

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1706/Mum/2010 & I.T.A. No. 3724/Mum/13
(निर्धारण वर्ष / Assessment Year: 2005-06 & 2006-07)

Smt. Maniben P. Chheda 296, Old Post Office Lane, Mangaldas Market, Mumbai - 400002	बनाम/ Vs.	Income Tax Officer 14(3)(3) Aayakar Bhavan Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPC5479P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Pradip N. Kapasi
Department by:	Shri N.P.Singh

सुनवाई की तारीख / Date of Hearing: 01.04.2016
घोषणा की तारीख /Date of Pronouncement: 29.06.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned two appeals against the order dated 13.01.2010 and 24.02.2010 passed by the Commissioner of Income Tax (Appeals) 25, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2005-06 & 2006-07. Since the parties are the same and the matter of controversy is also

same, therefore in the said circumstances these appeals are being taken up together for adjudication and for the sake of convenience.

ITA NO.1706/Mum/2010 (2005-06):-

2. The assessee has raised the following ground of appeal:-

“1. TREATMENT OF INCOME FROM HOUSE PROPERTY AS INCOME FROM OTHER SOURCES.

- (a) *The CIT(A) erred in law and in facts in confirming the action of the learned AO of treating ‘Income from House Property’ earned in respect of three different properties as ‘Income from Other Sources’ on the ground that the assessee is not the owner of the said properties but the tenant of the said property and the income has derived from sub-letting the same to different parties.*
- (b) *Your appellants respectfully submits that the assessee being deemed owner of the said properties in terms of s.27(iiib) r.w.s269UA(f) as the said properties were taken on lease for more than 12 years and as such, the rental income from the said properties should be taxed as ‘Income from House Property’.*
- (c) *Your appellants pray that the income from the said properties of Rs.5,04,000/- be charged under the head Income From House Property and 30% deduction u/s.24(a) be granted.*

2. DISALLOWANCE OF EXPNESES OF RS.10,088/- AGAINST THE INTEREST INCOME OF RS.94,233/-.

- (a) *The CIT(A) erred in law and on facts in confirming the treatment of the learned AO of disallowing business expenses of Rs.10,088/- by holding that the appellant is not engaged in the money lending business as no additional loans were advanced during the year but she continued to earn interest income on money advanced in the earlier years and that such advances made by the assessee are out of her own capital.*

- (b) *Your appellant submits that she is engaged in the Finance & Money Lending Business carried on from her residence and the expenses are incurred for earning such income for such business.*
- (c) *Your appellants pray that interest income be assessed as business income and expenditure of Rs.10,088/- be allowed while computing business income.*

3. SERIOUS VIOLATION OF NATURAL JUSTICE

- (a) *The CIT(A) erred in law and on facts in confirming the order of assessment passed in gross violation of the provisions of natural justice in as much as he did not give any specific opportunity to prove that the appellant is the deemed owner of properties and hence, the income be taxable under Income from house property eligible for statutory deduction of 30% and also for proving that she continues to conduct money lending business for which business expenditure are incurred.*
- (b) *Your appellant submits that before taking different view of the matter as submitted and accepted by the department in earlier years, the reasonable opportunity should have been given to her.*
- (c) *Your appellants pray that an order of assessment passed in violation of natural justice be quashed.*

4. LEVY OF INTEREST U/S.234A, 234B AND 234C

- (a) *The CIT(A) once again erred in law in confirming the levy of interest u/s.234A, 234B and 234C by incorrect calculations and further erred in levying interest without giving any opportunity of hearing and without passing any speaking order.*
- (b) *Your appellants deny any liability to payment of interest and without prejudice the interest charged suffered from errors in calculations and further submit that the interest was charged in violation of the provisions of the Natural Justice in as much as no opportunity for hearing was given and that no order was passed for levy of interest suggesting levy of interest without application of mind to the facts of the case.*

3. The brief facts of the case are that the assessee filed the return of income declaring total income to the tune of Rs.4,31,195/- on 31.10.2005. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short "the Act"). The case was selected for scrutiny assessment and notice u/s.143(2) of the Act dated 26.10.2006 was issued and served upon the assessee. Subsequently, notice u/s.142(1) of the Act was issued and served upon the assessee. The assessee was an individual and showed his income under the head house property, business and income from other sources. Business income has been claimed in the nature of money lending and financing business. Assessee has also earned interest on capital with partnership firm, M/s. Sona Textiles to the tune of Rs.4,029/-. During the year under consideration, assessee has shown income from house property to the tune of Rs.5,04,000/- from the three different properties. It was found that the assessee was the tenant of the said premises which has been let out to different parties. Since the assessee was not owner in view of the section 22 of the Act, therefore the income was not counted as income from house property and was taxed income from other sources and no deduction u/s.24(a) of the Act was allowed. The assessee had also received the interest to the tune of Rs.94,233 on account of money lending activities but the Assessing Officer was of the view that the assessee did not advance money but has earned interest income on money advanced in earlier years, therefore, the same was treated from money lending business and was treated as income from

other sources. The above said finding of the Assessing Officer was challenged by the assessee being not satisfied but the CIT(A) confirmed the said order, therefore the assessee has filed the present appeal before us.

ISSUE NO.1

4. We have heard the arguments advanced by the learned representative of the parties and perused the record. The representative of the assessee has argued that on the above said issues the CIT(A) has passed the order dated 03.01.2014 in his favour relevant A.Y.2007-08 and the department did not file the appeal, therefore the order dated 03.01.2014 has become final, therefore in view of the said circumstances the appeal is liable to be accepted in terms for order dated 03.01.2014 in the assessee's own case for the A.Y.2007-08. On the other hand the representative of the department has relied upon the order passed by the CIT(A) in question. Before discussing the matter of controversy we are of the view that it is necessary to advert the finding of the CIT(A) on this issue on record:-

“8. I have heard the learned A.R. of the assessee. I have also gone through the submission and various supporting documents placed before me. The A.O. has treated the income from House Property declared by the appellant as Income from Other Sources on the ground that the assessee is not the owner of the

concerned properties. The appellant has submitted that in view of the provisions of section 27(iib) r.w.s269UA(f), the appellant is a deemed owner of the aforesaid properties and hence, rent income received there from, is taxable under the head income from House Property.

8.1 As per provisions of section 22 of the Income Tax Act, 1961 the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner shall be chargeable to income under the head “Income from house property”. Hence, for any rent income to be taxable under the head “Income from house property”, the assessee needs to be the owner of the said property. Section 27 of the Act, defines the term “Owner of house property” and clause (iib) of section 27 of the Act states that a person who acquires any rights 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, shall be deemed to be the owner of that building or part thereof.

8.2 In the present case, the appellant has entered into lease agreements in respect of the concerned properties for a period of not less than 12 years. The appellant has furnished copies of lease agreements and rent receipts in support of its claim. On perusal of the documents placed on record, I observed that the

assessee though not an owner of the property but is a deemed owner of the property in view of the provisions of section 27(iiib) r.w.s.269UA(f) of the I.T.Act, 1961 as the assessee is holding the aforesaid properties on lease for a period of more than 12 years.

8.3 I also find that the judgment given by Mumbai ITAT in the case of DCIT Vs. D.B.S. Financial Services Limited strongly supports the contention of the appellant. In this case hon'ble ITAT has held that *“under s.27(iib), for the purposes of ss.22 to 26 “owner of house property” is defined. The aforesaid provision stipulates that a person who acquires any rights by virtue of any transaction referred to in cl.(f) of s.269UA, shall be deemed to be the owner and accordingly the relevant income has to be taxed as income from house property. Irrespective of whether the rights have been acquired under a lease or a sub-lease, s.27(iiib) shall apply. Sec.27(iiib) refers to cl.(f) of s.269UA which applies to transfer of property by way of sale or exchange or lease for a term of not less than 12 years. In the present case the assessee acquired sub-lease in respect of Delhi property and lease in respect of Bangalore property for a period of not less than 12 years. Accordingly, the relevant provisions of IT Act referred to above will be applicable. The agreements executed between the assessee and*

the sub-lessees have been duly acted upon and the assessee is receiving rental income by virtue of these agreements. Section 27(iiib) would apply in the present case.”

8.4 Therefore, in light of the above judgement and various provisions of the Act the assessee's contention is found to be acceptable and rent income received in respect of the said properties is taxable under the head Income from House Property. Therefore, disallowance made by the A.O. of Rs.1,02,465/- in respect of standard deduction @ 30% of Annual Value is, thus, deleted. This ground of appeal is, thus allowed.”

4.1 The department has dealt the matter of controversy in the assessee's own case for the A.Y.2007-08. In view of the above said observations made by the CIT(A) in the assessee's own case, the assessee's income from the house property was found to be taxed under the head of income form house property. These findings were not challenged by the revenue meaning thereby the revenue has accepted this contention. No doubt in the said circumstances the income of the assessee is liable to be treated as under the head income from house property and accordingly the assessee would also to be entitled for the consequential benefit as per law.

ISSUE NO.2 & 3:-

5. The issue no.2 & 3 are not pressed by the assessee, therefore, these issues are decided in favour of the revenue against the assessee.

ITA NO.3724/Mum/2010 (2006-07):-

6. The facts of the case are similar to the facts stated above, however, the figures are different. The matter of controversy is also the same.

7. The assessee has raised the following ground of appeal:-

“1. TREATMENT OF INCOME FROM HOUSE PROPERTY AS INCOME FROM OTHER SOURCES.

- (a) *The CIT(A) erred in law and in facts in confirming the action of the learned AO of treating ‘Income from House Property’ earned in respect of three different properties as ‘Income from Other Sources’ on the ground that the assessee is not the owner of the said properties but the tenant of the said property and the income has derived from sub-letting the same to different parties and consequently erred in confirming the denial of standard deduction u/s.24(a) of Rs.1,21,800/- being 30% of corresponding aggregate annual value of the said properties.*
- (b) *Your appellants respectfully submits that the assessee being deemed owner of the said properties in terms of s.27(iiib) r.w.s269UA(f) as the said properties were taken on lease for more than 12 years and as such, the rental income from the said properties should be taxed as ‘Income from House Property’.*
- (c) *Without prejudice to the above, your appellant submits that the property at Koyaji Chawl, Bhoiwada is fully owned by her whose proofs have been submitted and hence net rent thereof of Rs.44,000 should be assessed as ‘Income from House Property’ and standard deduction u/s.24(a) be allowed.*

- (d) *Your appellants pray that the income from the said properties of Rs.4,06,000/- be charged under the head Income From House Property and 30% deduction u/s.24(a) be granted.*

2. SERIOUS VIOLATION OF NATURAL JUSTICE

- (a) *The CIT(A) erred in law and on facts in confirming the order of assessment passed in gross violation of the provisions of natural justice in as much as all the evidences and proofs and explanations offered during the course of hearing were ignored and proceeded to assess the total income in total disregard of such evidences and explanations and in making additions and disallowances on the basis of surmises and conjectures without bringing any material of whatsoever nature*
- (b) *Your appellant submits that the learned Assessing Officer had violated the provisions of natural justice by not appreciating and instead ignoring the evidences produced before him and the appellant further submits that all the proofs of property being owned for more than 12 years and proof of ownership of Koyaji Chawl were produced and were furnished including those required as per the law.*
- (c) *Your appellants pray that an order of assessment passed in violations of natural justice be quashed.*

4. LEVY OF INTEREST U/S. 234B AND 234C

- (a) *The CIT(A) once again erred in law in confirming the levy of interest u/s.234A, 234B and 234C b incorrect calculations and further erred in levying interest without giving any opportunity of hearing and without passing any speaking order.*
- (b) *Your appellant denies any liability to payment of interest and without prejudice the interest charged suffered from errors in calculations and further submit that the interest was charged in violation of the provisions of the Natural Justice in as much as no opportunity for hearing was given and that no order was passed for levy of interest suggesting*

levy of interest without application of mind to the facts of the case.

(c) *Your appellant prays that the interest so levied be deleted.*

ISSUE NO.1:-

8. The matter of controversy under this issue has already been adjudicated while deciding the issue no.1 for the A.Y.2005-06. Facts and circumstances of the present case in this year also are the same. Nothing distinguishable facts came into the notice before us. In view of the said circumstances this issue has also been decided in favour of the assessee in view of the above said terms as decided by us in the relevant A.Y.2005-06.

ISSUE NO.2 & 3:-

9. The issue no.2 & 3 are not pressed by the assessee, therefore, these issues are decided in favour of the revenue against the assessee.

10. In the result, both the appeals filed by the **assessee are hereby partly allowed.**

Order pronounced in the open court on 29th June, 2016.

Sd/-
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29th June, 2016

Sd/-
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

MP

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai