

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1798/Mum/2019
(A.Y. 2013-14)**

Samir Shantilal Somaiya Fazalbhoy Building, 45- 47, M.G. Road, For, Mumbai - 400001	Vs.	ITO-2(3)(3) Aayakar Bhavan, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AMUPS9442C		
Appellant	..	Respondent

Appellant by :	Arati Vissanji
Respondent by :	Soumendu Kumar Dash

Date of Hearing	13.09.2022
Date of Pronouncement	28.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-6, Mumbai, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2012-13. The assessee has raised the following grounds before us:

- “1. The learned Commissioner of Income-tax (Appeals) erred in confirming amenity fees of Rs.27,54,000/- received from tenants as 'Income from Other Sources' instead of 'Income from house property and consequently not allowing deduction of Rs 8,26,200/- u/s. 24 (a) of the Income-tax Act 1961. Your appellant submits that this income ought to be assessed as 'Income from house property and not as 'Income from other sources' and thereby to allow deduction u/s 24(a) as claimed Without prejudice to the

above, the learned CIT(A) ought to have considered expenses related to earning the amenities income and allowed the same as deduction.

2. *The appellant's AR erred in stating before the CIT(A) that the ground of appeal relating to (1) capital transaction of inheriting the agricultural land valued at Rs. 5,09,438/- as agricultural income and (ii) Agriculture income of A.Y. 2012-13 as income of A.Y. 2013-14 of Rs. 12,500/- as ground not pressed by the appellants. In fact the appellants had made detailed written submissions to the learned CIT(A). Your appellant submits that the said amount of Rs.5,21,938/- is not the agricultural income of your appellant but an agricultural capital receipt and not liable to tax.*
3. *Your appellants further reserve the rights to add, amend or alter the aforesaid grounds of appeal as they think fit by the appellants or by their representatives.”*

2. There was a delay in filing this appeal by 440 days. The assessee has filed the affidavit dated 26.03.2019 requesting for condonation of delay in filing the appeal. It is submitted in the affidavit that order of the ld. CIT(A) was received by the assessee on 14.11.2017 and last date for filing of appeal was 12.01.2018, however, the appeal was filed on 27.03.2019 resulting a delay of 440 days in filing the present appeal. It is submitted that entire Income Tax proceedings of the assessee was managed by Mr. Pradip A. Shah partner of the assessee who had expired on 10.09.2017. Thereafter, the firm was managed by Shri Shreyansh M. Jhaveri another partner of the assessee firm who had also expired on 27.05.2018 after long illness. In view of the aforesaid circumstances the assessee submitted that there was a bonafide reason for delay in filing this appeal. After hearing both the side and taking into consideration the above facts and circumstances we observe that there was reasonable cause for delay in filing this appeal, therefore, we condone the delay.

3. The fact in brief is that return of income declaring income of Rs.8,33,55,960/- was filed on 30.07.2013. The return of income was subject to scrutiny assessment and notice u/s 143(2) of the Act was

issued 22.09.2014. Further fact of the case are discussed while adjudicating the ground of appeal filed by the assessee as under:

Ground No.1; Confirming fees of Rs.27,54,000/- received from the tenants as the income from other sources instead of income from house property:

4. During the course of assessment the A.O noticed that assessee had shown income from house property at Rs.76,14,000/- [Rs.48,60,000/- (+) Rs.27,54,000/-]. After perusal of the amenities agreement the A.O noticed as under:

“In consideration of the amenities provided in the said premises, the licensee shall pay to the Licensor, along with the license fee payable under the license agreement to the licensor, amenity fees of Rs. 2,29,500/- Rupees Two lakh Twenty Nine thousand five hundred only) per month for the term, without any default, from the commencement date for such use of the amenities.”

The A.O stated that the agreement for providing amenities was executed for 36 months for the period from 16.04.2010 to 15.04.2013. The A.O was of the view that amenities fees was not in the nature of rent, therefore, the assessee was asked that why such amenities income should not be treated as income under the head income from other sources u/s 56 of the Act. The assessee explained that the said amenities of Rs.27,50,000/- was pertained to Nirmal Premises which was rented out. The receipt was incidental to rent and part of the rent only. The said income was received from the same party for the same premises from which rent was received. The assessee further explained that the same was rightly claimed as income from house property in the statement of income. It is also stated that said transaction was reported in 26AS and ITD-ITS u/s 194I of the Act. However, the A.O had not agreed with the submission of the assessee he was of the view that as per lease and

license agreement monthly license fees was of Rs.4,05,000/- and separate agreement was executed for amenities for Rs.2,29,500/- per month. Therefore, the A.O held that income from amenities was not in the nature of rent therefore same was not eligible for deduction u/s 24 of the I.T. Act. Accordingly, the A.O has not provided deduction us/ 24 of the Act and same was treated as income from other sources.

5. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts stated by the A.O.

6. During the course of appellate proceedings before us the ld. Counsel referred page 42-53 of the paper book pertaining to copy of amenities agreement. The ld. Counsel submitted that this agreement was executed on 06.04.2010 between the Licensor and Licensee pertaining to the property known as Nirmal Premises situated at 241/242 Back Way Reclamation, Nariman Point, Mumbai. She also referred different clauses of the agreement and submitted that it is clearly mentioned in the agreement that along with license fees payable under the license agreement amenities fees of Rs.2,29,500/- per month will also be paid by the licensee to the licensor. She also referred page no. 1 on the paper book pertaining to Lease and License agreement and submitted that as per the Lease and License agreement the assessee had given on rent the same premises for the period from 16.04.2010 to 15.04.2013 for which amenity agreement was executed for the same period from 16.04.2010 to 15.04.2013. After placing reliance on the decision of coordinate bench of the ITAT in the case of Smt. Nirmala Zaverchand Shah Vs. The DCIT Ward 13(2) for A.Y. 2010-11, dated 17.06.2020, the ld. Counsel

contended that amenity fees should be assessed as income from House Property.

On the other hand the ld. D.R. supported the order of lower authorities.

7. Heard both the sides and perused the material on record. The assessee was the owner of commercial property of 2700 sq. ft. on 10th floor Nirmal Building situated at Nariman Point, Mumbai. The assessee had let out the said premises to Stemcor India Pvt. Ltd. from 16.04.2010 to 15.04.2013 for which the assessee entered into two separate agreement (i) for rent; (ii) for amenities. The A.O was of the view that there was two separate agreement executed, therefore, rent received from amenities cannot be considered as income from house property. On perusal of the material on record it is observed that both the agreement were executed with the same party for the same period pertaining to the same property which was let out by the assessee. The A.O has not brought on record any material to substantiate that the amenities were not related to the property let out by the assessee and also could not controvert that the amenity agreement executed by the assessee was an integral part of the Lease and License agreement. With the assistance of the ld. representative we have gone through the judicial pronouncements relied by the assessee as referred above. The relevant operating part is reproduced as under:

“6. We have heard the rival contentions and gone through the facts and circumstances of the case. Admittedly, the assessee has declared the rental income of `33,08,372/- including the amenity charges received vide two separate agreements. The amenities provided by the assessee by these two separate agreements are detailed out by the Assessing Officer in assessment order in Para 7 and the relevant read as under: -

- “a. RCC Frame Structure- Common Area Specification.*
- b. Marble / Granite/ Granamite in Common Areas, LOboies etc.*

- c. Kotah on Staircase.
- d. 2 Otis Elevator.
- e. Control Room- CCTV in common areas.
- f. Water supply – underground/ Basement.”

7. We noted that the Tribunal in assessee's own case has considered this issue for Assessment Year 2002-03 in ITA No.6880/Mum/2013 vide order dated 05.11.2015 considered this issue as amenity charges and held that the same falls under income from house property and not income from other sources. The Tribunal gave its finding at Para 2.3 as under: -

“2.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, we note that the amenities available in the building was RCC Frame Structure, Marvel/granite in the common areas, lobbies, etc, Kotah in staircases, two elevators, control room: CCTV in common areas, water supply, electricity, AHU Room and Fire Control System. If the nature of these amenities are analyzed, these are clearly part and partial of the building. Both the agreements of leave and licence and other for amenities are composite one and one cannot be enforced without the other. These are the basic agreement and are integral part to use of licence premises and their uses coextensive/coterminous, therefore, these cannot be segregated, thus, the charges for amenities were rightly held to be income from house property, thus, the claimed deduction is also allowable, therefore, we affirm the stand of the ld. Commissioner of Income Tax (Appeals).”

8. Even otherwise, then issue is absolutely covered by the decision of Hon'ble Supreme Court in the case of Shambhu investment Pvt. Ltd. Vs. CIT 263 ITR 143 (SC). Accordingly, we accept the income declared by assessee under the head income from other sources as against assessed by Assessing Officer under the head income from house property. Hence, we direct the Assessing Officer to consider this income under the head income from house property and not income from other sources. The orders of lower authorities are reversed on this ground and the appeal of the assessee is allowed.”

In view of the above facts and following the decision of the coordinate bench as above we direct the A.O to allow the claim of the assessee.

8. In the result, this ground of appeal is allowed.

Ground No. 2:

9. Regarding 2nd ground of appeal of the assessee pertaining to the issue that against the action of the AO in treating the amount of Rs.5,21,938/- as additional agricultural income of the assessee, the ld.

Counsel contended that there was no such agricultural income earned by the assessee and ld. CIT(A) had incorrectly dismissed the appeal of the assessee on the ground that assessee had not pressed this ground of appeal. In support of its contention the ld. Counsel has placed copies of ledger accounts of Kokatham Farm and Rampur Farm and copy of ledger account of the Sancheti Farms and also copy of balance sheet and schedule of agricultural farm as on 30.03.2013 of late Shantilal K. Somaiya. In the paper book submitting during the course of appellate proceedings before us, the ld. Counsel contended these relevant evidences were also furnished during the course of assessment proceedings and appellate proceedings before A.O and ld. CIT(A) and the same were not taken into consideration before treating the such amount as agricultural income. Therefore, we restore this issue to the file of the A.O for deciding afresh after verification/examination of these referred supporting material placed by the assessee in the paper book. Accordingly, this ground of appeal is partly allowed.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28.09.2022

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 28.09.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/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