

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'SMC' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA Nos.901 & 902/Mum/2018
Assessment Years: 2013-14 & 2014-15**

Corporate Avenue Co-op. Premises Society Ltd. 1 st Floor, Sonawala Road, Goregaon East, Mumbai-400063	बनाम/ Vs.	Income Tax Officer- 31(1)(3), C-13, 3 rd Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400051
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No.AAAAC8883C		

निर्धारिती की ओर से / Assessee by	Shri Devang K Shah
राजस्व की ओर से / Revenue by	Shri S.K. Bepari-DR

सुनवाई की तारीख / Date of Hearing :	06/09/2018
आदेश की तारीख / Date of Order:	06/09/2018

आदेश / O R D E R**Per Joginder Singh, JM**

These two appeals are by the assessee for Assessment Years 2013-14 & 2014-15- against the impugned order dated 18/09/2017 of the Ld. First Appellate Authority, Mumbai.

2. The first ground raised by the assessee in both the appeals is with respect to the addition and taxability of rental income from cellular service provider with respect to the Base Transceiver Station /in building solution installed on the terrace of the building of the assessee under the head "Income from other sources", thereby, denying the benefit of standard deduction under section 24(a) of the Act, without appreciating the essence of agreement with Cellular Service Provider allowing the use of open space or area on the terrace of its building for installation of their equipment.

3. During hearing the learned counsel for the assessee relied upon the decision in the case of *Matru Ashish Co-operative Housing Society Ltd. vs. Income Tax Officer (144*

TTJ 446) (Mum), Manpreet Singh vs. Income Tax Officer (2015) 67 SOT 426 (Del), Meherbad Co-op. Hsg. Society vs. Income Tax Officer (ITA No.6102/Mum/2009), Niagara Hotels & Builders Pvt. Ltd. (2015) 233 taxman 180 (Del). On the other hand, the learned DR contended that this matter may be sent to the file of the learned CIT(A) to examine the aforesaid cases and the agreement between the parties. The learned counsel for the assessee also consented that all these cases and the agreement needs to be examined afresh by the learned CIT(A).

4. We have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee is a co-operative society, having income from house property and other sources. The assessee declared income of Rs. 5,14,710/- (Assessment Year 2014-15) and Rs. 3,90,070/- for A.Y. 2013-14, which were processed under section 143(1) of the Income Tax Act, 1961 (hereinafter the Act). Subsequently, the case of the assessee was selected for scrutiny therefore, notice under section 143 (2) and 142(1) were issued to the assessee. The learned Assessing Officer disallowed the deduction under

section. 24(a) of the Act amounting to Rs. 1,58,548/- and also the claimed deduction under section. 80P(2)(d) of the Act. On appeal before the learned CIT(A) the stand taken in the assessment order was affirmed. Before us, the learned counsel for the assessee has relied upon aforementioned decisions by claiming that the case of the assessee is covered by the aforesaid decisions. So far as the denial of deduction under section 80P(2)(d) is concerned, the claim of the assessee is that this issue also requires fresh examination as it is covered by the decision in Bharat Co-operative Bank Ltd., Mumbai District Central Co-operative Bank and Saraswat Co-operative Bank Limited. As contended before us from both sides, that the issues in hand requires fresh adjudication/examination of facts and the agreement entered into between the parties. Thus, without going into much deliberation, we deem it appropriate to set aside these appeals to the file of the learned CIT(A) to examine the factual matrix including the agreement between the parties and the cases relied upon so that the interest of both parties may be safeguarded. The assessee is directed to furnish necessary evidence, if

any, in support of its claim. The assessee be given opportunity of being heard. Thus, both the appeals are allowed for statistical purposes.

This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 06/09/2018.

Sd/-

(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 06/09/2018

Shekhar. P.S./नि.स.

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai