

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 823/Mum/2021

(A.Y: 2017-18)

Sopariwala Exports 21 st Floor, Nirmal Bldg, Nariman Point, Mumbai – 400021.	Vs.	ACIT, CC-8(1) R-656, Aayakar Bhavan, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFS6325E		
Appellant	..	Respondent

Appellant by :	Ms.Ritu KamalKishore.AR
Respondent by :	Mr.Dilipkumar Shah.Sr.DR

Date of Hearing	19.01.2022.
Date of Pronouncement	14.02.2022.

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of CIT(A) -50, Mumbai passed u/s 143(3) and 250 of the Income Tax Act. The assessee has raised the following grounds of appeal.

- 1. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the AO's action of not allowing the society maintenance charges of Rs. 68,18,580/- paid to the housing society in respect of let out premises owned by the appellant while computing the annual letting value (ALV).*

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2. Without prejudice, on the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the AO's action of adding the society maintenance charges to total income of appellant as per return of income instead of adding the same to 'Income from House Property'.

3. The appellant craves leave to add to, alter, amend and/or delete all or any of the foregoing grounds of appeal.

The appellant prays this Hon'ble Tribunal to delete the addition/disallowance made by the Ld. AO and confirmed by the Ld. CIT(A).

2. The brief facts of the case that the assessee is a partnership firm and is engaged in trading of bidis, safety match boxes and tobacco products for export market and is also engaged in the business of letting out the commercial premises on leave and license basis and providing amenities to the licensees. The assessee has filed the return of income for the A.Y 2017-18 electronically on 31.10.2017 with a total income of Rs.33,13,58,490/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the assessee has uploaded the details as called for by the A.O. on the e-filing portal of the

Income Tax website. The Assessing officer (A.O.) on perusal of the financial statements found that the assessee has claimed expenses of Rs.68,18,580/- towards society maintenance charges and also 30% standard deduction u/s 24(a) of the Act. The A.O. is of the opinion that when the assessee is eligible for deduction of municipal taxes paid and 30% annual value/Net rent deduction and interest on house property and no further claims are allowed.

3. The A.O. has dealt on the provisions of Sec. 23 of the Act and a show cause notice was issued for disallowing the maintenance expenses. The assessee has filed the detailed explanations dated 25.11.2019 referred at Para 6 of the assessment order. The assessee has explained the reasons for the claim and supported the submissions with the judicial decisions. Whereas, the A.O. was not satisfied with the explanations and is of the view that though the CIT(A) in the assessee's own concerns case has passed a favorable order but the revenue has not accepted the CIT(A) order on merits and due to low tax effect by the CBDT Circular the appeal was not challenged. Finally, the A.O. has disallowed the claim

of Rs. 68,18,580/- and assessed the total income of Rs. 33,81,77,070/- and passed order u/s 143(3) of the Act dated 22.12.2019.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O, finally is of the opinion that the action of the A.O is tenable and confirmed the addition and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the addition irrespective of the fact that in the assessee's sister concern cases the claim was allowed. The assessee has filed explanations and judicial decisions with the assessing authority and the CIT(A) which were not considered. The Ld.AR supported her submissions with the provisions of law, judicial decisions and the paper book. Contra, the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material available on record. The sole crux of the disputed issue envisaged by the Ld. AR that the CIT(A) has erred in confirming the addition made by the A.O. in respect of society maintenance charges. The contentions of the Ld. AR are that the claim has to be allowed in addition to the deduction u/s 24 of the Act as these are society maintenance charges, which are mandatorily incurred irrespective of the property let out or vacant. The Ld AR explained the reasons for the claim and substantiated with the submissions read as under:

The appellant is a Partnership Firm, has let-out commercial properties on leave and licence. The appellant is a member of the Co-operative housing society. During the year apart from paying the Municipal Taxes, the appellant has also paid Rs,68,18,580/ towards society maintenance charges to the housing society for the maintenance of building including the Lift, providing lighting facility in the common area and cleaning of the common area etc. Society maintenance charge includes non-occupancy charges also which is paid when the property is let-out.

The Learned Assessing Officer has disallowed the society maintenance charges of Rs.68,18,580/- paid by the appellant to the housing society u/s 24 r.w.s Sec.23 of Income Tax Act 1961. The appellant has claimed the said amount of Rs.68,18,580/paid to the housing society towards the maintenance charges.

Rent collected by the licensor includes the society

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maintenance charges and rent is nothing hut a compensation money paid by the tenant for using the property. Thus, it is humbly stated that while determining the rent receipt by it from the tenant, the amount of Rs.68,18,580/- should have been excluded from the gross amount of the rent received by the appellant since it was only reimbursement of the utility charges paid by the appellant to the society on behalf of the tenant for the services enjoyed by the tenant.

As per the common practice the licensor pays the municipal taxes, cess or any other charges in respect of the let-out property. Further the society maintenance charges also is paid by the licensor for the benefits/amenities enjoyed by the tenant. Hence society maintenance charge paid by the licensor has direct a nexus for earning rent.

The appellant has claimed the said sum of Rs.68,18,580/- was paid by it towards the common maintenance of the building including the provision of lift, cleaning common areas, providing lighting facility in the common area, common security etc. These facilities are provided by the appellant to the occupant of the premises (Tenant).

The appellant further humbly submits that, the non-occupancy charges which is including society maintenance charges is also charged by the housing society to members (landlord) whose properties are let-out.

Therefore, while determining the annual letting value (ALV) of the property, the sum for which the property might be reasonably expected to be let from year to year, the non-occupancy charges paid to the society has to be taken into account. When it is taken into account, the annual letting value (ALV) would be considerably reduced. Because

payment of non-occupancy charges is inextricably linked with the letting out of the property even though there is no provision in sec.24 of I.T Act 1961 for deduction of non-occupancy charges to arrive the ALV. While calculating the ALV non occupancy charge cannot be ignored because payment of non-occupancy charge arises only when the property is let out. In view of the above, the society maintenance charges and non-occupancy charges levied by the society has to be allowed u/s. 24 r.w.s 23 of 1.1 Act 1961.

The appellant humbly submits that as per the decision of Delhi Bench of the Tribunal in the cases of Neelam Cable Mfg. Co. V. Asstt. CIT (1997) 59 TTJ (Del) 474 (1997) 63 1TD 1 (Del), Lekraj Channa v. ITO (1990) 37 TTJ (Del) 297 and the decision of the Bombay Bench of the Tribunal in the case of Blue Mellow Investment and Finance (P) Ltd (ITA No.1757/Bom/1993 Dt.6th May, 1993) it was decided and held that the society maintenance charges have to be deducted even while determining the annual value of the property under Section 23 of Income Tax Act, 1961.

The appellant further humbly submits in the following cases of appellant's sister concerns in the same matter has been decided in their favour by the different Honorable CITs (A) given below-

(i) M/s Crescent Realtors Pvt Ltd for Asst. Year 2013-14 CIT(A) -50 has passed favorable order vide dated 06/10/2017 and allowed the payment of society maintenance charges.

(ii) M/s Gold Castle Realtors Pvt Ltd appellate order dated 09/09/2014 passed by CIT (A)-38, Mumbai for A.Y 2010-11.

(iii) M/s Karnala Mansion Pvt Ltd appellate order dated 14/09/2011 passed by CIT (A)-38, Mumbai for A.V 2004-05, 2005-06 AND 200607.

Further the appellant has also relied on the following decisions of the Hon'ble FIAT Mumbai and Delhi I.T.A.T in

case of -

1. SHARMILA TAGORE V JOINT COMMISSIONER OF INCOME TAX (2005) 93 TTJ MUM 483

Held,

That the society maintenance charges have to be deducted even while determining the annual value of the property under Section 23 of Income Tax Act, 1961.

2. Ms. NAN DITA BENERJEE V ITO (ITA NO.1360/MUM/2000)

Held,

Housing society charges can be deducted from Income from House Property.

3. DIT (International Taxation) v Vinod Arora (2012) 139 ITD 205 (Delhi)

Held,

We find that assessee has claimed a sum of 22,888/- was paid by it towards common maintenance of the building including the provision of lift, cleaning of common areas etc. provided by the assessee to the occupants of the flat. Thus, it is the assessee's argument that while determining the rent received by it from the tenant, the amount of 22,888/- should have been excluded from the gross amount of the rent received by the assessee since it was only reimbursement of the utility charges paid by the assessee to the society on behalf of the tenant for the services enjoyed by the tenant. In our considered opinion, the view adopted by the Ld. Commissioner of Income Tax (A) is cogent one. We further note that Ld. Commissioner of Income Tax (A) has noted that assessee's own case for AY 2007-08, the said issue was decided in favour of the assessee by the Ld. Commissioner of Income Tax (A).

ITA No.827/Del/2012 This fact was not controverted by the Ld. Departmental Representative. Under the

circumstance, in the facts and circumstances of the case, we do not find any illegality or infirmity in the order of the Ld. Commissioner of Income Tax (A). Accordingly, we uphold the same.

In the result, the appeal filed by the revenue stands dismissed.

7. We find the Hon'ble Tribunal in the case of Ms Sharmila Tagore Vs. JCIT 2006 150 taxmann.com 4, (Mumbai) has held as under;

In view of the Tribunals order in the case of Bombay Oil Industries Ltd. v. Dy. CIT [2002] 82 1 (Mum.), the maintenance charges had to be deducted even while determining the annual value of the property under section 23.

Though there is no provision in section 24 for deduction of the non-occupancy charges, the non- occupancy charges will have a depressing effect upon the annual letting value of the property.

Once the annual letting value of the property is estimated which is the sum for which the property might reasonably be expected to be let from year to year, there is no way to ignore the non-occupancy charges because the question of payment of non-occupancy charges arises only when the property is not self-occupied but is let out. In that view of the matter, the non- occupancy charges levied by the society will have to be considered under section 23 even while arriving at the estimate of the annual letting value of the property. The Assessing Officer should recompute the annual letting value.

8. Further, the Ld.A.R relied on the decision of Realty Finance and Leasing Pvt Ltd Vs. ITO, [2006] 5 SOT 384(Mumbai) held as under

“For the A.Y 1999-20, the AO disallowed the society charges on the ground that the said expenses were not allowable u/s 24 out of the rent received by the assessee. On appeal, the Commissioner (Appeals) upheld the AO view.

On second appeal:

Held-II

It was an admitted fact that the gross rent receipt also included the society charges which were to be paid by the assessee. Therefore, while computing the annual value the amount of rent which actually went into the hands of the owner in respect of leased property should be taken into consideration. As per the provisions of Sec 23 the annual value of property is to be determined on the basis of actual rent received by the owner.

Hence, the society charges paid by the assessee in respect of its let out properties were allowable while computing the annual value.”

9. The Hon’ble ITAT in the case of Asha Ashar Vs. ITO. [2017] 81 taxmann.com 441(Mumbai) held as under:

13. Regarding the second issue, the ld. Counsel for the assessee submitted that the issue is squarely covered by the decision of Mumbai Bench of the Tribunal in the case of Sharmila Tagore v. JCIT, (2005) 93 TTJ (Mumbai) 483 and also in the case of Bombay Oil Industries Ltd. v. DCIT reported in (2002) 82 ITD 0626(Mum.). The ld. Counsel for the assessee

submitted that the rental income of Rs. 14,40,000/- received by the assessee from the tenant includes the society maintenance charges and Municipal Corporation taxes and hence the assessee has rightly reduced the said charges on account of society maintenance charges and Municipal Corporation taxes amount to Rs.1,80,000/- from the gross rental received . The ld. D.R. supported the orders of authorities below.

14. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee has paid society maintenance charges of Rs. 1,17,825/- which is stated to be the obligation of the lessee and the same is duly included in the rent received by the assessee. In our considered view, this issue is squarely covered by the decisions of the Tribunal in the cases of Sharmila Tagore (supra) and Bombay Oil Industries (supra). Respectfully following the decisions of the Tribunal in the cases cited (supra), we hold that assessee is entitled for deduction of Rs. 1,17,825/- u/s 23 of the Act apart from the standard deduction u/s 24(a) of the Act. We direct the AO to verify the claim of deduction of the assessee of the said society maintenance charges of Rs.1,17,825/- paid by the assessee but stated to be obligation of the lessee and stated to be duly included in the gross rent received by the assessee before allowing the claim of the assessee. We Order accordingly.

15. In the result, the appeal filed by the assessee in ITA NO. 1810/Mum/12 for the assessment year 2006-07 is partly allowed.

10. We find the submissions of the Ld.AR are realistic and are supported by the facts and judicial decisions which cannot be over looked and the claim of deduction of society maintenance charges has to be

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allowed. We respectfully follow the judicial precedence and set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14.02.2022.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 14.02.2022

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai