

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 7656/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2010-11)

Dy. Commissioner of Income-tax -10(2), Room No. 432, 4 th floor, Aayakar Bhavan, M.K. Road, Mumbai 400 020.	बनाम/ v.	M/s Ria Laboratories Pvt. Ltd., 24, Shree Diamond Centre, LBS Marg, Vikhroli West, Mumbai- 400 083.
स्थायी लेखा सं./PAN :AADCR2622R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by	Shri B.S. Bist
Assessee company by :	Shri Shailesh N. Doshi

सुनवाई की तारीख /**Date of Hearing** : 19-01-2016

घोषणा की तारीख /**Date of Pronouncement** : 01-02-2016

आदेश / O R D E R

PER RAMIT KOCHAR, A.M.

This appeal, filed by the Revenue, being ITA No. 7656/Mum/2013, is directed against the order dated 21-10-2013 passed by the learned Commissioner of Income Tax (Appeals)- 22, Mumbai (Hereinafter called "the CIT(A)"), for the assessment year 2010-11.

2. The grounds raised by the Revenue in the memo of appeal filed with the Tribunal read as under:-

"1(i). "On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) erred in holding that the income from sub-letting/leasing of property to Omnitech Infosolutions Pvt. Ltd., assessable as 'rent income' and not as 'income from other sources'.

1.(ii) On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) erred in not appreciating the fact that the rent receipt of Rs.1,04,13,240/- is taxable under the head 'Income from Other Sources' as the said rent was received from the letting out of Industrial Plot alongwith Building thereon.

1.(iii) On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee company did not carry out any business activity during the year and only exploited the commercial assets for earning huge rents which is taxable under the head 'Income from Other Sources'.

2. The appellant craves leave to add , amend , vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.

3. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored'.

3. The brief facts of the case are that the assessee company's case for the impugned assessment year was selected for scrutiny by Revenue to frame assessment u/s 143(3) of the Income Tax Act,1961(Hereinafter called "the Act") . It was observed by the learned assessing officer (Hereinafter called "the AO") that the assessee company has offered income from house property at annual value of Rs. 1,04,13,240/- which is the only income shown by the assessee company in its profits and loss account. The assessee company was asked by the AO to file copy of the agreement entered into with MIDC with respect to the plot of land on which building was constructed by the assessee company . In reply, the assessee company submitted that the assessee company has entered into leave and license agreement to let out its plot along with building at Plot No. A-812, in Trans Thane Creek Industrial Area, IIC Industrial Area, MIDC Mahape, Vapi Mumbai, with M/s Omnitech Infosolutions Pvt. Ltd. (Licensee) for a period specified therein. As per the agreement, the amount of monthly compensation agreed for the period of April 2009 - March 2010, is Rs.8,67,770/-, hence, the house property income is disclosed at annual value of Rs. 1,04,13,240/-. The copy of leave and License Agreement was duly filed by the assessee company with the AO. The

amount of rent received after deduction of TDS was also reflected in the bank statements submitted by the assessee company before the AO. The assessee company also submitted that it has not carried out any business activities during the year and hence there is no income other than income from house property as stated above. Since there was no business activities carried on by the assessee company during the previous year relevant to the assessment year, the assessee company submitted that it has not claimed depreciation on its fixed assets. Due to this, the assets including Building asset, are disclosed in the balance sheet at gross acquisition value and no depreciation is claimed on the said assets. The assessee company submitted that the assessee company was registered on 23.02.2006 and the relevant plot was purchased by one of the Directors of the company namely Mr Narandas Amritlal Sejpal in his capacity as the “director of the proposed company” in the year 2004 i.e. prior to incorporation of the assessee company. The plot and building constructed thereto was transferred to the assessee company by Sh Narandas Amritlal Sejpal in the year 2008 and hence the same is reflected in the books of accounts and the Balance Sheet of the assessee company. The assessee company finally prayed to accept the rental income under the head ‘income from house property’ and appreciate it to be a genuine income earned out of transparent actions of the assessee company.

The A.O. after careful perusal of the assessee company’s submission held the same are not acceptable. The A.O. observed that as per para 3(m) of the agreement of lease between Shri Narandas Amratlal Sejpal and MIDC (later on assigned to the assessee company), it is stipulated that “the licensee will not directly or indirectly transfer, assign, sell, encumber or part with his interest under or the benefit of this agreement or any part thereof in any manner whatsoever without the previous consent in writing of the Chief Executive Officer”. Thus as per the AO, it is clear that the assessee company is not the owner of the property and thus not entitled to even sublet the property to

third party. The use and occupation of the leased property is based on the contract between the lessee and lessor and the AO observed that right of occupation is co-terminus with the lease agreement. The AO observed that the objective of the MIDC to allocate the plot on lease for a specific purpose as stated in the lease deed and the same is for the purpose of promotion/ development of industries/ factory building and manufacture/ production of articles/goods by the person to whom the plot has been leased by MIDC. As per the provisions of the Act , an income to be charged under house property, inter-alia , the assessee company must be the legal owner of the house property and income from sub-letting of property is not taxable under the head 'income from house property' u/s 22 of the Act but shall be chargeable to tax u/s 56 of the Act as 'income from other sources', hence, it could be seen that assessee company has incorrectly offered to tax rental income received from M/s Omnitech Infosolutions Pvt. Ltd. under the head 'income from house property' in the return of Income filed with the Revenue and wrongly claimed standard deduction @ 30% u/s 24(a) of the Act and it was held by the AO that the rental income received by the assessee company of Rs. 1,04,13,240/- is to be brought to tax u/s 56 of the Act under the head "income from other sources" and claim of deduction of standard deduction @30% u/s 24(a) was denied to the assessee company by the AO vide orders dated 29.12.2012 passed u/s 143(3) of the Act .

4. Aggrieved by the orders dated 29.12.2012 passed u/s 143(3) of the Act by the AO, the assessee company carried the matter in appeal before the CIT(A).

5. Before the CIT(A), the assessee company submitted that assessee company had taken a plot on lease from MIDC for a period of 95 years which is clearly evident from the agreement to lease dated 26.02.2004 and Lease Deed dated 11.10.2007 , both executed by MIDC. A building is constructed on this plot by the assessee company on its expense. The plot along with

building is clearly reflected in the books of accounts of the assessee company as its asset and was later on rented out to the third party. However, the A.O. has contended that since the assessee company has acquired plot of land from MIDC on leave and license basis, the assessee company is not the owner of the plot and hence rent income received for the same should be taxed under the head 'income from other sources' and not under the head 'income from house property'. The assessee company submitted that the A.O. has totally misdirected herself in reaching the conclusion that the rental income is taxable under the head "income from other sources". The assessee company submitted that the query raised by the A.O., that the plot is acquired on leave and license basis, itself is wrong. It can be seen from the lease deeds that the plot is, not acquired on leave and license basis, but it is actually acquired on a long term lease basis (i.e. 95 years). Moreover for the purpose of taxation of property income, under the head "income from house property", owners are defined under Sec 27(iiiib) of the Act whereby it is stipulated that a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA of the Act, shall be deemed to be the owner of that building or part thereof and clause (f) of section 269UA of the Act states that in relation to any immovable property referred to in sub-clause (i) of clause (d), means transfer of such property by way of sale or exchange or lease for a term of not less than twelve years & includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882). The assessee company submitted that it has taken the immovable property (plot) on lease for a period of 95 years. As per the provisions of section 27(iiiib) read with clause (f) of section 269UA of the Act, where the period of lease is not less than 12 years, the assessee company is considered to be the deemed owner of the property and accordingly rental income earned

by it should be treated as income from house property, hence, assessee company is the rightful owner of the property and the rental income received against the lease of the property should be taxed under the head "income from house property". The assessee company submitted that agreement to lease dated 26.02.2004 was entered by the promoter-director of the assessee company, Mr Narandas Amratlal Sejpal with MIDC as a promoter of the proposed company and later on fresh lease agreement is entered into by the assessee company with MIDC on 11.10.2007 ratifying the agreement to lease dated 26.02.2004, wherein the assessee company is shown the lessee and the promoter-director of the assessee company, Mr Narandas Amratlal Sejpal is shown as the confirming party. Thus, the assessee company contended that the all the rights in respect of the plot of land is transferred in favour of the assessee company. The documents submitted clearly reveals that the assessee company is the owner of the plot of land and the building thereon.

The CIT(A) after carefully considered the submission of the assessee company and the assessment order held that one of the promoter director of the company Shri Narandas Amratlal Sejpal had acquired a plot of land from MIDC on leave and license basis vide agreement dated 26-02-2004 for 95 years even before the assessee company was incorporated. However, subsequent to the incorporation of the assessee company, a fresh lease agreement was entered into in the name of the assessee company with MIDC on 11-10-2007. The assessee company had constructed a factory building on the above leasehold plot of land allotted. The A.O.'s contention was that the assessee company was not the owner of the land and hence income arising out of letting out of the building could not be treated under income from house property. The CIT(A) held that ownership is the criteria for assessing the income under the head 'income from house property'. However, the income from property is assessable in the hands of the taxpayer as 'Income from house property' who is not the legal owner by virtue of Section 27 of the

Act which, inter-alia, stipulates that a person who acquires any rights in or with respect to any building or part thereof, for a period of 12 years or more by virtue of any transaction referred to u/s 269UA(f) of the Act shall be deemed to be the owner of that building or part thereof. In the light of these clauses, the CIT(A) held that the lease of land is for 95 years and since it exceeds 12 years, the assessee company can be treated as the deemed owner of the land. From the balance sheet of the assessee company, the CIT(A) noticed that the opening value of the building as on 1-4-2007 was shown as Rs. 40,97,816/- and after making additions, the value as on 31-03-2008 was Rs. 79,15,607/- and subsequently there were no addition made during assessment years 2009-10 and 2010-11. Thus, there is no doubt that the assessee company is owner of the building. The CIT(A) accordingly vide orders dated 21.10.2013 held that assessee company is the owner of the factory building and it is also a deemed owner of the land and the rent received has to be assessed as 'income from house property' and not under the head 'income from other sources'.

6. Aggrieved by the orders dated 21.10.2013 of the CIT(A), the Revenue is in appeal before the Tribunal.

7. The ld. D.R. submitted that the CIT(A) was not correct in bringing to tax, the rental income of the assessee company under the head 'income from house property' rather the same is correctly brought to tax under the head 'income from other sources' by the AO. The Ld. DR relied upon the orders of the A.O..

8. The ld. Counsel for the assessee company submitted that a plot of land bearing No. A-812, in the Trans Thane Creek Industrial Area within the village limit of Borivali and within the limits of Navi Mumbai Municipal Corporation, Thane District was acquired from MIDC on license basis by the

promoter-director of the assessee company Mr Narandas Amratlal Sejpal being promoter of proposed company , vide agreement dated 26.02.2004 for term of 95 years which was later on assigned to the assessee company after its incorporation vide lease agreement dated 11.10.2007 between MIDC and the assessee company whereby the promoter-director of the assessee company Mr. Narandas Amratlal Sejpal was the confirming party, the said agreements are placed in paper book filed with the Tribunal at page 12-37 and 42-65. The lease is now granted by MIDC in favour of the assessee company who is lessee of the said plot for a period of 95 years vide lease agreement dated 11-10-2007 which is placed at paper book, page 42-65. The assignment of interest of the promoter-director of the assessee company namely Mr. Narandas Amratlal Sejpal in favour of the assessee company was approved by MIDC vide approval dated 22.3.2007 which is also placed in paper book filed with the Tribunal page 38-39. The building there-on the said plot was constructed by the assessee company and the said plot along with building there-on is duly reflected in the books of accounts of the assessee company and the audited accounts filed with the Revenue , our attention was drawn to the audited Balance Sheet of the assessee company which is placed at paper book page 1-7, whereby the Fixed Assets consisting of land and building along with electrical installations, and lift is appearing at Gross value of Rs.1,00,07,574/- as at 31.03.2010 while there are no additions in fixed assets during financial year 2009-10 and no depreciation is claimed by the assessee company . The said premises consisting of land and building was given on leave and license basis to Omnitech Infosolutions Pvt. Ltd. by the assessee company vide leave and license agreement 10.12.2007. The assessee company has placed on record the copy of Leave and License Agreement dated 10-12-2007 entered into between the assessee company and M/s Omnitech Infosolutions Ltd. whereby it was agreed by the licensee to pay license fee per month for taking on the said premises on leave and license basis which is placed in paper book pages 66 to 96. The ld. Counsel

submitted that the assessee company acquired the plot of land for a long period i.e. 95 years from the MIDC and the assessee company is the deemed owner of this plot by virtue of section 27(iiiB) of the Act. Ld. Counsel for the assessee company submitted that the assessee company is the owner of the factory building and it is also a deemed owner of the land and the rent received has to be assessed under the head 'income from house property' and not income under the head 'income from other sources'. The Ld. Counsel of the assessee company submitted that this leave and license agreement dated 10.12.2007 is merely an agreement to give the right to use and occupy on leave and license basis the said premises to the licensee while no services are provided by the assessee company to the licensee apart from right to use and occupy the said premises. With respect to the lifts and electrical installations in the factory building given on leave and license basis along with the premises , it is submitted that the lift and electrical installations are amenities , which are necessary for the use and enjoyment of building and hence part of the building and cannot be separately assessed and charged to tax under the head 'Income from other sources' rather the same is also chargeable to tax under the head 'Income from House Property'. To support the contention, he relied upon the following decisions:-

1. Hon'ble Kerala High Court decision in the case of Dr. P.A. Varghese v. CIT [1971] 80 ITR 180 (Ker.)
2. Hon'ble High Court of Allahabad in the case of Hotel Arti Delux (P.) Ltd. v. ACIT, [2014] 50 taxmann.com 422 &
3. Madras Tribunal decision in the case of ACIT v. Smt. Farida Begum Tazudeen, [1997] 63 ITD 298 (Mad)

9. We have considered the rival contentions and also perused the material available on record including case laws relied upon. We have observed that the plot of land bearing No. A-812, in the Trans Thane Creek Industrial Area within the village limit of Borivali and within the limits of Navi Mumbai Municipal Corporation , Thane District was acquired from MIDC on license

basis by the promoter-director of the assessee company Mr Narandas Amratlal Sejpal as being 'promoter of proposed company' , vide agreement dated 26.02.2004 for a term of 95 years with MIDC which was later on assigned to the assessee company after its incorporation vide lease agreement dated 11.10.2007 between MIDC and the assessee company whereby the promoter-director of the assessee company Mr. Narandas Amratlal Sejpal was the confirming party, the said agreements are placed in paper book filed with the Tribunal at page 12-37 and 42-65. The lease is thereafter granted by MIDC in favour of the assessee company who is lessee of the said plot for a period of 95 years vide lease agreement dated 11-10-2007 which is placed at paper book, page 42-65. The assignment of interest of the promoter-director of the assessee company namely Mr. Narandas Amratlal Sejpal in favour of the assessee company was approved by MIDC vide approval letter dated 22.3.2007 which is placed in paper book filed with the Tribunal page 38-39. The building thereon the said plot along with the Plot is duly reflected in the books of accounts of the assessee company and the audited Balance Sheet filed with the Revenue and also filed in the paper book filed before us, which is placed at paper book page 1-7, whereby the Fixed Assets consisting of land and building along with electrical installations, and lift is appearing at Gross value of Rs.1,00,07,574/- as at 31.03.2010 while there are no additions in fixed assets during financial year 2009-10 and no depreciation is claimed by the assessee company as it is stated that there are no business user of the said assets during the previous year relevant to the assessment year apart from giving on leave and license basis to Omnitech Infosolutions Ltd.(licensee). The said premises consisting of land and building was given on leave and license basis by the assessee company (licensor) to Omnitech Infosolutions Ltd.(licensee). The assessee company has placed on record the copy of Leave and License Agreement dated 10-12-2007 entered into between the assessee company and M/s Omnitech Infosolutions Ltd. whereby it was agreed by the licensee to pay

license fee per month to the licensor i.e. the assessee company for taking on the said premises for use and occupation by the licensee from the licensor , which are placed in paper book filed with Tribunal at pages 66 to 96. We have carefully gone through the clause(s) of the leave and license agreement dated 10.12.2007 and we have observed that the said agreement is just like any other rent simplicitor agreement whereby the assessee company has given in consideration of license fee , its premises for occupation and use by the licensee without providing any other services such as secretarial, security, maintenance etc. and in our considered view the license fee income received by the assessee company shall fall for chargeability of taxation under the head 'Income from House Property'. The assessee company acquired the plot of land for a long period i.e. 95 years from the MIDC and the assessee company is the deemed owner of this plot by virtue of section 27(iiiib) of the Act read with Section 269UA(f) of the Act. The assessee company is the owner of the factory building and it is also a deemed owner of the land and the licensee fee income received has to be assessed under the head 'income from house property' and not under the head 'income from other sources'. With respect to the lifts and electrical installations in the factory building given on leave and license along with the premises consisting of land and building , the lift and electrical installations are amenities , which are necessary for the use and enjoyment of the building and hence part of the building and cannot be separately assessed and charged to tax under the head 'Income from other sources' rather the same is also chargeable to tax under the head 'Income from House Property'.

In our considered view, the CIT(A) has rightly held that income from license fee arising from leave and license agreement entered into by the assessee company with Omnitech Infosolutions Limited dated 10.12.2007 is chargeable to tax as income under the head "income from house property" and not under the head 'Income from other sources' and we find no infirmity

in the orders dated 21.10.2013 of the CIT(A) in allowing the appeal of the assessee company and we uphold the orders of the CIT(A). We order accordingly.

10. In the result, the appeal filed by the Revenue in ITA NO. 7656/Mum/2013 for the assessment year 2010-11 is dismissed.

Order pronounced in the open court on Ist February, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 01-02-2016 को की गई ।

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 01-02-2016

I

व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai H Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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