



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.6386/Mum./2019
(Assessment Year : 2015-16)

Maker Tower "F" Premises Co-operative
Society Ltd., Maker Arcade
G.D. Somani Road, Mumbai 400 005
PAN – AAAAM2065Q

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-17(2), Mumbai

..... Respondent

Assessee by : Shri Mahendra Gohel
Revenue by : Shri Gurbinder Singh

Date of Hearing – 13.05.2021

Date of Order – 08.07.2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The captioned appeal is against the order dated 22nd July 2019, passed by the learned Commissioner of Income Tax (Appeals)-28, Mumbai, for the assessment year 2015-16.

2. The grounds of appeal raised by the assessee are extracted below:-

*"1. COMPUTATION OF INCOME FROM RENTING OF TERRACE
UNDER THE HEAD "INCOME FROM OTHER SOURCES"*

1.1 On the facts and in the circumstances of the case and in law,

the learned Commissioner of Income Tax (Appeals)-28, MUMBAI [CIT (A)] erred in confirming the additions made by the learned Assessing Officer by computing income from renting of terrace under the head 'Income from Other Sources' as against the same offered by the appellant under the head 'Income from House Property' resulting into an addition for a sum of Rs.3,60,000/ -.

1.2 The learned CIT (A)-28, and the learned Assessing Officer failed to appreciate the legal position emerging from the related case laws on the issue.

1.3 The learned CIT (A)-28, and the learned Assessing Officer erred in disallowing claim for deduction under Section 24(a) of the Act, and bringing the same to tax under the head 'Income from Other Sources'.

The appellant prays that the learned Assessing Officer be directed to compute the income from renting of terrace under the head 'Income from House Property' and grant deduction under Section 24(a) and revise the total income of the appellant accordingly."

3. Facts in brief:- The assessee, for the year under consideration, had filed its return of income on 21st September 2015, declaring total income at ₹ 2,09,20,110. The Assessing Officer, on a perusal of the computation of income, observed that the assessee has Leave & License Agreement with M/s. Reliance Infratel Ltd. to use the terrace of the building situated at Maker Tower - F for erection & installation of Antenna Tower and received a sum of ₹ 12,00,000, for the same. The assessee declared this income under the head "Income from House Property" and deducted 30% of ₹ 12,00,000, aggregating to ₹ 3,60,000, for repairs and collection under section 24(a) of the Income Tax Act, 1961 (for short "the Act"). During the course of assessment proceedings, vide letter No.ACIT 17(2)/Asstt.Proceeding/2017-18 dated 8th September 2017, was asked to show cause as why the use

the terrace of the building situated at Maker Tower-F for erection & installation of Antenna Tower should not be treated as income from other sources and deduction under section 24(a) of the Act should not be denied. In response, the A.R. for the assessee, vide letter dated 18th September 2017, stated that it may be noted that Dish Antenna charges should be taxed as income from House Property after considering the deduction available under sections 23 and 24 of the Act. In support of his contention, he relied upon the decision of the Co-ordinate Bench of this Tribunal in Mahalaxmi Sheela Premises CHS Ltd., ITA no.784, 785 & 786/Mum./2010, dated 20th August 2011, as well as the decision of the Hon'ble Jurisdictional High Court rendered in ITA no.3183 of 2020, dated 16th August 2011. The Assessing Officer considered the submissions of the assessee, however, the same was not acceptable to him, as according to him, the receipts do not fall under the head Income From House Property, as per the provisions of section 22 of the Act, which deals with the income from house property and the same was added to the income of the assessee. Being aggrieved by the order so passed by the Assessing Officer, the assessee carried the matter before the first appellate authority.

4. The learned CIT(A) upheld the order of the Assessing Officer.

5. Before us, the learned Counsel for the assessee reiterated the submissions made before the authorities below and prayed that the

issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in Mahalaxmi Sheela Premises CHS Ltd., ITA no.784, 785 & 786/Mum./2010, dated 20th August 2011, as well as the decision of the Hon'ble Jurisdictional High Court rendered in ITA no.3183 of 2020, dated 16th August 2011. The A.R. accordingly prayed for allowing the claim of the assessee.

6. The learned Departmental Representative relied upon the order of the authorities below.

7. Considered the rival submissions and perused the material on record in the light of the decisions relied upon. In this case, the short issue that we need to adjudicate is, whether or not the computation of income received from renting of terrace under the head '*Income from Other Sources*' as against the same offered by the assessee under the head '*Income from House Property*' resulting into an addition for a sum of Rs.3,60,000. After hearing both the parties, we find that this issue is now settled by the decisions of the Co-ordinate Bench of the Tribunal in Mahalaxmi Sheela Premises CHS Ltd. v/s ITO, ITA no.784, 785 & 786/Mum./2010, dated 20th August 2011, wherein it has been held that the income on account of hoarding and display from terrace is liable to be taxed as income from house property. As a matter of convenience, we reproduce below the relevant portion of the findings

of the Co-ordinate Bench in Mahalaxmi Sheela Premises CHS Ltd.

(supra):-

2. "We have heard the learned Counsel, Mr. Hiro Rai, on behalf of the assessee and the learned Departmental Representative, Mr. P.C. Mourya, on behalf of the Revenue.

3. In the appeal for assessment year 2000-01, the sole issue raised by the assessee is, whether the income received by the assessee on lease of a portion of terrace of the building and a wall of the building to one Mrs. Sudha Vora, for the purpose of fixing of hoarding, neon sign, etc., is assessable under the head "Income From Business or Profession" or under the head "Income From Other Sources". The Assessing Officer assessed the income under the head "Income From Other Sources" on the ground that the amount received by the assessee is not for letting of a building or terrace or any land appurtenant thereto but on account of allowing to display the advertisement of neon sign, illuminated hoarding, of a size of 60' x 20' on the terrace and also illuminated hoarding of size of 20' x 50' on a vertical wall of the building are facing Padder Road.

4. On appeal, the Commissioner (Appeals) rejected the contention of the assessee on the ground that the terrace is not let out to Mr. Sudha Vora, and she has been allowed to use the terrace only to set-up the hoarding and to display the hoarding. He also commented that she could use only a portion of the terrace and that the purpose of utilization is not for stay, etc. The Commissioner (Appeals) distinguished the decision of the Delhi Bench of this Tribunal relied upon by the assessee. Aggrieved, the assessee is in further appeal before the Tribunal.

5. Before us, the learned Counsel relied on the following case laws:-

- ITO v/s Cuffe Parade Sainara Premises Co. Op. Society Ltd., ITA no.7225/Mum./2005, order dated 28.4.2008;
- Dalamal House Commercial Complex Premises Co. Op. Society Ltd. v/s ITO, ITA no.2286/Mum./2008, 29.5.2009;
- Sharda Chambers Premises Co. Op. Society Ltd. v/s ITO, ITA no.1234/Mum./2008, order dated 1.9.2009;
- Matru Ashish CHS Ltd. v/s ITO, ITA no.316/Mum./2010, order dated 27.8.2010;
- S. Sohan Singh v/s ITO, 16 ITD 272 (Del.); and
- CIT v/s Bajaj Bhavan Owners Premises Co. Op. Society Ltd., Income Tax Appeal no.3183 of 2010 (Bom.)

6. In *Bajaj Bhavan Owners Premises Co. Op. Society Ltd. v/s ITO, Mumbai "B" Bench of the Tribunal in ITA no.5048/Mum./2004, assessment year 2001-02 and ITA no.1433/Mum./2007, for assessment year 2002-03 and ITA no.1434/Mum./2007, for assessment year 2003-04, order dated 4th November 2009, has, at Page-16 / Para-36, brought out the facts as follows:-*

"36. The brief facts of the above issue are that it was found by the Assessing Officer that the assessee has allowed M/s. Hutchison Max Telecom Ltd. to erect the tower on their terrace in consideration of an amount of ₹ 5,93,700 and claimed as income from house property subject to deduction under section 24 of the Act. However, the Assessing Officer while observing that the assessee's society has not provided any house property to the company and it is only the open terrace which has been let out, treated the same as assessable under the head income from other sources without allowing any expenditure in this regard. On appeal, the learned CIT(A) while confirming the Assessing Officer's action treating the income from other sources directed the Assessing Officer to allow 20% of the gross receipts as expenses to earn such income."

7. *The Tribunal, after considering rival submissions, at Pages-17 & 18, Para-39, held as follows:-*

"39. After carefully hearing the submissions of the rival parties and perusing the material available on record, we find that the facts are not in dispute. We further find that in the case of Sharda Chamber Premises v/s ITO, in ITA no.1234/Mum./2008, dated 1.9.2009, for A.Y. 2003-04, in which JM was one of the party, on the similar facts, the Tribunal after considering the decision in ITO v/s Cuffe Parade Sainara Premises Co. Op. Society Ltd., ITA no.7225/Mum./2005, dated 28th April 2008, for A.Y. 2002-03 and also the decision in the case of S. Sohan v/s ITO (1986) 16 ITD 272 supra, has held vide Para-6 and 7 of its order dated 1.9.2009, as under:-

6. We have carefully considered the submissions of the rival parties and perused the material available on record. We find merit in the plea of the Id. counsel for the assessee that in the case of M/s. Dalamal House Commercial Complex Premises Co. Op. Society Ltd., the Tribunal while admitting the additional ground being a legal issue has also held that the letting out of the terrace erection of antenna and income derived from letting out has to be taxed as "income from house property" and not as "income from other sources". The Tribunal while deciding the issue has followed the order of the Tribunal in the case of M/s. Cuffe Parade Sainara Premises Co. Op. Society Ltd. supra.

7. In the absence of any distinguishing feature brought on record by the revenue, we respectfully following the order of the Tribunal (supra) and keeping in view the consistency while admitting the additional ground taken by the assessee hold that the letting out of terrace has to be assessed under the head "Income From House Property" as against "Income From Other Sources" assessed by the Assessing Officer and also allow deduction provided under section 24

of the Act and accordingly the additional ground taken by the assessee is allowed.

Respectfully following the order of the Tribunal supra, we are of the view that the letting out of the terrace has to be assessed under the head income from house property subject to deduction u/s 24 of the Act as against income from other sources assessed by the Assessing Officer. We hold and order accordingly. The grounds taken by the assessee are therefore allowed."

8. *The Hon'ble Jurisdictional High Court in Income Tax Appeal no.3183 of 2010, vide judgment dated 16th August 2011, confirmed the aforesaid findings of the Tribunal vide Para3, which reads as follows:-*

"3.As regards question (c) is concerned, counsel for the revenue states that the ITAT has allowed the claim of the assessee by following its decisions in the case of Sharda Chamber Premises v/s ITO and ITO v/s Cuffee Parade Sainara Premises Co. Op. Society Ltd. Counsel for the revenue fairly states that the appeals against the said decisions have not been filed by the Revenue in view of the smallness of the tax effect. However, the counsel for the revenue is not in a position to point out any error in the orders passed by the ITAT. In this view of the matter, we see no reason to entertain the appeal on question (c). In the result, the appeal is dismissed with no order as to costs."

9. *Keeping in view of the aforesaid binding judgment of the Hon'ble Jurisdictional High Court, we set aside the impugned order passed by the Commissioner (Appeals) and allow this ground raised by the assessee directing the Assessing Officer to assess the income in question under the head "Income From House Property".*

8. Since the issue in hand is squarely covered by the decision of the Tribunal cited supra, respectfully following the same, we set aside the impugned order passed by the learned CIT(A) and allow the grounds of appeal raised by the assessee.

9. In the result, assessee's appeal is allowed.

Order pronounced in the open court on 08.07.2021

Sd/-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

Sd/-
S. RIFAUZ RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 08.07.2021

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai