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

BEFORESHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.1383/Mum/2021 (A.Y 2012-13)

Sopariwala Exports 21st Floor, Nirmal Building, Nariman Point, Mumbai – 400 021	Vs.	Dy. Commissioner of Income Tax-8(1) Aayakar Bhavan, M.K. Road, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACFS6325E		
Appellant	..	Respondent

Appellant by :	Ms. Hema Kataria
Respondent by :	Shri C.T. Mathews

Date of Hearing	23.03.2022
Date of Pronouncement	31.03.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The solitary ground of appeal of the assessee is directed against the decision of ld. CIT(A) in confirming order of the assessing officer in disallowing maintenance charges of Rs.49,02,455/- (including non occupancy charges) claimed as deduction while computing income from house property.

2. Fact in brief is that assessee has filed return of income declaring total income of Rs.13,94,91,797/-. The scrutiny assessment u/s 143(3) was completed on 25.02.2015 and total income was assessed at

Rs.14,06,08,400/-. Subsequently, the proceedings u/s 147 of the Act was initiated by issuing of notice u/s 148 of the Act. The case was reopened on the reason that assessee has claimed expenses of Rs.49,02,455/- towards maintenance charges apart from claiming deduction u/s 24(a) of the Act. Therefore, assessing officer stated that the income chargeable to tax has escaped assessment to the extent of Rs.49,02,455/- in the case of the assessee within the meaning of Sec. 147 of the I.T. Act, 1961. Therefore, the Assessing Officer held that neither Sec. 23 nor Sec. 24 provides for the deduction of expenses incurred towards Society Maintenance Charges. Accordingly, assessing officer has disallowed the claim of aforesaid expenses and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us at the outset the ld. Counsel has contended that on similar issue and identical facts in the case of the assessee itself the coordinate bench of the ITAT, Mumbai has adjudicated the issue in favour of the assessee vide ITA No.823/Mum/2021 A.Y. 2017-18.

However, the ld. D.R. has placed reliance on the decision of CIT(A).

5. Heard both the sides and perused the material on record. The claim of maintenance charges of Rs.49,02,455/- against the rental income of the assessee has been disallowed on the ground that it had already claimed 30% deduction u/s 24(a) of the Income Tax Act, 1961. With the assistance of ld. Representatives we have gone through the decision of coordinate bench of the ITAT in the case of the assessee pertaining to

A.Y. 2017-18 vide ITA No. 823/Mum/2021. The relevant operating para of the order is reproduced as under:

> *"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 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 nonoccupancy 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 nonoccupancy 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 nonoccupancy 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 I.T 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 Cresent 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 l.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 lTD 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 assessees argument that while determining the rent receipt 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 Lo 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 own case for AX 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 controverter 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 N0. 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 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."

After taking into consideration the aforesaid decision of the coordinate bench of the ITAT, we consider that there is nothing before us on hand to defer from the decision of coordinate bench on the similar issue to take a different view on this issue. Therefore, since issue on hand being squarely covered, therefore, following principle of consistency we find merit in the submission of the assessee and allow the claim of deduction. Therefore, ground of appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.03.2022

Sd/-	Sd/-
(KAVITHA RAJAGOPAL) JUDICIAL MEMBER	(AMARJIT SINGH) ACCOUNTANT MEMBER

Mumbai, Dated 31.03.2022
PS: Rohit

आदेश की प्रतिलिपि ग्रेषित/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//

(Asst. Registrar)
ITAT, Mumbai