

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3077/Mum/2023
(A.Y. 2018-19)**

Laila Rustom Jehangir 1 st Floor, 41/44, Shapoorji Pallonji Centre, Minoos Desai Marg, Colaba Mumbai – 400 005	Vs.	Income Tax Officer, International Tax- Ward 3(1)(1), Air India Building Nariman Point, Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AACPJ7267L		
Appellant	..	Respondent

Appellant by :	Dhrmesh Shah & Ms. Mitali Parekh
Respondent by :	Anil Sant

Date of Hearing	18.01.2024
Date of Pronouncement	08.02.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-57, Mumbai, dated 31.07.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

“Ground No. 1 Disallowance of Condominium expenses paid while computing “Income from House Property.”

- 1.1. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) -57, Mumbai [learned CIT(A)] erred in disallowing Security Charges and Administrative expenses forming part of condominium expenses, without any basis while computing the Income from House Property.*
- 1.2. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) -57, Mumbai [learned CIT(A)] ought to have appreciated that Security Charges and Administrative charges are incurred by the society towards security of the building and*

other administrative work related to the society and are part of overall maintenance of the building.

General

Each one of the above grounds of appeal is without prejudice to the other.

The appellant craves leave to add, amend, alter, vary, omit, or otherwise substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal.”

2. The assessee is a NRI and filed return of income on 25.07.2018 showing total income of Rs.1,93,98,800/- which was subsequently, revised on 15.11.2018 by declaring total income of Rs.1,86,93,330/-. The assessee derived income from house property capital gain and income from other sources. During the course of assessment the assessing officer noticed that assessee has offered income from house property amounting to Rs.95,68,656/- from following seven properties:

Sr. No.	Address		Share in Property	Let out or Self occupied	Rent offer	Less Condominium Exp claim	Net rent offered
1.	G2	Windmere, Colaba Mumbai – 400005	50%	Let out	24,060/-	1,16,265/-	Nil
2.	101	---do---	50%	Let out	1,30,645/-	1,58,807/-	Nil
3.	102	---do---	50%	Self occupied	Nil	Nil	Nil
4.	201	---do---	50%	Let out	3,25,625	1,40,275	1,26,865
5.	202	---do---	50%	Let out	30,339	1,40,681	Nil
6.	401	---do---	100%	Let out	6000000	2,99,075	39,84,507
7.	402	---do---	100%	Let out	81,37,350	3,31,507	54,57,284
Total						11,86,610/-	95,68,656/-

The AO further notice that the assessee has claimed condominium expenses on the ground that without incurring such expenditure the property cannot be let out and rent would not have been received. On query the assessee claimed that these expenses were reimbursement of expenses incurred on behalf of the tenant and also referred the decision of ITAT in the case of Yogen D Sandhvi to support his claim. However, the AO had not agreed with the submission of the assessee after referring provisions of Section 24 of the Act at para 5.1 of the order and

held that these expenses of Rs.11,86,610/- were not allowable, therefore, the same was added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of condominium expenses excluding security charges and administrative expenses amounting to Rs.3,73,278/-.

4. During the course of appellate proceedings before us the ld. Counsel submitted that condominium expenses comprising security and administrative expenses are required to be excluded while determining the annual letting out value of the property and further submitted that these expenditure was basically reimbursement of expenses incurred on behalf of the tenants. In support of its contentions the ld. Counsel has referred the following judicial pronouncements:

- i. Decision of the Hon'ble Delhi High Court in the case of CIT v R. J. Wood P. Ltd. [334 ITR 358].*
- ii. Decision of the Hon'ble Mumbai Tribunal in the case of DCIT v. Yogen D. Sanghvi [ITA No. 4776/Mum/2014]*
- iii. Decision of the Hon'ble Mumbai Tribunal in the case of Ms Aloo Bejan Daver v. ITO [ITA No. 2381, 2382/Mum/2010]*
- iv. Decision of the Hon'ble Mumbai Tribunal in the case of Krishna N. Bhojwani v. ACIT [ITA No. 1463, 1772/Mum/2012]"*

On the other hand, the ld. D.R. submitted that such expenses were beyond the scope Section 23 and 24 of the Act and same were not allowable. He supported the decision of ld. CIT(A).

5. Heard both the sides and perused the material on record. During the year under consideration the assessee has deducted condominium expenses amounting to Rs.11,86,610/- from the rent receipt of such properties and offered income of Rs.95,68,656/- for taxation under the head income from house property. The assessee submitted that such expenditure claimed was reimbursement expenses incurred on behalf of the tenants. It is also submitted that such charges are to be borne by the owner of the property and the same is to be deducted from the Annual Letting Value (ALV) from the rent received or receivable by the

assessee. The assessee has referred the various decision of the Hon'ble High Court including ITAT, Mumbai wherein such claim of expenses were allowed to be deducted from the rent received. With the assistance of ld. representative we have perused the various decision referred by the ld. Counsel. We have also perused the decision in the case of Ms. Aloo Bejan Daver v. ITO [ITA No. 2381, 2382/Mum/2010]. The relevant extract of the decision is reproduced as under:

“7. We have considered the submissions made by both the parties, perused the orders of the A.O. and ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute in the impugned appeal is regarding the allowability of deduction of society charges from the rental income for the purpose of calculation of annual letting value u/s 23(1)(b). We find the Mumbai Bench of the ITAT in the case of Varma Family Trust (supra) has held that section 23(1)(b) proceeds on the basis of actual rent received or receivable and therefore all the outgoings for earning the said rental income would be admissible deduction. We find the Tribunal in the case of Bombay Oil Industries (supra) has held that maintenance charges and municipal taxes paid by the assessee are to be deducted from gross rent to arrive at the annual value. We find that in the case of Sharmila Tagore (supra), the Tribunal held that maintenance charges paid to housing society have to deducted even while computing annual letting value. Similar view has been taken in various other decisions relied on by the ld. counsel for the assessee. The decisions relied on by the ld. CIT(A), in our opinion, are distinguishable and not applicable to the facts of the present case.

8. We find the Mumbai Bench of the Tribunal in the case of Gopichand P. Godhwani (supra), after considering the decision of the Hon'ble Bombay High Court in the case of J.K. Investors (Bombay) Ltd. (2001) 168 CTR (Bom) 189 has held that for the purpose of determining annual value of the property all taxes, cesses and outgoings being liabilities of the assessee, have to be excluded from assessable income in view of s. 23(1)(b). So far as the decision of the Tribunal in the case of Barodawala Properties Ltd. (supra) is concerned, we find that the Tribunal in subsequent judgments have held that while calculating annual value of the let out property, maintenance charges paid to the society by the assessee is admissible deduction from the annual let out value u/s 23(1)(b). In view of the series of decisions relied on by the ld. counsel for the assessee supporting the deductibility of society charges from the gross rent for the purpose of determining the annual let out value u/s 23(1)(b), we hold that the assessee is entitled to deduction of society charges amounting to ` 1,26,000/- from the rent so received for the purpose of determining ALV u/s 23(1)(b) of the I.T. Act. The ground raised by the assessee is accordingly allowed.”

6. After considering the other decisions on similar propositions as referred there is nothing before us on hand differs from the issue raised in the cases cited (supra) so as to take a different view on this issue.

Therefore, following the decision of the ITAT as referred above, the ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 08.02.2024

Sd/-

(Vikas Awasthy)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 08.02.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.