

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 1278/MUM/2018
Assessment Year: 2014-15**

The ACIT-25(2),
R. No. 508, C-10, 5th floor,
Pratyaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (E),
Mumbai-400051.

Appellant

Vs. M/s Camoron Finance & Investments,
139-140 B, Shiv, Crossing of Sahar
Road & W.E. Highway, Vile Parle (E),
Mumbai-400057.

**PAN No. AAAFC 5210 A
Respondent**

**ITA No. 1289/MUM/2019
Assessment Year: 2014-15**

M/s Camoron Finance &
Investments,
139-140 B, Shiv, Crossing of Sahar
Road and Western Express
Highway, Vile Parle (E),
Mumbai-400057.

**PAN No. AAAFC 5210 A
Appellant**

Vs. The Joint Commissioner of
Income-Tax, Range-25(2),
Room No. 502, 5th floor, C-10,
Pratyaksha Kar Bhavan, Bandra
Kurla Complex, Bandra (E),
Mumbai-400051.

Respondent

Assessee by : Mr. Jishaan Jain, AR
Revenue by : Mr. R.A. Dhyani, DR

Date of Hearing : 04/05/2022
Date of pronouncement : 04/05/2022

ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the assessee and the Revenue are directed against order dated 05/12/2017 passed by the Ld. Commissioner of Income Tax (Appeals)-37, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2014-15.

2. The grounds raised by the assessee in ITA No. 1289/MUM/2019 are reproduced as under:

"1.1 The Commissioner of Income-tax (Appeals)-37 ("CIT(A)") erred in confirming the action of the Assistant Commissioner of Income Tax- 25(2), Mumbai ("AO") in treating income received in respect of the Amenities Agreement with the lessee of the premises under the head 'Income from Other Sources' instead of Income from House Property', as claimed by the Appellant.

1.2 He failed to appreciate and ought to have held that such income received under the Amenities Agreement was assessable under the head 'Income from House Property' only, along with the rental income received under the Lease Agreement with the lessee for the same premises.

1.3 *The Appellant therefore prays that the said income received under Amenities Agreement be assessed as Income from House Property'.*

2. Without Prejudice to Ground 1;

2.1 *The CIT (A) ought to have considered that if at all any part of the amount received under the Amenities Agreement is ascribed to its obligation to carry out repairs etc., the same must be grounds of appeal of the assessee treated as receipts in advance, to be set off against such expenditure in future years.*

2.2 *The Appellant therefore prays that such receipts under the Amenities Agreement be directed to be treated as 'receipts in advance' and not as "income".*

3. The grounds raised by the Revenue in ITA No. 1278/Mum/2018 are reproduced as under:

"1. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing municipal taxes against 'Income from Other Sources' u/s.57(iii) instead of 'Income from House Property' ignoring that the municipal taxes are paid in respect of the house property and thus are directly related to the House Property on which income is earned.*

2. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in ignoring that the municipal taxes are to be deducted from 'Income from House Property' u/s 23 and not from "Income from Other Sources' and hence not covered u/s 57(ili) of the Income-tax Act, 1961".*

4. Briefly stated facts of the case at that the assessee is a partnership firm and for the year under consideration, the assessee filed return of income on 29/11/2014 declaring total income of ₹10,93,20,540/-. In the return of income filed, the assessee shown gross rental income of ₹19,03,17,192/- received from lease and amenities charges for letting out of the property during the year under consideration , under the head “income from house property” and after claiming deduction for municipal taxes of ₹2,59,72,464/-, the assessee further claimed 30% of standard deduction amounting to ₹4,93,03,418/- and offered net income under the head “income from house property” of ₹11,50,41,310/-. The scrutiny assessment under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) was completed in 18/11/2016, wherein the Assessing Officer assessed the income from the amenities under the head ‘income from other sources’ and disallowed the corresponding standard deduction of the 30% amounting to ₹2,77,65,328/- following the finding of the Tribunal in the case of the assessee for assessment

year 2009-10 in ITA No. 170/MUM/2013 and for assessment year 2010-11 in ITA No. 4583/MUM/2014. The Assessing Officer also disallowed insurance premium claimed under the head 'income from house property'. On further appeal, the Ld. CIT(A) following the finding of the Tribunal (supra), upheld the order of the Assessing Officer observing as under:

"7. The facts in the year under consideration are similar to the case of appellant for A.Y.2009-10 and also the submission of the appellant in this regard. Similar disallowance was made in AY 2014-15. Since the facts remain the same with AY 2009-10. Therefore, keeping in view of the principles of judicial consistency, the action of the AO in treating the receipt pursuant to the amenities agreement treated as income from other sources is upheld. However the AO is directed to compute the income from house property and income from other sources for the year under consideration in the manner directed by Predecessor in the appellant's case for A.Y.2009-10. Accordingly this ground of appeal is treated as partly allowed."

5. Aggrieved by the order of the Ld. CIT(A), both the assessee and the Revenue are before the Tribunal raising the grounds as reproduced above.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record including the orders of the Tribunal referred by the parties.

6.1 In the ground No. one of the appeal, the assessee is aggrieved by action of the Ld. CIT(A) in upholding the action of the Assessing Officer and treating receipts from amenities under the head 'income from other sources'. We find that Tribunal in ITA No. 7497/Mum/2012 rejected the identical issue observing as under:

"5. Per contra, the ld. DR strongly supported the orders of the Revenue authorities. After giving a thoughtful consideration to the rival submissions, we have carefully perused the orders of the authorities below. It is not in dispute that the assessee has entered into two separate agreements, one for lease rental and the other for amenities. On going through the amenities agreement, the only amenity to be provided by the lessor to the lessee was in respect of structural repairs to the building let out and to pay municipal and property taxes in respect of the let out property. We fail to understand how these can be termed as amenities in respect of the letting out property. Even if the property is not let out, the assessee has to incur expenditure towards repairs and maintenance of the said property and also to pay municipal taxes. It appears that by separately charging in the guise of amenities charges, the assessee wanted to reduce the liability to property tax which is based on the

rental income of the property. The cases relied upon by the ld. Counsel are totally misplaced and not matching the facts of the case in hand. Considering the fact in totality, we do not find any error in treating the amenity charges under the head "income from other sources". Ground No. 1 is accordingly dismissed".

6.2 Accordingly, respectfully following the finding of the Tribunal (supra), we are of the opinion that in the year under consideration also the receipt from amenities has been correctly assessed under the head 'income from other sources'. We do not find any error in the order of the Ld. CIT(A) in following the binding precedent, thus, we uphold the order of the Ld. CIT(A). The ground No. 1 the appeal of the assessee is accordingly, dismissed.

6.3 In ground No. 2 (two), the assessee has raised alternative prayer for treating the amenities charges received as advance. We find that Tribunal (supra), on this issue has adjudicated as under:

"6. Ground No. 2 is an alternate plea by which the assessee has claimed that the amenities charges received by it should be treated as advance. It is the claim of the assessee that amenity charges should be treated as advance, as it runs through the period of lease. Therefore for the year under consideration, the amenity charges should be treated as advance".

6.4 Thus, respectfully following the order of the Tribunal, the alternative prayer of the assessee is also rejected. The ground No. 2 of the appeal of the assessee is accordingly, dismissed.

6.5 As far as the ground Nos 1 and 2 of the Revenue are concerned, the Revenue has objected to allowing municipal taxes under the head 'income from other sources'. The Tribunal (supra) on this issue has observed as under:

"13. We have given a thoughtful consideration to the rival submission and have carefully perused the orders of the authorities below. As discussed elsewhere, we have held that the amenities charges have to be taxed under the head of 'income from other sources'. Section 57(iii) shows that any other expenditure not been in the nature of capital expenditure lead out of expanded wholly and exclusively for the purpose of making or earning income which is taxed under the head 'income from other sources'. In our considered opinion, payment of municipal taxes cannot be said to be let out or expanded wholly and exclusively for the purpose of earning amenity charges, as these municipal taxes are directly related to the letting out of the property, the rental income from which is taxed is under the head 'income from house property'. We, therefore, find that the finding of the Id. CIT(A), in allowing the municipal taxes deductible as erroneous. We set aside the findings of the Id.CIT(A) and confirm that of the A.O. Ground Nos. 1 and 2 are accordingly allowed".

6.6 Respectfully following the finding of the Tribunal (supra), the action of the Ld. CIT(A) of allowing deduction of municipal taxes under section 57(iii) of the Act, is set aside. The ground Nos. 1 and 2 of the Revenue, are accordingly allowed.

7. In the result, the appeal of the assessee is dismissed whereas the appeal of the revenue is allowed.

Order pronounced in the open Court on 04/05/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 04/05/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai