

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 666/Kol/2022
Assessment Year: 2018-19

Shashikant V. Mansata (AOP) (PAN: AAAAS 8998 Q)	Vs.	DCIT, Ward-44(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri Anil Kr. Agrawal, FCA
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 25.10.2022 for the AY 2018-19.

2. The only issue raised by the assessee is against the confirmation of addition of Rs. 23,30,980/- by Ld. CIT(A) as made by the AO which was assessed by the AO/CPC as income of rental of the assessee AOP.

3. Facts in brief are that the assessee AOP filed its return of income on 18.07.2018. The said income of AOP derived income from house property which was

offered to tax in the hands of co-owners u/s 26 of the Act and was offered accordingly. This position has been accepted by the Department in the earlier and succeeding assessment years and the copies of the orders passed u/s 143(3) of the Act are placed in the paper book. Deviating from that, the CPC/AO treated the said property income as the business income of the assessee in the intimation passed u/s 143(1) of the Act dated 31.05.2019 thereby raising a demand of Rs. 7,64,129/-.

4. The assessee went on appeal before the Ld. CIT(A) and the ld. CIT(A) simply affirmed the order of AO. The ld. CIT(A) further invoked the provisions of Section 167B of the Act by observing and holding as under:

“4.8. Thus, the contention of the appellant that since the income is already offered in the hands of individual members of AOP, the same should not be taxed in the hands of AOP is not tenable under the law. The AOP had failed to offer the rental income in its hands in accordance with the provisions of 167B since it was not offered under any head. The processing of the return by CPC u/s 143(1) is not a scrutiny proceeding wherein the appropriate heads of income shall be examined and re-determined once again by the AO. It was the responsibility of the appellant to properly enter the details in the relevant Schedules and on its failure to do so had resulted in mismatch of details of income under the relevant head vis-à-vis the Profit and Loss account drawn by the appellant. Therefore, the intimation issued u/s 143(1) does not merit any interference on this issue. The Grounds raised by the appellant fail.”

5. After hearing the rival contentions and perusing the material on record, we find that the assessee is an AOP with members having definitive share. We note that it is not the case where the share of each member of the AOP is not known and therefore at the outset we reject the conclusion drawn by the Ld. CIT(A) that Section 167B of the Act are to be applied for assessing the rental income of AOP. Moreover, we find that income of the preceding and succeeding assessment years have been assessed in the hands of members of AO u/s 26 of the Act and not in hands of assessee and the said orders are placed in the paper books at page 7 to 14. In our considered view the department cannot be allowed to change its stand in the current year vis-à-vis the earlier and succeeding assessment years as there is no change in facts and law during the years vis a vis other years. Moreover we find merit in the contention of the assessee that the rental income is required to be assessed in the hands of members of AOP u/s 26 and has been assessed accordingly as stated above. The Ld. A.R was kind

enough to place before us the copies of ITRs and computation of income which corroborate the rental income having been assessed in the hands of members. In view of this fact, we do not find any reasons to sustain the order of Ld. CIT(A) as the same appears to be incorrect and against the accepted stand of the revenue in other years. Moreover, if we concur with the conclusion of the ld CIT(A), then it would result in double taxation of the same income which is against the spirit of the Act. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition of Rs. 23,30,980/-.

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

Order is pronounced in the open court on 17th January, 2023

Sd/-
(SonjoySarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 17th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shashikant V. Mansata (AOP), 134/1, Mahatma Gandhi Road, Burra Bazar, Kolkata-700007.
2. Respondent – DCIT, Ward-44(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata