

आयकर अपीलीय अधिकरण, मुंबई “बी” खंडपीठ मे
Income-tax Appellate Tribunal -“B”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member
आयकर अपील सं./I.T.A./4498/Mum/2017,**निर्धारण वर्ष** /Assessment Year: 2013-14

M/s. Navnit L. Kachalia and Others C-Wing, Unit No.101, 1st Floor Waterford Building, Juhu Lane C.D. Burfiwala Lane,Aandheri (W) Mumbai-400 058. PAN:AAABN 0124 E	Vs.	Income tax Officer 17(2)(4), Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri Suman Kumar -DR

अपीलार्थी की ओर से /**Assessee by:** Ms. Rutuja N. Pawar

सुनवाई की तारीख / **Date of Hearing:** 28/03/2018

घोषणा की तारीख / **Date of Pronouncement:** 04/04/2018

लेखा सदस्य, राजेन्द्र के अनुसार -PER RAJENDRA, AM-

Challenging the order dated 14/03/2017 of the CIT(A)- 28,Mumbai,the Assessee has filed present appeal.The assessee,an Association of persons(AOP),deriving income from house property and other sources,filed its return of income on 26/09/2013,declaring Nil income. The Assessing Officer(AO)completed assessment,u/s.143(3)of the Act on 22/02/2016, determining its income at Rs.1,02,33,770/-,.

2.Effective Ground of appeal is about computing the total income of the assessee to the extent of Rs.1.02 crores instead of Nil income as declared by it and not considering the grounds of appeal and the rectification application filed by it u/s. 154 of the Act.

3.During the assessment proceedings,the AO found that the assessee had computed total income at Rs.89.33 lakhs consisting of income from house property, that it had not offered the income for taxation, that it had claimed that the income under question had been divided among its eight co-owners/members, that the assessee had claimed full credit of TDS in its return of income,that it claimed that it was an AOP including one HUF.The AO further observed that it was also claimed before him that the shares of members were determinate, that the shares had been apportioned and included in the computation of individual cases of members/co-owners.However,the AO did not agree with the explanation filed by the assessee and computed its income at Rs.1,02,33,770/-.

4.Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority (FAA) and made submissions.As per the FAA, the appeal was fixed for hearing on 11/01/17 and 10/03/17, that none appeared on both the occasions.Accordingly,he

decided the appeal as per available material. Reproducing the order of the AO he held that in the absence of any controverting argument, there was no need to interfere with the order of the AO with regard to assessing the rental income in the hands of AOP.

5. Before us, the Authorised Representative (AR) stated in the year 2005-06 the income was assessed in the hands of individual co-owners/members of the AOP, that while adjudicating the appeal for the AY.2011-12 the then FAA had called for a remand report, that the AO had, in the remand report, admitted that for the year 2005-06 income was taxed in the hands of co-owners, that he had also admitted that property was jointly owned and that tax was not payable in the hands of AOP. He referred to the judgment of Hon'ble Bombay High Court in the case of Madhukar C. Ashar (239taxman367, dtd.13/4/16) and stated that the same was squarely applicable to the facts of the case, that after considering the remand report of the AO, the FAA had decided the issue in favour of the assessee for the AY.2011-12, that the AO had not challenged the order of the FAA before the Tribunal, that the application filed by the assessee u/s. 154 of the Act was not adjudicated upon by FAA. The DR stated that the matter could be decided on merits.

6. We have heard the rival submission as perused the material on record. We find that the dispute of taxability of house property income in the hands of individual members or in the hands of AOP was decided in favour of the assessee in the year 2005-06. In that year AO had passed order u/s. 154 of the Act. In the rectification order, the then AO had mentioned that the assessee had contended that no tax was payable by AOP as the shares of co-owners was determined. The AO had further observed that the contention of the assessee was found to be correct. It is also found that while deciding the appeal for the AY 2011-12 the FAA had called for a remand report from AO, that the FAA had observed that the AO had 'fairly conceded' that disputed amount was to be taxed in the individual hands of the co-owners/members. We are unable to understand as to why the FAA did not follow the order of his predecessor for earlier year and passed a non-speaking order for the year under consideration. The reasons for not deciding rectification application are not known. In our opinion, once the income is assessed in the hands of the co-owners/members of a legal entity the same cannot be taxed in the hands of that entity also. It will lead to taxing the same amount twice. The principles of taxation jurisprudence do not allow double taxation.

Considering the above, we are restoring back the issue to the file of the FAA for fresh adjudication. He is directed to pass a speaking order and to afford a reasonable opportunity to of hearing to the assessee. He is also directed to consider the judgment of Hon'ble Bombay

High Court in the case of Madhukar C. Asha (supra) and order of his predecessor for AY 2011-12, the assessee is directed to appear before the FAA and extend full co-operation to him. Effective Ground of appeal is decided in favour of the assessee ,in part.

As a result, appeal filed by assessee stands partly allowed
फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.
Order pronounced in the open court on 04th April, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 04 अप्रैल , 2018 को की गई ।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 04.04.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.