

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" Bench, Mumbai**

**Before Shri R.C. Sharma, Accountant Member  
and Shri Ram Lal Negi, Judicial Member**

**ITA No. 499/Mum/2016**  
(Assessment Year: 2012-13)

Shri Narendrapal Gupta  
Raja Bahadur Building  
28, B.S. Marg, Fort  
Mumbai 400023

ACIT, Central Circle-30  
Room No. 401, 4th Floor  
Vs. Aayakar Bhavan, M.K. Road  
Mumbai 400020

PAN – AAXPG2396L

**Appellant**

**Respondent**

Appellant by: Shri J.P. Bairagra &  
Ms. Shraddha Gor  
Respondent by: Shri Suman Kumar

Date of Hearing: 26.04.2018  
Date of Pronouncement: 14.05.2018

**ORDER**

**Per R.C. Sharma, AM**

This appeal has been filed by the assessee against the order of the CIT(A)-51, Mumbai dated 18.11.2015 for A.Y. 2012-13.

2. The only grievance or the assessee relates to the treatment of lease rental income in relation to furniture as income from other sources in place of income declared by assessee as income from house property.

3. At the outset the learned A.R. placed on record the order of the Tribunal in assessee's own case for A.Y. 2010-11 dated 03.03.2016, wherein the income so offered by assessee was treated by the Tribunal as income from house property.

4. We have gone through the order of the Tribunal dated 03.02.2016, wherein the Tribunal held as under: -

“2. The assessee is aggrieved by the decision of the ld.CIT(A) in confirming the order of the AO in assessing the lease rent received for furniture as income under the head “Income From Other Sources”.

3. We heard the parties and perused the record. The facts relating to the case are set out in brief. The assessee had let out a building to M/s East India Hotels Ltd. The assessee had entered into two separate lease agreements viz., one agreement for lease of premises and another agreement for leasing of furniture. The assessee had received lease rent of Rs.1,35,98,750/- each under those agreements. The assessee offered both the lease rental incomes under the head “Income from House Property”. However, the AO assessed the income of Rs.1.35 crores received for leasing of furniture as “Income from Other Sources” and the same was also confirmed by the ld.CIT(A).

4. The ld. AR submitted that the assessee had actually let out entire premises in bare condition and, in fact, no furniture and fixture was actually let out. He submitted that the list of furniture and fixtures given in the second lease agreement are mere amenities attached with the premises. The ld. AR submitted that the assessee had entered into two separate agreements in order to avoid problems of municipal taxes. Accordingly, the ld.AR submitted that the assessee had received the lease rent under both the agreements towards letting out of the building only. The ld. AR submitted that the Hon’ble Hyderabad Bench of the Tribunal in the case of DCIT v/s G Raghuram (2010) 134 TTJ (Hyd) 87 has held that the amenities are not separate assets such as plant and machinery and hence income received towards amenities is also required to be assessed under the head “Income From House Property”. He submitted that an identical view has also been taken by the Mumbai Bench of the Tribunal in the case of Unique Construction and Developers V/s ACIT in its order dated 24.7.2013 passed in ITA No.1397/Mum/2012 (AY-2008-09). He further submitted that an identical issue was also considered in the case of assessee’s spouse named Mrs. Manju Gupta in ITA No.4432/Mum/2013, dated 26.3.2015 and it was decided in favour of the assessee by following the decision rendered by the Hyderabad Bench of the Tribunal in the case of G Raghuram(supra).

5. On the contrary, the ld. DR submitted that the decision rendered by the Hyderabad Bench of the Tribunal in the case of G Raghuram (supra) was relating to the amenities and not to furnitures and fixtures. Accordingly, he submitted that the said decision could not be placed reliance by the assessee. He submitted that, in the case of Mrs.Manju Gupta (supra), the Co-ordinate Bench has followed the decision rendered by the Hyderabad Bench of the Tribunal in the case of G Raghuram (supra). The ld. DR further submitted that the assessee has entered into an agreement for letting out furniture and fixture and hence, the ld.CIT(A) was justified in confirming the order of the AO.

6. Having heard the rival contentions, we are of the view that there is merit in the contentions of the assessee. It is a well settled proposition of law that substance will prevail over the form. We have noticed that the assessee has entered into two separate agreements while leasing out the premises, viz., one for leasing out the premises and another one for leasing out furniture and fixtures. The lease agreement entered for leasing out the furniture and fixtures contains a list of items covered by it. A perusal of the said list would show that they are amenities attached with the building only. For the sake of convenience, we extract below the list of items which have been named as "furniture and fixtures":

- i. Two lockable single Wardrobes in every room;
- ii. Modular Kitchen in Kitchen;
- iii. Water Purifier (with 24 months warranty);
- iv. Sliding covering Niche Areas in each Bedroom;
- v. Intercom system;
- vi. Installation of Safety grills on all windows in the said building;
- vii. Provision of one-liter hot water instant Geyser in Bathrooms (with 24 months warranty);
- viii. Tube lights and fans;
- ix. Plaster of paris work done in the flats;
- x. Stilt Car Parking spaces : 9 (nine )Nos.;
- xi. Open car parking spaces: 60 (sixty) Nos.
- xii. 24 hrs Security Guards presence at the compound's main gate, at the ground floor lobby entrance the building and in the car parking areas. There would be 3 guards of M/s Trig.....Ltd working 8 hours shift each at the entrance of lobby of the building...."

A careful perusal of the details given above would show that they are in the nature of amenities only and hence, in our view the decision rendered by the Hon'ble Hyderabad Bench of the Tribunal in the case of G Raghuram (supra) shall squarely apply to the facts of the present case. In addition to the above, we notice that the Co-ordinate Benches of the Tribunal has also taken identical views in the case of Unique Construction and Developers (supra) and also in the case of Mrs. Manju Gupta (supra). Accordingly, we are of the view that the lease rent received by the assessee for the building as well as furniture and fixtures, which are in the form of amenities only, should be assessed as income under the head "Income from House Property".

7. Accordingly, we set aside the order of Id. CIT(A) and direct the AO to assess the entire lease rental income received under both the agreements as income under the head "Income From House Property".

8. In the result, the appeal filed by the assessee is allowed.

5. The above decision of the Tribunal was followed in A.Y. 2011-12 also vide order dated 8<sup>th</sup> June, 2016. As the facts and circumstances during the

year under consideration are similar, respectfully following the order of the Tribunal in assessee's own case we direct the AO to treat the income as income from house property.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14<sup>th</sup> May, 2018.

Sd/-  
**(Ram Lal Negi)**  
**Judicial Member**

Sd/-  
**(R.C. Sharma)**  
**Accountant Member**

Mumbai, Dated: 14<sup>th</sup> May, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -51, Mumbai*
4. *The Pr. CIT, Central-2, Mumbai*
5. *The DR, "B" Bench, ITAT, Mumbai*

*By Order*

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*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.