

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1871/Mum/2020  
(निर्धारण वर्ष / Assessment Year: 2015-16)

Sukhbir Singh Sahni 101, Mangal Bhandar, 13 <sup>th</sup> Road, TPS-III, Khar, Mumbai-400052.	<b>बनाम/</b> Vs.	CIT-16 Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJPS4701K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Kavita Hehendale (AR)	
Revenue by:	Shri H. N. Singh (DR)	

सुनवाई की तारीख / Date of Hearing: 16/02/2021  
घोषणा की तारीख /Date of Pronouncement: 07/04/2021

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 21.02.2020 passed by the Principal Commissioner of Income Tax -16, Mumbai [hereinafter referred to as the “PCIT”] relevant to the A.Y.2015-16.

2. The assessee has raised the following grounds: -

*“1 The Learned Pr. CIT failed to appreciate that the order passed by the AO u/s 143(3) was neither erroneous nor prejudicial to the interest of revenue and erred thereby in passing the order u/s 263 and referring the matter again to AO.*

*2 The Learned Pr. CIT erred in not passing a speaking order and simply stating that the submission of appellant considered and rejected being not found satisfactory without giving any reason for the same while passing the order. The order passed u/s 263 is bad in law.*

*3 The Learned Pr. CIT failed to appreciate the AOs order u/s 143(3) was passed after application of mind and proper enquiry in appellant's own case for AY 2014-15 as well as for year under review i.e. A.Y. 2015-16.*



ITA No. 1871/M/2020

A.Y.2015-16

*4 The Learned Pr. CIT erred in reaching to the conclusion that the claim of deduction of 'Common Area Maintenance Charges (CAM) of Rs.7,17,768/- from Composite Gross Rent received by assessee while computing Net Annual Value u/s 23 of the Act is an incorrect*

*5 The Learned Pr. CU failed to appreciate that the deduction of CAM charges levied by society was claimed by the appellant u/s 23(1)(b) and not u/s 24(a) as misunderstood by the Pr. CIT.*

*6 The Appellant craves leave to add, amend, alter or substitute any of the grounds of appeal at the time of hearing.”*

**3.** The brief facts of the case are that the assessment of the assessee was completed on 16.06.2017 in view of the provisions u/s 143(3) of the I. T. Act, 1961. Thereafter, the assessment was examined and records reveals that.:-

*“7 .Subsequently, it was observed from computation of income submitted by the assessee that an amount of Rs 7,17,768/- (Rs2,45, 160/- against the property 304, Naman centre and Rs 4.72,608/- against the property 405, Western Edge) was claimed as deduction towards maintenance charges from these two separate properties from where assessee was getting rent and this rent were offered for taxation under the head of Income from House Property. As the deduction allowed to the assessee under section 24(a)@ 30% includes maintenance and repairs, deduction claimed by you towards maintenance charge apart of deduction claimed u/s 24(a) of the I. T. Act should have been disallowed. This has resulted into underassessment of income Rs 7,17,768/- leading to short levy of tax plus consequent levy of interest and penalty. Thus, the assessment order was passed without making proper enquiry and is prejudicial to the interest of revenue. ....”*

**4.** Thereafter, the notice was given and after the reply of the assessee, the PCIT reopened the assessment in view of the provisions u/s 263 of the Act on the grounds mentioned above. Feeling aggrieved, the assessee has filed the present appeal before us.

**5.** All the issues are in connection with the reopening of the assessment in view of the provisions contained u/s 263 of the I. T. Act, 1961 vide order



ITA No. 1871/M/2020

A.Y.2015-16

dated 21.02.2020. The Ld. Representative of the assessee has argued that the AO had already examined the issue, therefore, the reopening is bad in law, hence, the reopening u/s 263 of the Act is bad and liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. At the very outset, the Ld. Representative of the assessee has argued that the issue which has been taken into consideration for the re-assessment u/s 263 of the I. T. Act, 1961 has already been examined by AO, therefore, invoking the provisions u/s 263 of the I. T. Act, 1961 is wrong against law and facts and is liable to be set aside. However, on the hand, the Ld. Representative of the Department has strongly relied upon the order passed by PCIT. The reasons for reopening the issue u/s 263 of the Act is hereby reproduced as under.:-

*“7 .Subsequently, it was observed from computation of income submitted by the assessee that an amount of Rs 7,17,768/- (Rs2,45,160/- against the property 304, Naman centre and Rs 4.72,608/- against the property 405, Western Edge) was claimed as deduction towards maintenance charges from these two separate properties from where assessee was getting rent and this rent were offered for taxation under the head of Income from House Property. As the deduction allowed to the assessee under section 24(a)@ 30% includes maintenance and repairs, deduction claimed by you towards maintenance charge apart of deduction claimed u/s 24(a) of the I. T. Act should have been disallowed. This has resulted into underassessment of income Rs 7,17,768/- leading to short levy of tax plus consequent levy of interest and penalty. Thus, the assessment order was passed without making proper enquiry and is prejudicial to the interest of revenue. ....”*

6. The reply to the query raised by the AO is on record which lies at page no. 5 of the paper book. The relevant finding has been given in para no. 3 & 4 which is hereby reproduced as under.:-

*“3. The net difference of Rs.5,02,440/- is on account of overstatement of Income from House Property to the tune of Rs.7,17,768/-. As per various*



ITA No. 1871/M/2020

A.Y.2015-16

*judicial decisions, the common area maintenance charges paid to building managers is to be reduced from the Gross Rent. The rent impact on taxable income is on 70% of Rs.7,17,768/- as 30% is allowable as standard deduction. The breakup of Rs.7,17,768/- is as under.-*

S. No.	Particulars	Amount (Rs.)
1	Paid to Shree Naman Developers Ltd. for BKC Naman Property	2,45,160
2	Paid to Western Edge Premises Co-operative Society Limited for Western Edge Borivali	1,57,536
3	Paid to Western Edge Premises Co-operative Society Limited	3,15,072
	Total	7,17,768

*I am enclosing copies of the relevant invoices as annexure 4. In this regard I would like to state that the Gross Rent is inclusive various facilities provided by the building management like security, water supply, electricity of passage and other common areas, lift operations, garden upkeep and other such common area maintenance. Hence, the expenses for the same is reduced from the Gross Rent in the revised return.*

*4. I have relied upon various judicial decisions where this issue was examined by ITAT and the High Court, and it was held that these charges paid by the assessee should be reduced from the Gross Rent to arrive at the Gross Annual Value u/s 23 of the Act.*

*I request your good sleeves to kindly take this submission on record. In case you need any further particulars or clarifications on any point. I shall be glad to furnish the same.”*

7. Apparently, the issue has been examined by AO and allowed the claim of the assessee. In such circumstances, the assessment is not liable to be reopened on the basis of this specific reason. In this regard, we also find support of the decision in the case of **CIT Vs. Gabriel India Ltd. 203 ITR 108 (1993)** and **CIT Vs. Arvind Jeweller, 259 ITR 502 (Guj)**, therefore, in the said circumstances, we are of the view that the PCIT has wrongly invoked the provisions u/s 263 of the I. T. Act, 1961 on the specific grounds maintenance of charges, hence, we set aside the order passed by PCIT u/s 263 of the Act and decide this issue in favour of the assessee against the revenue.



ITA No. 1871/M/2020  
A.Y.2015-16

8. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 07/04/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/04/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की 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//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai