

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 3107/Mum/2013

(निर्धारण वर्ष / Assessment Year 2008-09)

Tulsiani Buildings & Textiles Pvt. Ltd. 1103/1104, Chambers, 212, Nariman Point, Mumbai-400 021	Vs.	DCIT, Circle 3(3) 6 th Floor, R.No. 609, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AA ACT1892Q		

अपीलार्थी की ओर से / **Appellant by** : Shri AR Singh,
Shri Apurva Shah, ARs'

प्रत्यर्थी की ओर से / **Respondent by** : Shri DG Pansari, DR

सुनवाई की तारीख / Date of hearing:	06-08-2018
घोषणा की तारीख / Date of pronouncement :	06-08-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-7, Mumbai [in short CIT(A)], in appeal No. CIT(A)-7/DCIT-3(3)/IT-175/10-11 dated 15.01.2013. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-3(3), Mumbai (in short 'DCIT'/ AO) for the A.Y. 2008-09 vide order dated 15.11.2010 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. At the outset, the learned Counsel for the assessee took us through the MA No. 162/Mum/2017 arising out of 3107/Mum/2013 for AY 2008-09 order dated 14.05.2018, wherein, the Tribunal has recalled the ground No. 4 for adjudication vide Para 3 as under: -

“3. After hearing the Ld. departmental representative, we perused the relevant material on record in the light of the submissions of the Ld. counsel. We notice that the Bench has not decided this ground of appeal as the assessee has taken the same as without prejudice to ground No.3. However, in our considered view since the assessee has taken ground No 4 as alternative ground to consider the same in case ground No 3 is decided against the assessee. Hence this mistake apparent is required to be rectified. We accordingly, re-call the order dated 24.01.2017 for the limited purpose of adjudicating ground No. 4 of the assessee’s appeal ITA No 3107/Mum/2013. Registry is directed to fix the matter before the regular Bench.”

3. Briefly stated facts are that the assessee has rented out the premises, owned by it during the year and collector Mumbai has levied the charge of ₹ 2,47,87,500/- towards the same. As per the agreement between the State Bank of India and the assessee, 50% thereof was to be borne by the SBI i.e. a sum of ₹ 1,23,93,750/-. The assessee claimed the deduction of proportionate of 1/10th of this amount borne by it under section 23 of the Act. In term of this, the CIT(A) enhanced, the rent received by a sum of ₹ 1,23,93,750/- borne by the tenant SBI. It was claimed that the present levy is charge by local authority and is directly connected to the rent of the premises. It was also claimed that the assessee has earned rental income which is taxed as income from house property. During the year, the assessee has incurred a sum of ₹



1,23,93,750/- being levy by the collector of Mumbai for grant of NOC, which was necessary in order to enter into an agreement for leave and license with the State Bank of India. The said lease was for a period of ten years and accordingly, this amount of ₹ 1,23,93,750/- i.e. 1/10th of the said amount was reduced while computing the taxable annual value of the property. The learned Counsel for the assessee before us, contended that this amount has been enhanced by CIT(A) and Tribunal has already confirmed the enhancement. However, now the learned Counsel for the assessee only requested that this should be allowed as deduction in term of section 24 of the Act i.e. payment of levy of stamp duty on leave and license agreement to the State Bank of India. The CIT(A) has not allowed this claim by observing in Para 6.8 and the relevant para reads as under:

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“6.8 The appellant's AR vide its letter dated 27/09/2012 has requested for deduction of the sum of Rs.1,23,93,750/- u/s.23 against property income. However, I am not in agreement with the appellant's request, because this deduction can be allowed only if the appellant could have paid the said sum or would have incurred such expenditure. As the appellant has not at all incurred any such expenditure nor it has paid the sum of Rs.1,23,93,750/- as claimed for deduction, hence in this perspective of the appellant's case, the claim made by the appellant for deduction of such sum u/s. 23 of the Act is completely unjustified and untenable. Accordingly, appellant's this request is rejected.”

Aggrieved, now assessee is in appeal before Tribunal.

4. We have considered this issue and noted that any levy borne by the tenant is always a part of taxable annual value and the CIT(A) has



already enhanced this amount. In term of section 23 of the Act which provides that while computing the annual value of any property any tax levied by any local of the authority in respect of the said property should be deducted. According to us, this levy by the local authority is allowable as deduction under section 23 of the Act but its annual payment should have been verified. Accordingly, we refer this matter back to the file of the AO for verification whether the assessee company actually paid this amount or not, it means that the AO will verify whether the said Bank has paid this amount i.e. levy to State Government amounting to ₹ 1,23,93,750/- claimed by assessee. However, we noticed that the assessee has also claimed the deduction of 1/10th i.e. 1/10th for the relevant assessment years which is not permissible in case of deduction is allowed for the entire amount in this very year. The AO will accordingly, decide the claim of the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06-08-2018.

आदेश की घोषणा खुले मे दिनांक 06-08-2018 को की गई ।

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 06-08-2018

Sudip Sarkar /Sr.PS



ITA No. 3107/Mum/2013

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,

Assistant Registrar
ITAT, MUMBAI