

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5313/MUM/2017
Assessment Year: 2013-14**

M/s Camoron Finance and Investments, 139-140B Shiv, Crossing of Sahar Road and W.E. Highway, Vile Parle (E), Mumbai - 400057 PAN: AAAFC5210A	Vs.	The Joint Commissioner of Income Tax – 25(2), Bandra Kurla Complex, Mumbai - 400051
(Appellant)		(Respondent)

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**ITA No. 5306/MUM/2017
Assessment Year: 2013-14**

The ACIT-25(2), R. No. 508, C-10, 5 th Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051	Vs.	M/s Camoron Finance and Investments, 139-1408 Crossing of Sahar Road and W.E. Highway, Vile Parle (E), Mumbai - 400057 PAN: AAAFC5210A
(Appellant)		(Respondent)

Assessee by : Shri Moksha Mehta (AR)

Revenue by : Shri Abi Rama Kartikiyen (DR)

Date of Hearing: 07/01/2019
Date of Pronouncement: 29/01/2019

ORDER

PER RAM LAL NEGI, JM

These are the cross appeals filed by the assessee and the revenue against the order dated 28.06.2017 passed by the Commissioner of Income Tax (Appeals)-37 (for short 'the CIT (A)'), Mumbai, for the assessment year 2013-14,

whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

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2. Brief facts of the case are that the assessee, a partnership firm, having income from house property, running of Cinema Theatre and capital gain, e-filed its return of income for the assessment year under consideration declaring the total income of Rs. 10,81,71,430/-. The assessment was completed u/s 143(3) of the Act, determining the total income at Rs. 13,32,48,030/-. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee partly allowed the appeal of the assessee. Aggrieved by the order passed by the Ld. CIT(A), the assessee and the revenue are in appeal before the Tribunal.

3. The assessee has preferred the present appeal by raising the following effective grounds:

Ground I:

1. *The Commissioner of Income-tax (Appeals) -37 ("CIT (A)") erred in confirming the action of the Joint Commissioner of Income Tax-25(2), Mumbai ("AO") in treating income received in respect of the Amenities Agreement with, the lessee of the premises under the head 'Income from Other Sources' instead of 'Income from House Property' as claimed by the Appellant.*
2. *He failed to appreciate and ought to have held that such income received under the Amenities Agreement was assessable under the head 'Income from House Property' only, along with rental income received under the Lease Agreement with the lessee for the same premises.*
3. *The Appellant therefore, prays that the said income received under Amenities Agreement be assessed as 'Income from House Property.'*

Without prejudice to Ground I

Ground II:

1. *The CIT (A) ought to have considered that if at all any part of the amount received under the Amenities Agreement is ascribed to its obligation to carry out repairs etc. the same must be treated as receipts in advance, to be set off against such expenditure in future years.*
2. *The Appellant therefore prays that such receipts under the Amenities Agreement be directed to be treated as 'receipts in advance' and not as 'income'.*

Ground III:

1. *On the facts and circumstances of the case and in law, the AO erred in computing interest charged u/s 234B/234C of the Act.'*
2. *The Appellant prays that the interest chargeable u/s 234B/234C of the Act accordingly deleted/reduced.*

4. At the outset, the Ld. Departmental Representative (DR) submitted that the issues raised by the assessee are covered in favour of the revenue by the order of the Tribunal rendered in assessee's own case for the A.Y. 2012-13. The Ld. counsel for the assessee fairly admitted that the issues involved in the present case are identical to the issues involved in the assessee's own appeal for the A.Y. 2012-13 and the Tribunal by following the decision of the coordinate Bench rendered in the assessee's own case ITA No. 7497/Mum2012 and 170/Mum/2013 for the A.Y. 2009-10, confirmed the order of the Ld. CIT(A) and dismissed the appeal of the assessee.

5. We have gone through the material on record in the light of the submissions of the Ld. DR. We notice that the facts of case and the issues raised by the assessee in the present case are identical to the facts of the case and issues raised by the assessee in assessee's own case ITA No. 5780/Mum/2016 dated 16.03.2018 for the A.Y. 2012-13. The coordinate Bench of the Tribunal has decided the said issues in favour of the revenue and dismissed the appeal of the assessee by following the decision of the coordinate Bench rendered in the assessee's own case for the assessment year 2009-10.

The relevant paras of the order of the coordinate Bench rendered in the assessee's case read as under:-

"8. At the outset, the learned Counsel for the assessee stated that the Tribunal in earlier years in ITA No. 7497/Mum/2012 & 170 /Mum/2013 order dated 29-05-2015 for AY 2009-10, exactly on identical issue has confirmed the action of the AO vide Para 5 to 7 including contention of alternate argument of the assessee as under: -

"5. Per contra, the ld. DR strongly supported the orders of the Revenue authorities. After giving a thoughtful consideration to the rival submissions, we have carefully perused the orders of the authorities below. It is not in dispute that the assessee has entered into two separate agreements, one for lease rental and the other for amenities. On going through the amenities agreement, the only amenity to be provided by the lessor to the lessee was in respect of structural repairs to the building let out and to pay municipal and property taxes in respect of the let out property. We fail to understand how these can be termed as amenities in respect of the letting out property. Even if the property is not let out, the assessee has to incur expenditure towards repairs and maintenance of the said property and also to pay municipal taxes. It appears that by separately charging in the guise of amenities charges, the assessee wanted to reduce the liability to property tax which is based on the rental income of the property. The cases relied upon by the ld. Counsel are totally misplaced and not matching the facts of the case in hand. Considering the fact in totality, we do not find any error in treating the amenity charges under the head 'income from other sources'. Ground No. 1 is accordingly dismissed.

6. Ground No. 2 is an alternate plea by which the assessee has claimed that the amenities charges received by it should be treated as advance. It is the claim of the assessee that amenity charges should be treated as advance, as it runs through the period of lease. Therefore for the year

under consideration, the amenity charges should be treated as advance.

7. We do not subscribe to this claim of the ld. Counsel. The amenity charges have been received by the assessee as per the agreement and the same has to be taxed under the head 'income from other sources' as held hereinabove. The alternate claim of the assessee is accordingly dismissed.'

Respectfully following the Tribunal's decision in assessee's own case, we confirm the order of the AO and this appeal of the assessee is dismissed".

6. The coordinate Bench has decided the identical issues in favour of the revenue and dismissed the assessee's appeal ITA No. 7497/Mum/2012 for the A.Y. 2012-13. Hence, respectfully following the order of the coordinate Bench aforesaid, we dismiss the assessee's appeal and uphold the findings of the Ld. CIT (A).

ITA No. 5306/MUM/2017 (Assessment Year: 2013-14)

The revenue has preferred the present appeal by raising the following effective grounds:

- 1. "On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in allowing municipal taxes against "Income from Other Sources" u/s 57(iii) instead of "Income from house Property" ignoring that the municipal taxes are paid in respect of the house property and thus are directly related to the House property on which income is earned."*
- 2. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in ignoring that the municipal taxes are to be deducted from "Income from House Property" u/s 23 and not from "Income from Other Sources" and have not covered u/s 57(iii) of the Income Tax Act, 1961.*

2. Before us, the Ld. DR submitted that this issue is covered in favour of the revenue by the order of the Tribunal in assessee's own case for the A.Y. 2012-13. The Ld. counsel fairly admitted that the Tribunal has decided the identical issue in the appeal filed by the revenue in the assessee's case for the A.Y. 2012-13.

3. In the light of the submissions of the parties, we have perused the material on record. We notice that the coordinate Bench has decided the identical issue in favour of the revenue and allowed the revenue's appeal in ITA No. 5886/Mum/2016 for the A.Y. 2012-13 by following the decision of the coordinate Bench passed in the assessee's own case for the A.Y. 2009-10. The relevant portion of the order followed by the coordinate Bench reads as under:

“13. We have given a thoughtful consideration to the rival submission and have carefully perused the orders of the authorities below. As discussed elsewhere, we have held that the amenities charges have to be taxed under the head of 'income from other sources'. Section 57(iii) shows that any other expenditure not been in the nature of capital expenditure lead out of expanded wholly and exclusively for the purpose of making or earning income which is taxed under the head 'income from other sources'. In our considered opinion, payment of municipal taxes cannot be said to be let out or expanded wholly and exclusively for the purpose of earning amenity charges, as these municipal taxes are directly related to the letting out of the property, the rental income from which is taxed is under the head 'income from house property'. We, therefore, find that the finding of the Id. CIT(A), in allowing the municipal taxes deductible as erroneous. We set aside the findings of the ld. CIT(A) and confirm that of the A.O. Ground Nos. 1 and 2 are accordingly allowed.” At the time of hearing, the learned Counsel fairly conceded the position. 5. After hearing the rival contentions and going through the facts, we find that the issue is squarely covered in favour of Revenue and against assessee. Respectfully following the Tribunal's decision in assessee's own case, we restore the order of the AO. Similar is the position in

AY 5 ITA No. 5780 & 5886/Mum/2016 2010-11 in ITA No. 4227 & 4583/mum/2014, wherein the Tribunal vide order dated 20-01-2016 restored the order of AO. Hence this issue of Revenue's appeal is allowed."

4. The coordinate Bench has allowed the appeal filed by the revenue in the assessee's case for the A.Y. 2012-13 observing as under:-

"5. After hearing the rival contentions and going through the facts, we find that the issue is squarely covered in favour of the Revenue and against assessee. Respectfully following the Tribunal's decision in assessee's own case, we restore the order of the AO. Similar is the position in AY 2010-11 in ITA No. 4227 & 4583/mum/2014, wherein the Tribunal vide order dated 20.01.2016 restored the order of AO. Hence this issue of Revenue's appeal is allowed."

5. Since, the coordinate Bench has decided the identical issue in favour of the revenue and allowed the appeal of the revenue, we find no reason to take a different view in the identical set of facts. Hence, respectfully following the decision of the coordinate Bench, allow the appeal of the revenue, set aside the findings of the Ld. CIT (A) and uphold the findings of the AO.

In the result, appeal filed by the assessee is dismissed and the appeal of the revenue is allowed.

Order pronounced in the open court on 29th January, 2019.

Sd/-

(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/01/2019

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**