

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Amarjit Singh (Judicial Member)]**

ITA No. 6079/Mum/2019
Assessment Year: 2013-14

M/s. Western Industrial Co-Operative Estate Ltd.Appellant
*Plot No. F11-12, Administrative Building, MIDC,
Central Road, Andheri (E), Mumbai 400093
[PAN: AAAAW0335M]*

Vs.

Assistant Commissioner of Income Tax Respondent
25(1) Mumbai.

Appearances:

Ramkrishna Lingsur *for the appellant*
T.S Khalsa *for the respondent*

Date of concluding the hearing : April 22, 2021
Date of pronouncement : July 14, 2021

O R D E R

Per Pramod Kumar VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 8th July 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2013-14.

2. Grievance raised by the appellant is as follow:-

1. *The learned CIT(A) erred in not excluding amount of mandatory charges payable to MIDC from the gross annual value.*

3. The short issue thus requiring our adjudication is whether or not learned CIT(A) was justified in not excluding amount of mandatory charges of Rs. 7,92,084/- paid to MIDC in respect of property sub let out by the assessee.

4. The assessee has earned income from sub-letting the property rented out to the assessee by Maharashtra Industrial Development Corporation Ltd. (MIDC in short). The claim of the assessee was that since the sub-letting permission was granted to the assessee subject to payment of an amount of Rs. 7,92,084 to MIDC, the rental income is to be reduced to this extent. This claim was declined by the Assessing Officer on the ground that no such deduction is permissible under section 23. When matter travelled in appeal, learned CIT(A) confirmed the action of the Assessing Officer and observed as follows:-

DECISION:

I have gone through the assessment order, facts on record and the written and oral submissions made by the learned representative on the issue in hand.

It has been contention of the assessee that for letting out property, assessee was required to take prior permission of MIDC who was the legal owner of the land and it was required to pay sub-letting charges to MIDC, This being direct charge on the income earned should be allowed as deduction while computing annual rent received or receivable under section 23(1)(b) of the Act. The assessee puts heavy reliance on the observations of the Hon, Mumbai ITAT in the case of M/s Radiant Premises Pvt. Ltd in support of its claim. I have gone through the said decision and is of the view that the Hon. ITAT has held it as obiter dictum and not as a ratio decidendi. Hence, the benefit of the decision cannot be given to the appellant as it is not directly relatable.

The claim of the assessee cannot be accepted in view of the amended provisions of section 24 that have come into force effective from AY 2002-2003. With a view to rationalize the deductions and simplify the computation, the Act has substituted the said section so as to provide for only two deductions, namely a deduction of thirty per cent of annual value (which takes into account all expenses and outgoings for maintaining the property) and interest paid on capital borrowed.

The deduction claimed by the assessee did no fall into any of these categories and in view of clear mandate of the law to allow specified deductions, I hold that assessee is not entitled to claim deduction of sub letting charges of Rs. 7,92,084/- paid to MIDC. The grounds of appeal are therefore dismissed.

In sum, the appeal is partly allowed.

5. Aggrieved, assessee is in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

7. We find that the permission for sub-letting as granted by Maharashtra Industrial Corporation-vide letter dated 5th April 2011, was subject to a payment of Rs. 77,84,200 as “sub-letting charges” for a ten year period of 01.02.2011 to 31.01.2021. In effect, thus, the actual rent received by the assessee, for sub-letting, was net of this proportionate annual amount of Rs. 7,78,420/-. It is only the net amount, i.e., gross sub-letting charges paid by the assessee to the actual owner MIDC, which can be treated as income of the assessee on account of sub-letting. It is particularly so as the sub-letting being paid to a governmental body like MIDC, its bonafides cannot be doubted. The starting point of computation of income has to be thus this net amount. In this view of the matter, we uphold the plea of the assessee and direct the Assessing Officer to recompute the income accordingly. In effect thus the amount of Rs. 7,78,420/- will stand reduced from the sub-letting income received.

8. We, therefore, allow the ground of appeal raised by the assessee. The assessee gets the relief accordingly.

9. In the result, this appeal is allowed in the terms indicated above. Pronounced in the open court today on the 14th day of July 2021.

Sd/-
Amarjit Singh
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 14th day of July 2021.

Copies to: (1) *The Applicant* (2) *The respondent*
(3) *CIT* (4) *CIT(A)*
(5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai