

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C” MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 4437/MUM/2017
(Assessment Year: 2012-13)**

ITO-2(2)(4), Room No. 542,
5th Floor, Aaykar Bhavan,
M.K Road,
Mumbai – 400 020.

M/s Perspective Business
Systems Pvt. Ltd., 26,
Onlooker Building,
Sir P M Road,
Mumbai 400 001.

PAN No. AABCP4398L

(Assessee)

(Revenue)

Assessee by : Shri. Subodh Ratnaparikh, A.R
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 28/01/2021
Date of pronouncement : 01/02/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-5, Mumbai dated 09.03.2017, which in turn arises from the assessment order passed u/s 143(3) of the Income-tax Act, 1961 (for short “Act”), dated 11.03.2015 for assessment year 2012-13. The revenue has assailed the impugned order on the following grounds of appeal before us :

“i) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in directing to delete the addition made on account of rent from basement without appreciating the fact that the assessee failed to show that the basement area was SOP used wholly and exclusively for business purpose.

ii) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in directing to delete the addition made on account of rent for basement without appreciating the fact that the assessee failed to prove with evidence that the liability of Rs. 66 Lakh shown in the balance sheet is not towards basement charges deposit.

iii) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in directing to delete the addition made on the account of unexplained stamp duty of Rs74,77,350/- as although the identity of a corporate entity stands established

because of its incorporation, the creditworthiness of the contributors and genuineness of the transactions have not been proved.

iv) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in directing to delete the addition made on the grounds of outstanding liability since F. Y. 2005-06 without appreciating the fact that the assessee failed to clearly show the nature of liability and since this liability is appearing in assessee's books since so long accounts to cessation of liability taxable u/s. 41 of I.T.Act..

v) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in directing to delete the addition made on the grounds of outstanding liability since F. Y. 2005-06 without appreciating the fact that the assessee failed to prove with evidence that the liability of Rs. 1.01 crores shown in the balance sheet is a genuine liability.

vi) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was right in directing to delete the addition made on the grounds of outstanding liability since F. Y. 2005-06 without appreciating the fact that the assessee failed to prove with evidence that the liability of Rs. 1.01 crores shown in the balance sheet is a genuine liability.

vii) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has not appreciated the facts that the assessee failed to show that the remaining expenses are relatable to premises which is used for the purpose of business and hence not covered by sec. 24 of the I.T.Act.”

2. Briefly stated, the assessee company which is engaged in the business of providing business applications in the field of computer hardware, software, education and networking had e-filed its return of income for A.Y 2012-13 on 29.09.2012, declaring an income of Rs. 15,23,530/-. The return of income was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) and its income was assessed at 2,39,21,450/- after inter alia making the following additions/disallowances :

Sr. No.	Particulars	Amount
1.	Addition of deemed rent of basement property as 'house property' income. (net addition)	Rs. 33,60,000/-
2.	Addition u/s 68 of registration & stamp duty paid by the assessee w.r.t an 'agreement', dated 31.03.2012.	Rs. 74,77,350/-
3.	Addition u/s 41(1) of the BMC charges payable that were outstanding in the assessee's balance sheet since long i.e from F.Y 2005-06.	Rs.1,01,25,139/-
4.	Disallowance of security, repairs and maintenance charges of property.	Rs. 12,10,003/-

3. Aggrieved, the assessee assailed the assessment order before the CIT(A). Being persuaded to subscribe to the contentions advanced by the assessee, the CIT(A) except for sustaining 20% of the disallowance of security, repairs and maintenance charges of the property in question, vacated the remaining additions/disallowances made by the A.O and partly allowed the appeal.

4. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As multiple issues are involved in the present appeal, we shall, therefore, hereinafter take up the same in a chronological manner in the backdrop of the respective contentions advanced by the authorised representative for both the parties.

5. On a perusal of the orders of the lower authorities, we find, that the A.O had made an addition of Rs. 33,60,000/- (net addition) towards the deemed rental of the basement property (admeasuring 3,980.62 sq. feet) owned by the assessee. The genesis of the issue leading to the controversy in hand lies in a narrow compass. Observing, that though the assessee had shown a liability of Rs. 66 lacs towards “basement charges deposit” in its balance sheet, it was noticed by the A.O that the assessee had however not disclosed any correlating rental income. In the backdrop of the quantum of deposits that were taken by the assessee while letting out certain other properties, the A.O worked out the average deposit rate at Rs. 450/- per sq. feet. On the basis of his aforesaid observation the A.O was of the view that an amount of Rs. 18 lac (i.e 3,980.62 sq. feet @ Rs. 450/- per sq. feet) could safely be held as the deposit received by the assessee on letting out the basement property in question, while for the balance amount of Rs. 48 lac (out of Rs. 66 lac) was the rental income in respect of the property in question. Thereafter, allowing deduction @30% towards repairs and maintenance charges the A.O restricted the addition to an amount of Rs. 33,60,000/-.

6. We have heard the Id. authorised representatives for both the parties, perused the orders of the lower authorities and also the material available on record in context of the aforesaid issue under consideration. The Id. Departmental representative (for short “D.R”) relied on the assessment order. It was averred by the Id. D.R that as the assessee company had not offered for tax any rental income in respect of basement property owned by it thus, the A.O had rightly worked out the

deemed lettable value of the same at Rs. 48 lacs and after allowing the statutory deduction @30% brought to tax the balance amount of Rs. 33.60 lac. Per contra, the Id. Authorised representative (for short “A.R”) for the assessee relied on the order of the CIT(A). It was submitted by the Id. A.R that the A.O had proceeded with on the basis of misconceived facts which had resulted into a baseless addition in context of the issue in hand. Elaborating on his aforesaid submission, it was submitted by the Id. A.R that the assessee had got its tenanted property developed through M/s West Avenues Realtors Pvt. Ltd. It was submitted by the Id. A.R that the cost of construction of Rs. 66 lac was directly paid on 15.03.2007 by one of the shareholder, viz. Mr. Ritesh Deshmukh on behalf of the assessee company to M/s West Avenues Pvt. Ltd. It was submitted by the Id. A.R that in the backdrop of the aforesaid facts the amount so paid by the shareholder, viz. Mr. Ritesh Deshmukh was credited to his account in the books of account of the assessee company. It was averred by the Id. A.R that the assessee had at no stage let out the basement property in question. It was, thus, submitted by the Id. A.R that the A.O had proceeded with on the basis of a misconceived fact that the assessee had let out the property by taking a deposit of Rs. 66 lac without any monthly rent. It was submitted by the Id. A.R that as the basement was used by the assessee for its own business thus, there remained no occasion for determining the deemed ALV of the same.

7. On a perusal of the order of the CIT(A), we find, that finding favour with the contentions advanced by the assessee the said first appellate authority had vacated the addition that was made by the A.O towards the deemed lettable value of Rs. 33.60 lac (net). The CIT(A) in context of the issue in hand had observed as under:

“3.3. I have considered the appellant's submissions. AO noticed that there was a liability shown for Rs.66,00,000/- towards Basement charges deposit. AO treated that this basement charges deposit was received by the appellant from a tenant for giving rent of a basement. Based on the rental value received from other two properties, AO had computed rental income at Rs.48,00,000/-. After giving credit for 1/3rd of the amount for maintenance, AO had added to the total income Rs.33,60,000/-. In the submissions appellant states that appellant got its tenanted property developed through M/s West Avenue Realtors Pvt.Ltd. A part of such cost of construction was directly paid by one of the shareholders, Mr. Ritesh Deshmukh to M/s West Avenue Realtors Pvt.Ltd. on behalf of the appellant company . Later through a journal entry this Rs.66,00,000/- was credited in the books of accounts of the appellant in F.Y. 2006-07. Hence appellant states that this basement premises was not rented to anyone neither they received any deposit for renting this basement premises. This deposit of Rs.66,00,000/- which was shown as basement charges was received from share holder Mr. Ritesh Deshmukh in the F.Y. 2006-07 which the share holder had

paid directly to M/s Western Avenue Realtors P. Ltd., so the same is transferred to appellant's income. [Further it is stated that basement premises was used for business purpose and, not rented to anyone.

On examining the above facts, it appears that AO has misunderstood regarding the mention of the name basement charges deposit. This deposit is only paid by one of the share holder to the builders and later transferred as journal entry in the appellant's account. By the above facts it is clear that appellant has not received an amount deposit for basement charges. Thus AO's addition is mainly because of not misunderstanding and also because of not understanding the nature of transaction involved. As here appellant has not rented any basement premises, there is no question of adding any income from property. In view of the above the addition made by the AO of Rs.33,60,000/- is deleted. This ground of appeal is allowed.”

“
We have deliberated at length on the issue under consideration in the backdrop of the contentions advanced by the Id. authorised representatives for both the parties. On a conjoint perusal of the ledger account of Mr. Ritesh Deshmukh and the ledger account of M/s West Avenue Realtors Pvt. Ltd. in the books of account of the assessee company; it can safely be gathered that the shareholder, viz. Mr. Ritesh Deshmukh had as on 15.03.2007 vide a Cheque No. 444954 drawn on ICICI Bank Ltd., Branch: Mahalaxmi, Mumbai paid an advance of Rs. 66 lac on behalf of the assessee company to M/s West Avenue Realtors Pvt. Ltd. On the basis of the aforesaid facts, it can safely be gathered that the A.O had proceeded with on the basis of a misconception that the assessee had received an amount of Rs. 66 lac as an interest free deposit from a tenant without any monthly rent. Insofar the contention of the Id. D.R that as the assessee had not shown any deemed lettable value of the property under consideration, the A.O, thus, had rightly determined the same as per the mandate of Sec. 23(1) of the Act is concerned, we find that the same being devoid and bereft of any force cannot be sustained. As observed by us hereinabove, it is the claim of the Id. A.R that as the property in question was being used by the assessee for its own business and had not been let out thus, the issue of determining the deemed annual lettable value of the same does not arise. In our considered view, in the absence of any material which would support the claim of the A.O that the assessee had let out the property in question, the same cannot be summarily accepted. Accordingly, finding no infirmity in the well reasoned deletion of the addition of Rs. 33.60 lac made by the A.O towards deemed lettable value of the property in question, we uphold the order of the CIT(A) to the said extent. The **Grounds of appeal Nos. (i) & (ii)** are dismissed.

8. We shall now deal with the claim of the revenue that the CIT(A) had erred in vacating the addition of Rs. 75,07,350/- made by the A.O u/s 68 of the Act. Briefly stated, the assessee had paid stamp duty & registration charges of Rs. 74,77,350/- in respect of an 'agreement', dated 31.03.2012 with M/s West Avenue Realtors Pvt. Ltd. All the shareholders of the assessee company in order to facilitate the aforesaid payment of stamp duty/registration amount of Rs. 74,77,350/- had contributed, as under:

i. Saigal Sea Trade Pvt. Ltd. (Share of stamp duty)	Rs.53,94,031.00
ii. Shankar Jadhav (Share of Stamp duty)	Rs. 1,68,915.00
iii. Rashmi Jadhav (Share of stamp duty & Regn.)	Rs. 4,23,415.00
iv. Indo Allied Protin Foods Pvt. Ltd. (Stamp duty & Regn.)	Rs. 3,41,584.00
v. R.V. Deshmukh (Stamp duty & Regn.)	Rs. 6,20,858.00
vi. Mr. Kiran Pavaskar (Stamp duty & Regn.)	<u>Rs. 5,58,547.00</u>
Total	<u>Rs. 75,07,350.00</u>

However, the assessee company instead of debiting the stamp duty amount to the premises in the "fixed assets", had erroneously debited the same to the accounts of the respective shareholders in the proportion of their shareholding. Subsequently, as and when the amounts were received from the respective shareholders, their accounts in the books of accounts of the assessee were credited. A.O being of the view that the assessee could not satisfactorily explain the reason for transferring legitimate expense of stamp duty to personal account of shareholders had therein added the aforesaid amount of Rs. 74,77,350/- as an unexplained credit u/s 68 in the hands of the assessee.

9. On appeal, the CIT(A) concurring with the claim of the assessee that the A.O had proceeded with on the basis of misconceived facts, and also, that invocation of the provisions of Sec. 68 were even otherwise unwarranted, deleted the addition of Rs. 74,77,350/- made by the A.O. The CIT(A) in context of the issue in hand had observed as under:

"5.3 I have considered the appellant's submission. AO noticed that appellant had paid registration charges of Rs.74,77,350/- in respect of agreement dated 31.3.2012 with M/s West Avenue Realtors P. Ltd. through its bank account on 27.3.2012. AO is of the view that this registration charges which was collected from

shareholders, appellant had transferred it into appellant's individual account. Hence AO is of the view that there are chances that the opening loans advances of the company may be inflated and this is done to correct the defect. AO mentioned that in the interest of revenue the stamp duty is added to the income of the appellant as undisclosed income u/s 68 of the Act

When we examine the details furnished by the appellant, appellant had to pay stamp duty for registration of property in respect of agreement dt. 31.3.2012 with M/s Esst Avenue Realtors P. Ltd. This stamp duty was contributed by respective share holders, details of which are as under :

i	Saigal Sea Trade P. Ltd. (share of stamp duty)	53,94,031.00
li	Shankar Jadhav (share of stamp duty)	1,68,915.00
hi	Rashmi Jadhav(share of stamp duty fit Regn.)	4,23,415.00
iv	Indo Allied Protin Foods Pvt. Ltd. (stamp duty a Regn.)	3,41,584.00
V	R.V. Deshmukh (stamp duty fr Regn.)	6,20,858.00
Vi	Mr. Kiran Pavaskar (stamp duty & Regn.)	5,58,547.00

Each shareholder had contributed for payment of stamp duty. These were credited to individual shareholder account. AO is of the view that as this stamp duty was not shown as expenditure, hence this is undisclosed income u/s 68 of the Act. When we examine the details, this stamp duty is not at all an expenditure pf the appellant. This stamp duty is paid for registration of property, so it is a capital expenditure. So this is not to be shown as expenditure. Further the stamp duty was contributed by each shareholder. All these shareholders are there in the company from the beginning and they are acting as shareholder. Their identity was not doubted by the AO neither their creditworthiness and he himself said the amount was paid through bank account. Hence the genuineness of the transaction also cannot be questioned. Here it is a simple transaction of the shareholder contributing to payment of stamp duty through bank accounts and stamp duty was paid to Govt. department. The AO had not doubted the identity, genuineness and creditworthiness of the transaction. This cannot be treated as cash credit u/s 68 Of the Act. This merely is a payment of stamp duty to Govt department through contribution of individual shareholder who are in the company from the beginning. Hence, in view of the above, AO's disallowance is deleted and this ground of appeal is allowed."

10. We have given a thoughtful consideration to the aforesaid issue in the backdrop of the contentions advanced by the authorised representatives for both the parties. Ld. D.R had relied on the order of the A.O. It was stated by the Id. D.R that as the assessee had failed to demonstrate the source and basis of credit in the respective accounts of the shareholders, the A.O, thus, had rightly added the same as an unexplained credit in the hands of the assessee company. On the contrary, the

Id. A.R relied on the order of the CIT(A). Elaborating on the nature of the transaction leading to the credit in the respective accounts of the shareholders, it was averred by the Id. A.R that all the shareholders had contributed towards the stamp duty/registration amount of Rs. 74,77,350/- that was incurred by the assessee in respect of an 'agreement', dated 31.03.2012 with M/s West Avenue Realtors Pvt. Ltd. It was stated by the Id. A.R that the stamp duty charges pertaining to the aforesaid 'agreement' instead of being debited to the premises in the "fixed assets a/c" was however erroneously appropriated on the basis of respective shareholding of the shareholders and debited to their accounts. It was submitted by the Id. A.R that thereafter on receipt of the respective amounts (as attributed to their shares) the accounts of the respective shareholders were credited by the said amounts. In order to fortify his aforesaid claim the Id. A.R took us through the copies of the ledger accounts of the respective shareholders as appearing in the books of account of the assessee company for the year under consideration. In the backdrop of the aforesaid fact, it was averred by the Id. A.R that not only the transaction in question was fully explained but in fact there was no justification on the part of the A.O to have dubbed the credits appearing in the ledger accounts of the respective shareholders as unexplained credits within the meaning of Sec. 68 of the Act.

11. We have heard the Id. authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of the issue under consideration. On a perusal of the ledger accounts of the shareholders w.r.t payment of stamp duty and registration charges, it can safely be gathered that on 20.03.2012 the amount of stamp duty/charges of Rs. 74,77,350/- was distributed amongst them on the basis of their respective shareholdings. Admittedly, the assessee instead of debiting the stamp duty expenses to the premises in the "fixed assets a/c" had wrongly debited the respective accounts of the shareholders. As observed by us hereinabove, as and when the respective amount of contributions were received vide account payee cheques from the shareholders, the same were credited to their respective accounts. As the aforesaid transaction was not only fully explained, but there was no reason for treating the duly substantiated credits in the respective accounts of the shareholders as an unexplained credit within the meaning of Sec. 68 of the Act, the CIT(A), in our considered view had rightly vacated the addition of Rs. 74,77,350/- that was made

by the A.O u/s 68 of the Act. Concurring with the view taken by the CIT(A) in context of the issue in hand, we uphold the same. **Ground of appeal Nos. (iii)** is dismissed.

12. We shall now deal with the claim of the revenue that the CIT(A) had erred in deleting the addition of Rs. 1.01 crore made by the A.O u/s 41(1) of the Act. The genesis of the controversy in hand lies in a narrow compass. Observing, that the assessee since F.Y 2005-06 had been reflecting a liability under the head “BMC Charges Payable” of Rs. 1,01,25,139/-, the A.O holding a conviction that the said amount was no more outstanding added the same u/s 41(1) of the Act. On appeal, it was submitted by the assessee that it had acquired tenancy rights from several tenants occupying BMC land. For transfer of the tenancy rights in its favour, the assessee had to pay certain amounts aggregating to Rs. 97,53,492/- to BMC in F.Y 2007-08. In order to facilitate the aforesaid payments the assessee had borrowed the requisite funds from its shareholders, as under:

Sr. no.	Name of the shareholder	Date of receipt	Amount (Rs)
1	Mrs. Kavita Pawaskar	07.04.2008	5,58,135/-
2	Mrs. Rashmi J. Jadhav	23.06.2007	1,24,500/-
3	Saigal Seatrade Pvt. Ltd.	22.06.2007 22.06.2007 27.03.2008	11,15,000/- 20,00,000/- 38,50,000/-
4	Shri. Shankar Jadhav	23.06.2007 23.06.2007 28.06.2007 27.03.2008 28.03.2008 28.03.2008 28.03.2008 28.03.2008	70,000/- 42,000/- 70,702/- 3,38,520/- 1,36,533/- 80,269/- 2,40,058/- 1,35,033/-
5	Indo Allied Protein Foods Pvt. Ltd.	27.03.2008 27.03.2008 28.03.2008	1,76,756/- 8,46,300/- 3,41,333/-
		Total	1,01,25,139/-

Resultantly, the “BMC Charges Collection” account in the balance sheet of the assessee company as “Trade Payables” as on 31.03.2012 was reflected as under:

S.No	Particulars	Amount
1.	Indo Allied Protein Foods Pvt. Ltd.	Rs. 13,64,389/-
2.	Kavita Pawaskar	Rs. 5,58,135/-
3.	Rashmi J. Jadhav	Rs. 1,24,500/-
4.	Saigal Sea Trade Pvt. Ltd.	Rs. 69,65,000/-
5.	Shankar Vishnu Jadhav	Rs. 11,13,115/-
Total		Rs.1,01,25,139/-

In order to substantiate the fact that the payments were made by the aforementioned respective shareholders, the assessee had placed on record the copy of the pass book of the assessee for the period April, 2007 to March, 2008, alongwith the ledger accounts of the respective shareholders. Before the CIT(A), it was the inter alia claim of the assessee that as the aforesaid amount paid to BMC in the year 2007-08 was never claimed as a deduction, the same, thus, by no means could have been added as the income of the assessee u/s 41(1) of the Act. Finding favour with the said claim of the assessee the CIT(A) vacated the addition of Rs. 1,01,25,139/-, observing as under :

“6.3 I have considered the appellant's submission. AO noticed there is an entry of Rs. 1,01,25,1397- in the Balance sheet of the appellant from F.Y. 2005-06. According to the AO this BMC charges need not be paid, hence it is ceased liability and hence AO added this amount u/s 41 of the Act. In the submission, appellant states that appellant had acquired tenancy rights from several tenants occupying BMC land. Appellant is required to pay certain amounts to BMC in F.Y. 2007-08 for transfer of such tenancy rights in favour of the appellant company. To pay this amount appellant had collected from the shareholders as under:

Sr. no.	Name of the shareholder	Date of receipt	Amount (Rs)
1	Mrs. Kavita Pawaskar	07.04.2008	5,58, 135/-
2_	Mrs. Rashmi J. Jadhav	23.06.2007	1,24,500/-
3	Saigal Seatrade Pvt. Ltd.	22.06.2007 22.06.2007 27.03.2008	11,15,000/- 20,00,000/- 38,50,000/-

4	Shri. Shankar Jadhav	23.06.2007	70,000/-
		23.06.2007	42,000/-
		28.06.2007	70,702/-
		27.03.2008	3,38,520/-
		28.03.2008	1,36,533/-
		28.03.2008	80,269/-
		28.03.2008	2,40,058/-
		28.03.2008	1,35,033/-
5	Indo Allied Protein Foods Pvt. Ltd.	27.03.2008	1,76,756/-
		27.03.2008	8,46,300/-
		28.03.2008	3,41,333/-
		Total	1,01,25,139/-

These amounts are collected by the appellant in the F.Y. 2007-08 and 1008-09 i.e. from the period April 2007 to March 2008. These amounts were collected to be paid to the BMC. These amount collected is separately grouped in the books of accounts as BMC charges collection. However the name of each shareholder with the liability amount also appears under the group head in the list of Trade payables. By this submission of the appellant, it is clear that appellant had collected Rs.1,01,25,139/- from shareholders to pay to the BMC for tenancy rights and this was mentioned in the Balance sheet as BMC charges. According to the AO this amount is a ceased liability, hence the same was added u/s 41 of the Act. According to Section 41(1) of the Act, Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the appellant and subsequently during any previous year –

(a) The first-mentioned person has obtained whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of the previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not :

or

(b) The successor in business has obtained whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gins of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

Here in Section 41(1) it is clear that appellant should have first claim in deduction or allowance in P & L Account and if later from the deduction or allowance if he receives any benefit i.e. added as a deemed income to the total income of the appellant. In this case regarding the BMC charges, appellant had not claimed any expenditure or allowance .in the P & L Account. This BMC charges is a simple amount contributed by shareholders and which is shown as liability from A.Y, 2007-08 and which was accepted in assessment proceedings in A.Yrs. 2008-09 and 2009-10 also. As here

appellant had not claimed any expenditure or allowance, this does not come under the purview of section 41(1), Here it is only the payment by individual shareholders which is shown as liability as appellant has to pay to the BMC. AO further considers that it is a ceased liability. Here the liability has not ceased. Further appellant has to pay this BMC charges also in future. As it is not claimed as expenditure or allowance by the appellant in P & L A/c, it does not come under the purview of section 41(1). However, AO's addition is erroneous as BMC charges is contributed by individual shareholders. Hence AO's disallowance is deleted. This ground of appeal is allowed. “

13. We have deliberated at length on the issue under consideration and concur with the view taken by the CIT(A) that it is only where an allowance or deduction had been made in the assessment for any year in respect of a loss, expenditure or trading liability incurred by the assessee and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year. For a fair appreciation of the issue under consideration, we herein reproduce the relevant extract of Sec. 41(1) of the Act, which reads as under :

“41 (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of the previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b).....”

In our considered view, the CIT(A) had rightly observed that as the assessee had at no stage claimed much the less was allowed any deduction of the “BMC charges” in question in assessment for any year, thus, the provisions of Sec. 41(1) could not have been invoked. Accordingly, finding no infirmity in the view taken by the CIT(A) in context of the issue under consideration, we uphold the same. **Grounds of appeal Nos. (iv) to (vi) are dismissed.**

14. We shall now deal with the grievance of the revenue that the CIT(A) had erred in sustaining 20% i.e Rs. 2,42,000/- out of the disallowance of security charges and repairs and maintenance charges of Rs. 12,10,003/- pertaining to the property given on rent. Facts in brief are that in the course of the assessment proceedings the A.O noticed that the assessee had debited an amount of Rs. 2,76,828/- as security charges and Rs. 9,33,175/- as repairs and maintenance charges. Holding a conviction that as the aforesaid expenditure related to a property that was let out by the assessee, the A.O being of the view that the deduction for the said expenses was subsumed in the 30% deduction that was claimed by the assessee under the head 'income from house property', thus, disallowed the entire claim of expenses of Rs. 12,10,003/- that was raised by the assessee. On appeal, the CIT(A) finding favour with the claim of the assessee that only 4,140/- sq. feet area of the property (which as per the assessee was only 20% of the total built up area) was let out, thus, restricted the disallowance to 20% of the aforesaid charges. Accordingly, the CIT(A) sustained the addition to the extent of Rs. 2,42,000/-.

15. Aggrieved with the deletion of the security charges and repairs and maintenance charges of Rs. 9,68,003/- (out of Rs. 12,10,003/-), the revenue has assailed the order of the CIT(A) before us. Ld. D.R relied on the order of the A.O. Per contra, the Id. A.R relied on the order of the CIT(A). It was submitted by the Id. A.R that now when only 20% of the built up area of the property in question was let out by the assessee, the CIT(A), thus, had in all fairness restricted the disallowance of the said expenditure to the extent relatable to the same. It was submitted by the Id. A.R that no infirmity did emerge from the order of the CIT(A) in context of the issue under consideration.

16. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and also the material available on record in context of the aforesaid issue under consideration. As observed by the CIT(A) only 20% of the building in question was let out by the assessee. Nothing has been brought to our notice by the Id. D.R which would point out any perversity in the aforesaid observation of the CIT(A). Accordingly, in the backdrop of the fact that only 20% of the building in question was let out by the assessee, we concur with the view

taken by the CIT(A). Accordingly, in the backdrop of the fact that only 20% of the building in question was let out by the assessee, we concur with the view taken by the CIT(A) that the security charges and repairs & maintenance charges only to the said extent could have been disallowed on the pretext that the same were subsumed in the statutory 30% deduction allowed while computing the income under the head 'house property'. As such, finding no infirmity in the view taken by the CIT(A) in context of the aforesaid issue under consideration, we uphold the same to the said extent. **Ground of appeal No. vii** is dismissed.

17. Resultantly, finding no merit in the appeal of the revenue, we dismiss the same.

Order pronounced in the open court on 01/02/2021.

Sd/-

S. Rifaur Rahman
(ACCOUNTANT MEMBER)

Sd/-

Ravish Sood
(JUDICIAL MEMBER)

Mumbai, Date: 01.02.2021

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai