

IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.768 & 769/Mum/2019
(Assessment Years: 2013-14 & 2014-15)

Kohli Industries 601, Hill-N-Sea 6 th Floor, 72 Palli Hill Road Bandra (W) Mumbai-400 050	Vs.	ITO-24(2)(3) Piramal Chambers Lalbaug Mumbai-400 012
PAN/GIR No.AAAF6841R		
Appellant)	..	Respondent)

Assessee by	Shri R.K.Bothra, AR
Revenue by	Shri Sachchidanand Dube, DR
Date of Hearing	09/01/2020
Date of Pronouncement	22/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These two appeal filed by the assessee are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals), Mumbai, both dated 31/12/2018 and they pertain to AY 2013-14 and 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee, has more or less raised common grounds of appeal for both AY's. Therefore, for the sake of brevity grounds of appeal filed for AY 2013-14 are reproduced as under:-

1. *Whether on facts and circumstances of the case. The Ld.CIT(A) was correct in confirming the disallowances of Rs.83,389/- paid as society charges while determining the annual value of the flat.*

2. *Whether on the facts and circumstances of the case. The Ld.CIT(A) was correct in confirming the addition of Rs. 13,605/- paid as donation to local Ganesh Mandals etc.*

3. The brief facts of the case are that the assessee is a partnership firm, which is engaged in the business of manufacturer of goods, filed its return of income for AY 2013-14 on 30/09/2013, declaring total income at Rs. 'Nil'. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has claimed society charges of Rs. 83,889/- for Maple Society (for flat at Powai), the income of which is offered to tax under the head income from house property, but claimed the said expenditure into the profit and loss account. Therefore, he called upon the assessee to explain as to why expenditure related to income from house property shall not be disallowed. In response, the assessee vide letter, dated 17/03/2016, submitted that society charges paid to Maple Society of which income is disclosed under the head income from house property not only relates to said society, but also relates to manual church society and this is a society, where the registered office of the firm is situated. The Ld. AO after considering the relevant submission of the assessee noted that as per the provision of section 24(a) deductions equal to a sum of 30% of the annual value is allowable and no other deductions are permissible as per the law, because deductions allowed @ 30% will take care all expenditure of repairs and maintenance of the property. Therefore, he opined that deductions claimed towards society charges out of rental income is not permitted. Similarly, the Ld. AO noticed that the assessee has claimed deduction for a sum of Rs. 13,605/- under the head

donations, but on verification, it was noticed that such donations has been paid to local organizations for Genasha festival. Hence, the same cannot be allowed as deductions. When the issue has been discussed with the Ld. AR for the assessee, he has agreed for disallowances, but requested for deductions u/s 80G of the I.T.Act, 1961. Since, the assessee has not claimed deductions u/s 80G by filing revised return, the Ld. AO has not consider the claim of the assessee for deductions towards donations u/s 80G of the I.T.Act, 1961.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A), before the Ld.CIT(A), the assessee has reiterated its arguments made before the Ld. AO , along with certain judicial precedents, in respect of disallowances of society charges out of gross rental income. Similarly, the assessee further submitted that insofar as, donations paid to local mandals for Ganesha festival, said expenditure is incurred wholly and exclusively for the purpose of business, because this is a compulsory donation one has to be paid to local mandal in order to run business smoothly.

5. The Ld.CIT(A) after considering the relevant submission of the assessee and also taken support from the decision of ITAT, Delhi Bench, in the case of Tube Rose Estates (P.) Ltd. 123 ITD 498 (Delhi) [2010] held that if, expenses like society charges is held to be allowable, then numerous other expenses like brokerage professional fees salary or commission of employee/agent, who collects rent can also be have claimed and held to be allowable and this is not mandate of the law. Therefore, he opined that payment of society charges cannot be allowed as deduction, either u/ 23 or u/s

24 except as otherwise provided u/s 24(a) @ 30% on gross rental income. Since, the assessee has claimed deductions towards society charges out of rental income, over and above deductions claimed u/s 24(a), the Ld. AO was right in rejecting the claim of the assessee and accordingly, confirmed disallowances of payment of society charges.

6. Insofar as, disallowances of donations paid to local mandals, the Ld.CIT(A) noted that expenditure incurred is not for business purpose, but it is in the nature of personal expenses, because said donations are meant for religious functions. Therefore, the same cannot be allowed as deductions. He, further observed that assessee could have claimed deduction u/s 80G, if the local mandals had the requisite approvals as required under the Act. In absence of the same, the Ld. AO is correct in disallowances of donations of Rs. 13,605/-. Aggrieved by the Ld.CIT(A), the assessee is in appeal before us.

7. The first issue that came up for our consideration from ground No. 1 of assessee appeal is disallowances of society maintenance charges claimed by the assessee. The facts with regard to the impugned disputes are that the assessee has let out a property at Maple Society, Powai and the income of which is offered to tax under the head income from house property. The assessee has debited society charges of Rs. 83,889/- into the profit and loss account. The Ld. AO has disallowed said charges, on the ground that expenses related to income from house property cannot be allowed as deduction.

8. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirmed the action of the Ld. AO in denying the deduction for municipal tax and other society charges of Rs. 83,389/- without appreciating the fact that municipal tax paid is deductible out of gross annual value. The Ld. AR, further submitted that this issue is covered by the decision of ITAT, Mumbai 'A' bench in the case of Kanwaljit Singh P.Kohli In ITA No. 839/ Mum/2014, where it was held that municipal taxes and maintenance charges has to be reduced from the rental income. The assessee has also relied upon the decision of ITAT, in the case of Ms. Aloo Bejan Daver in ITA Nos. 2381 & 2382/Mum/2010.

9. The Ld. DR, on the other hand strongly supporting order of the Ld.CIT(A) submitted that expenditure related to income from house property cannot be allowed as deduction under the head income from business or profession. Further, under the head income from house property, only deduction permissible is the statutory deduction provided @ 30% u/s 24(a). Since, the assessee has already claimed statutory deductions @ 30% on rental income, further deductions towards society charges out of rental income is not permitted.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As per the provision of section 23 of the Act, the annual value of the property shall be actual rent received less, the tax levied by any local authority, in respect of the property so let out. In computing income from house property, the assessee can claim deductions for property taxes levied by the local authority, if such

taxes has been actually paid by him during the relevant financial year. In addition, the statutory deductions @ 30% as provided u/s 24(a) and other deductions like interest is permissible, as per the provision of the Act. In light of above legal position, if you consider the facts of the present case, we find that the assessee has claimed deductions towards society charges paid to Maple Society out of rental income. No doubt, If the amount claimed by the assessee includes municipal tax levied by the local authorities, then the assessee is entitled for deductions towards said municipal taxes out of rental income. But, in respect of society charges for maintenance of property no deductions could be allowed, because while computing income under the head house property, the statutory deduction @ 30% has been provided, which take care all expenses related to repairs and maintenance of the property. Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) was right in coming to the conclusion that no further deduction is allowed towards any expenses, when statutory deductions @ 30% is provided u/s 24(a) out of rental income. But, the facts remains that, deduction claimed by the assessee includes amount paid towards local taxes is not emanating from the records. It is the claim of the assessee that it includes municipal taxes, whereas the Ld. AO noted that it is paid for maintenance of the property. Therefore, we are of the considered view that the issues needs to go back to the file of the Ld. AO to ascertain the correct facts with regard to nature of expenses. If, the amount paid to society charges includes municipal taxes levied by the local authorities, then to that extent the Ld. AO is directed to allow deductions out of rental income. If the amount relates to maintenance of property, then the Ld. AO is right in denying deductions for said amount out of rental income.

11. The next issue that came up for our consideration from ground No.2 of assessee appeal is disallowances of donations of Rs. 13,605/-. The assessee has claimed deductions for donations paid to local mandals such as Ganesha mandals etc,. The assessee claims that these are compulsory donations one has to paid to local mandal in order to run business smoothly. We find that it is a general practice prevailing in business that in some occasions, the business people needs to pay certain donations to local peoples for celebrations of various festivals and functions and those donations are compulsory in nature in order to smoothly conduct the business of the assessee. Therefore, we are of the considered view that donations paid by the assessee to local Ganesha mandals are necessarily incurred wholly and exclusively for the purpose of the business of the assessee and are deductible u/s 37(1) of the I.T.Act, 1961. Therefore, we direct the Ld. AO to delete additions made towards disallowances of donations.

12. In the result, appeal filed by the assessee is allowed for statistical purpose.

ITA No. 769/Mum/2019:-

13. The issue involved in this appeal is identical to the issue, which we had considered in ITA No. 768/Mum/2019 for AY 2013-14. The reasons given by us in preceding paragraphs shall mutatis mutandis apply to this appeal as well. Therefore, for similar reasons, we set aside the appeal to the file of the Ld. AO and direct him to ascertain the nature of expenses in payment made to society charges and

decide the issue in accordance with our findings given for AY 2013-14. Accordingly, the appeal of the assessee is allowed for statistical purposes.

14. As a result, both appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 22 /01/2020

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 22 /01/2020
Thirumalesh Sr.PS

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai