sum for which property might reasonably be expected to let from year to year. The only finding thus left is in respect of the actual rent received by the owner. On one hand it is abundantly clear that the terms of the agreement were explicit and unambiguous that the licensor was under an obligation to maintain the said premises and bear the cost of maintenance. It is also not doubted that the licensee was under obligation to reimburse the proportionate share in respect of the monthly outgoings in respect of maintenance charges etc. On the other hand, it is not clear why the said amount was treated by the Assessing Officer as rent receivable in the hands of the assessee specially when the expenditure were nothing but outgoings in respect of the said flat. How an expenditure can be treated as rent received by the owner is not clear from the order of the revenue authorities. Whether an expense can be treated as an income has also not been clarified by the revenue authorities. From the clauses it can be observed that the licensee had paid the said amount against or raised by the society though in the name of the owners. The Assessing Officer has not raised, any doubt in respect of the genuineness of the bills raised. In support of the claim few case laws have also been cited. In the case of CIT v. Sathya Co. 125 Taxation 136 (Ca.), copy of the order filed, it was held that no notional interest could be added to calculate the rental income and it was also held that the presumption of Assessing Officer that the notional interest as integral part of rent was ultra vires the provisions of section 23 of IT Act. In an another decision of CIT v. Prabutty Chum Law [1965] 57 ITR 609 (Cl.) wherein it was held that the bona fide annual value had to be determined in accordance with section 9(1)(i) and not under section 9(1)(ii). It was, so held that there was no justification for adding a particular

sum to the stipulated rent merely because the tenant had undertaken to bear the cost of repairs. One more case of CIT v. Smt. Nayeema Momen [1994] 73 Taxman 498 has also been cited. In all such cases the ratio laid down by the Hon'ble Courts are that where the tenant has agreed to pay the maintenance charges or accepted to bear the cost of repairs the same should not be a ground for holding that the stipulated rent does not represent the annual letting value specially when there was no evidence or finding to show that the rent received was low compared with the prevailing rent for similar premises in the same locality. Further in the instant appeals this fact has not been controverted that the expenditure were in respect of bills raised by the co-operative society having no element of income in the hands of the owners. Since we have taken a view that the annual value was wrongly determined by the Assessing Officer of the property, therefore, there is no need to adjudicate upon alternate grounds of the appeals that the expenditure incurred may be allowed under section 57 of IT Act. Resultantly, the main ground raised in both the appeals are hereby allowed.

In the result, both the appeals are allowed."

12. We have deliberated on the observations arrived at by the CIT(A) as well as the view taken by the coordinate bench of the Tribunal in the case of Mukesh D. Ambani (supra). We find ourselves persuaded to be in agreement with the view taken by the coordinate bench that contributions of the tenants of the property towards sinking fund cannot be assessed as rental income of the assessee. We thus finding no reason to take a different view, therefore, uphold the deletion of the addition of Rs.33,86,952/- on the said count by the CIT(A). The **Ground of appeal No. 1** raised by the revenue before us is dismissed.

13. We now advert to the disallowance by the A.O of the claim of the assessee in respect of interest expenditure under Sec. 24(b) of Rs.33,10,656/-, which was deleted by the CIT(A). We find that the CIT(A) observed that the issue pertaining to disallowance of interest on borrowed capital had came up before his predecessor in the assessees own case for A.Y 2010-11, wherein the said disallowance was vacated by the CIT(A) for the reason that the revenue had failed to establish that the borrowed funds were utilized by the assessee for purposes other than for acquiring the property under consideration. The CIT(A)

observed that as the funds borrowed by the assessee were utilized for acquiring of property, therefore, following the order passed by his predecessor involving identical facts, deleted the disallowance of Rs.33,10,656/- which was made by the A.O on the said count in the hands of the assessee. We find that though the A.O while framing the assessment was not oblivious of the fact that the identical issue was decided by the CIT(A) in the assessees own case for the immediately preceding year, viz. A.Y 2010-11, but however, had disallowed the claim of deduction of interest expenditure of Rs.33,10,656/- raised by the assessee under Sec. 24(b), only for the reason that the revenue had not accepted the order of the CIT(A) on the issue under consideration in the preceding year, viz. A.Y 2010-11 and had assailed the same before the Tribunal. We have deliberated on the facts and are unable to comprehend that now when the similar issue involving identical facts had been adjudicated by the CIT(A) in favour of the assessee, therefore, how a contrary view could have been taken by the A.O, despite remaining well convesant of the aforesaid state of affairs. We are unable to persuade ourselves to accept the view taken by the A.O for disallowing the claim of the assessee under Sec. 24(b), therein leading to a consequential addition of Rs.33,10,656/- in its hands. We had deliberated on the observations of the CIT(A) and are persuaded to be in agreement with the view taken by him. We thus finding no infirmity in the deletion of the aforesaid disallowance of Rs.33,10,656/- by the CIT(A) therefore, uphold his order. The **Ground of appeal No. 2** raised by the revenue is dismissed.

14. We now take up the addition made by the A.O in respect of notional interest in respect of interest free refundable deposits received by the assessee from its tenants. We find that the assessee who during the year under consideration was in receipt of rental

income of Rs.10,01,68,146/-, had received interest free refundable deposits totalling to Rs.9,53,43,395/- from the said tenants. The A.O being of the view that as the aforesaid deposits were received by the assessee in respect of the leased premises, therefore, reasonable expected interest on the said deposits would form part of the reasonable expected rent for the property under consideration. We find that the A.O on the basis of his aforesaid conviction had worked out the notional interest on such interest free refundable deposits at Rs.57,20,603/- and added the same to the income of the assessee from house property. We find that on appeal the CIT(A) observed that a similar addition of notional interest in respect of interest free deposits had came up before his predecessor in the assessees own case for the immediately preceding year, viz. A.Y 2010-11. The CIT(A) observed that his predecessor while disposing of the appeal of the assessee for A.Y 2010-11, after placing reliance on the various orders of the coordinate benches of the Tribunal and the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. J.K. Investors (Bom) Ltd. (2001) 248 ITR 723 (Bom)**, had observed that as the actual rent received or receivable by the assessee in respect of the aforesaid property was found to be in excess of the sum for which the property might reasonably be expected to have been let out from year to year, and the ALV had been determined under Sec. 23(1)(b), therefore, no addition in respect of the notional interest was called for in the hands of the assessee. We have deliberated on the observations recorded by the CIT(A) and are persuaded to be in agreement with the view taken by him. We find that as the CIT(A) had followed the view taken by his predecessor in the assessee's own case for the immediately preceding year, viz. A.Y 2010-11, therefore, no infirmity emerges from his order. We may herein observe that nothing has been placed on record or averred before us which could persuade us to

conclude that the view taken by the CIT(A) in the assessees own case for A.Y 2010-11 had been set aside by the higher appellate forums and thus no more holds the ground. We thus finding ourselves to be in agreement with the view taken by the CIT(A), therefore, uphold the deletion of the addition of Rs.57,20,603/- by him. The **Ground of appeal No. 3** raised by the revenue before us is dismissed.

15. The **Grounds of appeal No. 4 and 5** being general in nature are dismissed as not pressed.

16. The appeal of the revenue is dismissed.

Order pronounced in the open court on 28.02.2018

Sd/-	Sd/-
(R.C. Sharma)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 28.02.2018
Ps. Rohit Kumar

आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**