

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.761 & 762/Mum/2024
(Assessment Year :2013-14 & 2014-15)**

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| The Maharashtra State Co-op Hsg. Finance Corp. Ltd. Housefin Bhavan C-21, 3 rd Floor Bandra Kurla Complex Bandra (E) Mumbai - 400 051 | Vs. | ACIT-23(3) Matru Mandir, Nana Chowk, Grant Road Mumbai - 400 007 |
| PAN/GIR No.AAAAT0072E | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|---------------------------|
| Assessee by | Shri Sanjeev Joshi |
| Revenue by | Shri Ashok Kumar Ambastha |
| Date of Hearing | 03/06/2024 |
| Date of Pronouncement | 02/09/2024 |
| | |

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 26/12/2023 for the quantum of assessment passed u/s.143(3) for the A.Y.2013-14 & 2014-15.

2. In both the appeals the common ground for the quantum which is on account of addition of Rs.1,06,74,204/- on

account of unrealized rent as 'income from house property'.

The grounds raised for both the years reads as under:-

1) *The learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as 'the learned CIT (A))' erred In upholding the addition of Rs. 1,06,74,204/- on account of unrealized rent as 'Income from House Property'.*

1.1) *The learned CIT(A) failed to appreciate that the appellant has filed a suit on 22-06-2011 to get vacant possession of the property & for determination of mesne profits and therefore, rent though paid by the tenant, did not accrue to the appellant & was therefore, not chargeable to tax.*

1.2) *The learned CIT(A) failed to appreciate that the appellant's case was squarely covered by Rule 4 of the Income Tax Rules, 1962 and the rent could not be taxed in A.Y. 2014-15*

1.3) *The learned CIT(A) erred in holding that the appellant had not satisfied the conditions of Rule 4 and therefore, rent income was chargeable to tax.*

1.4) *The learned CIT(A) ought to have held that rent Income of Rs 1,06,74,200/- was not taxable in the hands of the appellant.*

1.5) *The learned CIT(A) ought to have held that mesne profits (amount received/receivable from a person in wrongful possession of property) is a capital receipt & not chargeable to tax.*

2) *Without prejudice to the above grounds of appeal, as rent received has already been offered to tax in the year of receipt i.e. A.Y. 2015-16, when the matter was settled, we pray that a direction be issued to exclude the same from the income assessed in A.Y. 2015-16, if rent is held to be taxable as Income of the appellant In A.Y. 2014-15."*

3. The brief facts qua the issue involved is that assessee is a housing finance society and during the course of assessment

proceedings, the ld. AO has noted that in Form 26AS, assessee has an undisclosed TDS of Rs. 10,67,424/- and enquired the assessee as to why the corresponding income to the said undisclosed TDS of Rs.10,67,424/- should not be added.

4. In response, the assessee submitted as under:-

“The said rental income was disputed during the FY2013-14 and as lease agreement was not in force the said income was not considered as our income. The matter of dispute and non-recording of rental Income was informed to the Income-tax Office vide our letter No. F/1691 dated 01.09.2014. We have received the said rental income in FY 2014-15 and we have paid the Income tax on said income in FY 2014-15 on receipt basis.”

5. Ld. AO rejected assessee's contention and held that assessee should have shown the rental income on accrual basis. His relevant finding for making the addition reads as under:-

1. Ms. Starlight Systems Pvt. Ltd. are in possession and occupying the assessee's premises during the F.Y.2013-14 and paying rent to the assessee.

2 M/s. Starlight Systems Pvt. Ltd. has issued cheques of rent during the F.Y.2013-14 and has deducted tax on rental payments.

As submitted by the assessee, the cheques for rent were given to the assessee but were not deposited by it. Thus, it was in the knowledge of assessee that cheques of rent were issued in its favour

4. The dispute between the assessed, and Starlight Systems Pvt. Ltd was only for upward revision of rent which is now sorted, but the rent which was fixed earlier was not in any case supposed to be reduced. Therefore, the assessee was required to offer the Income of at least Rs.1,00,74,240/-being the amount of rent agreed upon.

5 No proof is produced by assessee to prove that attempts were made to get the rented premises vacated

6 The assessee has offered interest for tax on accrual basis and on the same basis rent is also required to be offered for tax, since the assessee follows Mercantile system of accounting.

7. Also, as the 26AS has not been revised, the income is deemed to have accrued in the year under scrutiny to which the credit has been given by the deductor. Therefore, an income of Rs. 1,06,74,240/- is hereby added to the total income of the assessee under the head Income from House property. Penalty proceedings are hereby initiated us. 271(1)(c) for concealment of income.

6. Ld. CIT(A) too has confirmed the said addition holding that similar issue was involved in the A.Y.2012-13 and in that year ld. CIT(A) has confirmed the said addition and before the Tribunal assessee has not raised this ground and therefore, the matter has attained finality. His relevant observation reads as under:-

6.2 From the facts of the case, it is apparent that the appellant contested the issue of taxation of rental receipt of Rs. 1,06,74,200/- under the head income from house property before the CIT(A) and the CIT(A) confirmed, the action of the AO for the A.Y 2012-13. The appellant contested the same issue of rental income before the Hon'ble ITAT and thereafter withdrawn the appeal filed before the ITAT. It was the only issue remained against the appellant after the order of the CIT(A) dated 05.02.2016. Due to withdrawal of the appeal

filed, before the Hon'ble ITAT the decision of the CIT(A) vide order dated 05.02.2016 on the issue of rental income attains finality.

6.3 Vide letter dated 25.05.2023, the appellant has submitted the following -

The assessee did not accepted cheque issued by the issued by the lessee due to legal Dispute with the lessee (explained in detailed "statement of facts")

When the legal dispute was settled and rent payment was accepted, the rent income is declared on receipt basis in the A.Y. 2015-16. The copy of statement of income for the S.Y. 2015-16 is enclosed herewith.

In the letter, the appellant referred to the Statement of facts which is as under –

1. The Assessee, The Maharashtra State Co-op Hsg. Finance Corpn. Ltd is a Co-operative Society and engaged in business of providing credit facilities to its members.

2. As statutory requirement under Maharashtra State Co-op Societies Act, assessee invested its funds in other Co-op Societies.

3. During the year, the assessee received interest of Rs.1.45.40.844/- from Investment with other Co-op Societies during the ordinary course of business

4. Till F.Y. 2010-11 (A.Y. 2011-12) assessee received rent from let out property. The said lease agreement got expired on 31.03.2011.

5. Assessee didn't renew the said lease agreement and asked the lessee to vacate the premises.

6. Lessee refused to vacate the premises and the matter went in litigation.

7. Lessee continued to make the payment and deduct TDS

8. Assessee didn't accept the payment of rent as per the advice of legal consultant and no house property income was declared In the return as per rule 4 of the Income Tax Rules, 1962

9. Assessing Officer added the Rent of Rs 1,06 74 204/-as income from House Property to the total income on the basis of 26AS

6.4 It would be worth mentioning here that the facts of the case in respect of Impugned rental income, there was no change for the AY 2012-13 and the current A.Y. 2013-14. The appellant had withdrawn appeal against the issue of impugned rental income for the A.Y. 2012-13 filed before the Hon'ble ITAT. Thus, due to withdrawal of the appeal filed before the Hon'ble ITAT, the decision of the CIT(A) vide order dated 05.02.2016 on the issue of rental income becomes final and thus is required to be applied for the current year i.e. A.Y. 2013-14 also. In view of these facts, the appellant's contentions are not accepted. Accordingly, following the order of the CIT(A)-34, Mumbai in Appeal No. CIT(A)-34/ DCIT 23(3)/ IT-556/14-15 dated 05.02.2016, it is held that the rental receipt of Rs.1,06,74,240/- received from M/s Starlight Systems Pvt Ltd should be considered as the receipts for the purpose of income from house property. Therefore, the AO is directed to compute the income from house property on the receipt of Rs.1,06,74,240/- by allowing necessary deduction as provided in the Income Tax Act. Accordingly, ground no. 3 is dismissed.”

7. Before us ld. Counsel for the assessee submitted that the tenant M/s. Starlight Systems Pvt. Ltd was occupying the premises of the assessee in an unauthorized manner. The assessee had filed a suit before the small causes Court at Mumbai being suit No.RAE-15 of 2012 for the termination of lease and eviction. The suit was filed in the year 2012. The tenant was illegally occupying the premises and had given cheques for rent however, the assessee did not deposit the said cheque as it was contesting for the eviction of tenant from its premises. Later on, a compromise was entered and

MOU was signed on 04/12/2014 and assessee withdrew the suit. All the cheques for the rent for A.Y.2013-14 and 2014-15 was then deposited in the A.Y.2015-16 onwards which assessee has duly disclosed the rental income in the return of income. Thus, the income has duly disclosed in the A.Y.2015-16 and in support he has also filed a copy of return of income and computation of income for the A.Y.2015-16. Thus, the addition on account of rent on accrual basis made by the ld. AO should be deleted in this year as the same has been offered as income in the subsequent year.

8. On the other hand ld. DR relied upon the order of the ld. AO and ld. CIT(A) and submitted that in A.Y.2012-13 assessee had accepted rent and did not contest it and therefore, in these years also the rent added on accrual basis should be confirmed.

9. On perusal of the records we find that there was a dispute between assessee and tenant and assessee had filed a suit before the small cases Court for the eviction. Since assessee had filed a suit which had not deposited the cheques issued by the tenant in his bank account. After the compromise and MOU was signed, the assessee withdrew the suit and the payment of rent for the A.Y.2013-14 and 2014-15 had been disclosed on receipt basis for A.Y.2015-16. Accordingly, we direct the ld. AO to examine if assessee has offered the rental income in A.Y.2015-16 then, the same cannot be taxed in the A.Y.2013-14 and 2014-15 which is also in accordance with

the Rule 4 of the Income Tax Rules. Accordingly, the appeal of the assessee is partly allowed for statistical purposes.

10. In the result, appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on 2nd September, 2024.

Sd/-

**(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

Mumbai; Dated 02/09/2024
KARUNA, *sr.ps*

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai