

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA.No. 4470/MUM/2016 (A.Y:2012-13)

M/s. Machinery & Spares,
201/202, Karma Stambh,
Opp. MTNL Office, Vikhroli (W),
Mumbai – 400 083

v. Asst. Commissioner of Income
Tax – 29(2), C-10, 2nd Floor,
B.K.C. Bandra (E),
Mumbai – 400 051

PAN No: AAAFM 1528 K

(Appellant)

(Respondent)

Assessee by : Shri Vimal Punmiya

Revenue by : Shri M.V. Rajguru

Date of Hearing : 05.03.2018

Date of Pronouncement : 31.05.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)-40, Mumbai dated 01.03.2016 for the Assessment Year 2012-13.

2. The assessee has raised the following grounds in its appeal: -

"1. On the facts and circumstances of the case, whether the learned CIT (A) & Assessing Officer were correct in holding that the Assessee is not a deemed owner as per section 27(iib) r.w.s. 269 UA & as such was not entitled to declare

income u/s.22 of the Income Tax Act 1961 & claim standard deduction of ₹.63,60,750/- @ 30% u/s.24b on rental income of ₹.2,12,02,500/-.

2. *On the facts and circumstances of the case, whether the learned CIT (A) & Assessing Officer were correct in not following the judgment of Hon'ble ITAT for A.Y. 2005-06, 2006-07, 2007-08 & holding that the rental income received by the Assessee should be Assessed as Income from Other sources instead of Income from House property as declared by the Assessee."*

3. At the outset Ld. Counsel for the assessee submitted that an identical issue came up before the Tribunal i.e. as to whether the rental income from property should be assessed under the head House Property or other sources for the Assessment Years 2010-11 & 2011-12 and also in earlier years and the Tribunal held that rental income received by the assessee from property is assessable under the head income from house property and not under the head income from other sources. Copies of the Orders are placed on record.

4. Ld. DR vehemently supported the orders of the Authorities below.

5. We have heard the rival submissions and perused the orders of the authorities below and the Coordinate Bench Orders. We find that an identical issue came up before the Tribunal for the Assessment Year 2010-11 & 2011-12 in ITA.No. 5695/Mum/2013 dated 21.10.2015 and in ITA.No. 4517/Mum/2014 dated 27.07.2016, wherein the Tribunal held that income from subletting of property is assessable under the head income from house property and not under the head income from Other Sources.

The Tribunal in its order dated 21.10.2016 for the Assessment Year 2010-11 held as under:

“2. In this appeal, the solitary dispute relates to the manner in which the rent of Rs.68.02 lacs received by the assessee from ICICI Bank Ltd is to be taxed. In the return of income assessee has declared such income as being taxable under the head ‘income from house property’. The Assessing Officer noticed that the amount received is not from a property owned by the assessee but it is in respect of a property which has been sub-let to ICICI Bank Ltd. Therefore, he has proceeded to tax the same as ‘income from other sources’. The Assessing Officer further noticed that though in assessment year 2005-06, the Tribunal had upheld the plea of the assessee for assessing such income under the head ‘income from house property’ but since the appeal of the Revenue was pending before the Hon'ble Bombay High Court, he proceeded to tax such receipt as ‘income from other sources’. The CIT(A) has also affirmed the stand of the Assessing Officer on the ground that assessee is a mere licensor of the property and, therefore, the income received by it from ICICI Bank Ltd. was taxable under the head ‘income from other sources’ and not ‘income from house property’. Against such a decision assessee is in appeal before the Tribunal.

3. The Ld. Representative for the assessee pointed out that in the past years, the issue has been consistently decided by the Tribunal in favour of the assessee, starting with the lead order for assessment year 2005-06 vide ITA No.3008/Mum/2008 dated 09/10/2009. In this context, the following discussion in the order of the Tribunal dated 9/10/2009(supra) is relevant:-

“We have considered the rival submissions. We find that the assessee is in possession of the premises for the last 40 years. The premises were with M/s Bharat Import and Exports as tenant and this firm was dissolved vide dissolution of the partnership made on 3-4-1958. Thereafter the tenancy right in the premises were received by the assessee. The owners of the property M/s. Vrindavan Lal Goverdhan Lal have allowed the assessee firm to create sub-tenancy with the regard to the premises and has given their premises for creating the sub-tenancy in favour of ICICI Bank, Ltd. for a period of 15 years on certain terms and conditions as detailed in their letter dated 24/11/2000 addressed to the assessee, copy thereof filed in the compilation before us. In these facts of the case we find that the assessee become a deemed owner. in accordance with provision of section 27(iii)b) r.w.s. 269UA(f)(i) of the Act. 3 ITA 5689/M/12 There is no material on record to suggest that the letter dated 24/11/2000 of M/s. Vrindavan Lal Goverdhan Lal is not genuine. The fact that the agreement for letting out the premises to ICICI Bank Ltd. is for a period of 15 years, clinches the issue in favour of the assessee as they become the deemed owner under the provision of

section 27(iib) r.w.s. 269 UA (f)(i) of the Act and accordingly is entitled to deduction as provided u/s 24(a) of the Act. The decision of the Mumbai Tribunal in 8 SOT 441 and Calcutta Tribunal in 89 ITD 199 covers the issue in this case in favour of the assessee and accordingly we hold that there is no mistake in the order of CIT(A) in holding that the assessee is the deemed owner of the premises u/s 27(iib) of the Act and the order of the CIT(A) is confirmed and the grounds of appeal of the revenue are dismissed.”

4. Similarly in assessment years 2006-07, 2007-08 and 2008-09 the Tribunal vide its order in ITA No. 5419/Mum/2009, ITA No. 4584/Mum/2010 , ITA No. 6186/Mum/2011 and ITA No.5689/Mum/2012 dated 29-12-2010, 29-7-2011, 09-01-2014 and 28/04/2015 respectively followed the earlier precedents in assessee's own case for A.Y. 2005-06 (supra) and decided the issue in favour of the assessee.

3.1 In view of the aforesaid precedents the issue is liable to be decided in favour of the assessee. So however, we find that the CIT(A) has noted that the Tribunal erred in treating the assessee as a deemed owner in terms of section 27(iib) r.w.s. 269 UA (f)(i) of the Act because the fact that the assessee was a mere licensor was not brought to the notice of the Tribunal in assessment year 2005-06. Notably, assessee has earned the rental income from ICICI Bank in terms of sub-tenancy dated 29/11/2000 and an agreement dated 24/11/2000 between assessee and the owner of the property, namely, M/s. Vrindavan Lal Goverdhan Lal, which sets out all the terms and conditions of the arrangement. The relevant discussion in the order of the Tribunal for 2005-06 (supra), which has been reproduced by us in the earlier paras, clearly shows that the entire arrangement in terms of which assessee has earned the impugned rentals has been examined. It has also been specifically noticed that the owner of the property M/s. Vrindavan Lal Goverdhan Lal allowed the assessee firm to create sub-tenancy with regard to the premises in question and assessee created the sub-tenancy in favour of ICICI Bank Ltd. for a period of 15 years on certain terms and conditions. The Tribunal has noted that such terms and conditions have been placed before them. In this background, the Tribunal held that assessee became a 'deemed owner' on an application of section 27(iib) r.w.s. 269 UA (f)(i) of the Act. On the contrary, reference made by the CIT(A) to the fact that assessee was a mere licensor of the property and, therefore, cannot be treated to be a deemed owner in terms of the section 27(iib) r.w.s. 269 UA(f)(i) of the Act is a bald assertion, and is de hors any reference to the terms and conditions of the agreement. The Tribunal, on the other hand, had considered the entire arrangement and arrived at a considered finding on the application of section 27(iib) r.w.s. 269 UA(f)(i) of the Act treating assessee as a 'deemed owner'. Therefore, in our considered opinion, the CIT(A) has grossly erred in not following the decision of the Tribunal in the assessee's own case, which has been rendered under identical circumstances, without any cogent and substantive reasons of fact or law. Be that as it may, we set-aside the order of the order of the CIT(A) and direct the Assessing Officer to treat the sub-tenancy rent receipts from ICICI Bank Ltd. as assessable under the head income from house property following the aforesaid precedents.”

6. Respectfully following the said order, we hold that the sub tenancy rent receipts from ICICI Bank Limited is assessable under the head income from house property and not under the head income from other sources. Grounds raised by the assessee are allowed on this issue.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on the 31st May, 2018.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 31/05/2017
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum