

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.717/Lkw/2017
Assessment year:2013-14

Shri Vineet Mehrotra, Buxuriya, Shahjahanpur. PAN:ADSPM2681C	Vs.	Income Tax Officer-1(5), Shahjahanpur.
(Appellant)		(Respondent)

Appellant by	Shri P. K. Kapoor, C. A.
Respondent by	Shri Harish Gidwani, D. R.
Date of hearing	10/08/2022
Date of pronouncement	30/08/2022

ORDER

This is an appeal filed by the assessee against the order of learned CIT(A) dated 17/08/2017 pertaining to assessment year 2013-14.

2. The appeal was earlier dismissed for non prosecution vide order of the Tribunal dated 29/03/2019. However, the order of the Tribunal was recalled vide order dated 07/02/2020 and the appeal was listed for hearing on merits. The only ground taken by the assessee is reproduced below:

"1. That the learned CIT(A), Bareilly erred on facts and in law in confirming the action of Assessing Officer treating the entire rental income of Rs.10,85,276/- of the appellant which is contrary to the facts and circumstances of the case and added Rs.7,54,418/- as extra income after allowing deduction u/s 24 of the I.T. Act, 1961."

3. Learned counsel for the assessee, at the outset, submitted that assessee is an individual and during assessment proceedings the Assessing Officer observed that assessee had claimed deduction u/s 57 of the Act in respect of income received as rental and which the assessee had declared under the head 'income from other sources'. The assessee was therefore, required to provide the details of the ownership of the property and lease agreement for letting out the property and was questioned about the admissibility of deduction. The assessee, in reply, submitted that he had entered into an agreement with the United Spirits for letting out the property belonging to his family members including his mother and brother and that is why the assessee had received the rental income after deduction of TDS and which actually did not belong to him and rather belonged to his family members. The assessee also submitted that since the income did not belong to assessee therefore, he transferred the amount of such rent received to the co-owners and therefore, he claimed the deduction u/s 57 of the Act. The Assessing Officer held that the claim of the assessee that property was owned by other family members was not substantiated and therefore, he assessed the income as 'income from house property' in the hands of the assessee and allowed deduction u/s 24 of the Act and made the addition in respect of rest of the income.

4. Aggrieved with the order, the assessee filed appeal before learned CIT(A) who also dismissed the appeal of the assessee. Now the assessee is in appeal before the Tribunal.

5. Learned counsel for the assessee submitted that the findings of the Assessing Officer that no evidence was filed regarding ownership of the property is a wrong statement as the necessary evidence was filed with the Assessing Officer and in this respect our attention was invited to pages 14 to

32 of the paper book where a copy of sale deed of the property in favour of the mother and assessee and all other family members was placed. Learned counsel for the assessee submitted that since the assessee himself was carrying on his own business therefore, for his share of property, his share in the rent was nil. Learned counsel for the assessee submitted that this practice of sub letting has been followed by him in the succeeding years also and in this respect my attention was invited to paper book pages 96 to 102 where copies of computation of income of assessee for the assessment years 2014-15 and 2015-16 are placed. Learned counsel for the assessee also invited my attention to pages 53, 54 and 68 to 70 of the paper book where the ITRs of Mr. Amit Mehrotra and Mr. Ashish Mehrotra, brothers of the assessee, were placed wherein the family members had declared the income received from the assessee as rental income in the assessment year 2013-14. My attention was also invited to paper book pages 94 & 95 where copy of computation of income along with acknowledgement of return of income for assessment of Smt. Asha Mehrotra for assessment year 2013-14 was placed and wherein she had also declared income received from assessee as income from house property. Learned counsel for the assessee also invited my attention to pages 87 to 89 of the paper book where the copy of affidavits of Shri Ashish Mehrotra, Smt. Asha Mehrotra and Shri Amit Mehrotra, family members of the assessee, were placed, where they have affirmed that they have received rental income from godown through Vineet Mehrotra and therefore, it was submitted that the income has rightly been claimed by the assessee as 'income from other sources' and the assessee had rightly claimed the deduction u/s 57 of the Act as the income did not belong to the assessee and was distributed to the rightful owners of the property.

6. Learned D. R., on the other hand, submitted that the assessee had received the rental income and tax was deducted on the same and assessee will get refund or adjustment of such refund and therefore, the income rightfully belongs to the assessee and not to the other members.

7. I have heard the rival parties and have gone through the material placed on record. I find that the assessee had received the rental income from the godown, jointly owned by him and other family members namely Shri Ashish Mehrotra, Smt. Asha Mehrotra and Shri Amit Mehrotra. The entire rent received by the assessee has been paid to these three persons and this practice has been followed in succeeding years where the assessee has again claimed the rent paid to family members as deduction u/s 57 of the Act. The assessee, before the Assessing Officer, had filed affidavits of Shri Ashish Mehrotra, Smt. Asha Mehrotra and Shri Amit Mehrotra where they have confirmed that they have received the respective amounts from Vineet Mehrotra as part of the rent of the godown. The respective amounts, received from the assessee by the family members of the assessee, has been declared in the income tax returns for the relevant assessment years, a copy of which is placed at pages 53, 54, 68 to 70 and 94 & 95 of the paper book respectively. The Assessing Officer did not allow the claim of the assessee by holding that the assessee had not submitted any proof of ownership of the property whereas the assessee, in the paper book, has enclosed copy of godown records which were submitted to the authorities below and a copy of which is placed at pages 14 to 32 of the paper book. While going through the copy of godown records, I find that the name of Shri Paras Mehrotra, Shri Vineet Mehrotra, Smt. Asha Mehrotra and Shri Amit Mehrotra and Ashish Mehrotra are appearing in this sale deed as owners of the property therefore, the finding of the Assessing Officer that no evidence was filed before him, substantiating the ownership of the

property, is wrong. The learned CIT(A) has also not considered all the submissions of the assessee in right perspective. Since the income received by the assessee has been distributed amongst the co-owners of the property and the co-owners had declared the income in their respective income tax returns, the non allowability of deduction to the assessee u/s 57 will amount to double taxation of the same income which is not permissible. The receipt of income in the hands of the assessee had only occurred due to the fact that the assessee had entered into an agreement with United Spirits for letting out the godown but merely letting out the property, belonging to others, by one of the family members, does not entitle the assessee to earn the rental income. The rental income received by assessee in fact belongs to these persons who are owners of that part of the property. In view of the above facts and circumstances, I direct the Assessing Officer to allow the deduction to the assessee u/s 57 of the Act as the distribution of income by assessee in this case is equivalent to amount spent for earning of the income which is allowable deduction u/s 57 of the Act.

8. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 30/08/2022)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:30/08/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar