

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'G' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.2194/Mum/2015
Assessment Year: 2010-11**

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|---|----------------------|---|
| Shri Sanjay Kantilal Patel, Sunrise, 91, Walkeshwar Road, Walkeshwar, Mumbai-400006 | बनाम/ Vs. | Income Tax Officer, Ward-5(2)(4), Mumbai |
| (निर्धारिती / Assessee) | | (राजस्व / Revenue) |
| PAN. No. AADPP0822G | | |

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|-----------------------------------|------------------------|
| राजस्व की ओर से / Revenue by | Shri Rakesh Joshi |
| निर्धारिती की ओर से / Assessee by | Ms. Anupama Singhla-DR |

| | |
|--|-------------------|
| सुनवाई की तारीख / Date of Hearing : | 16/01/2017 |
| आदेश की तारीख /Date of Order: | 16/01/2017 |

आदेश / O R D E R**Per Joginder Singh(Judicial Member)**

1. The captioned appeal by assessee for Assessment Year [AY] 2010-2011 assails the order dated 03/02/2015 passed by Ld. Commissioner of Income Tax (Appeals) -10 [CIT(A)], Mumbai on the following effective grounds of appeals:-

1. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in considering the rental income from Clear Channel Communication India Pvt Ltd at Rs.67,80,000/- instead of actual amount received of Rs.53,03,720/- without considering facts and circumstances of the case.*
2. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in disallowing the classification of House Property Income of Rs.37,96,604/- within the meaning of section 23(2) of the Income Tax Act being rent received from Clear Channel & Bharat Patel as Income from other sources, without considering facts and circumstances of the case.*

2. Briefly, stated the assessee is a resident individual and earned income from various sources. He filed its return of income for impugned AY on 31/07/2010 declaring total income of Rs.4,57,73,720/-. The same was picked up for scrutiny assessment u/s 143(3) wherein total income was determined at Rs.5,09,02,470/- after making certain adjustments vide Assessing officer [AO] order dated 28/03/2013. The assessee derived rental income from sub-letting of a property situated at 52, Film Center Building which was let out to *M/s Clear Channel Communications India Pvt. Ltd.*. The assessee reflected rent of Rs. 53,03,720/- (net of service tax) from this property in the following manner:-

| No. | Period | No. of Months | Rent Per month | Total Rent |
|-----|---------------------------|---------------|----------------|--------------------|
| 1. | April 2009 to July 2009 | 4 | 5,65,000/- | 22,60,000/- |
| 2. | August 2009 to March 2010 | 8 | 3,80,465/- | 30,43,720/- |
| | | | Total | 53,03,720/- |

AO disregarded the reduction in rent from August, 2009 and computed total rent at Rs.67,80,000/- by taking monthly rental at Rs.5,65,000/- and treated the same as 'income from other sources' on the premises that the assessee was not the owner of the property and also the assessee was not in the business of leasing out of properties. The assessee assailed the same before CIT(A) who affirmed the stand of AO after finding no justification for such drastic decrease in rent and also finding shortcoming in the supplementary lease and license agreement. Aggrieved, the assessee is in appeal before us.

3. The Ld. Counsel for Assessee, Shri Rakesh Joshi [AR] contended that notional rental income could not be taxed by revenue. The rent was decreased due to adverse market conditions and Rental income derived by assessee duly matches with Form 26AS and Service Tax Returns filed by the assessee. A paper-book containing the relevant ledger

account of the tenant, leave and license agreement, Power of attorney, Supplementary Agreement to Leave and license besides other documents has been placed before us. Per *Contra*, the Ld. DR, Ms. Anupama Singhla, strongly defended the impugned order by contending that the supplementary agreement was neither registered document nor there are signatures of witnesses which cast doubt on the genuineness of the documents and hence could not be relied upon. She further pleaded that the said agreement was never filed before the Assessing Officer, therefore, the Ld. Assessing Officer could not examine the genuineness of the same. Per query from the bench, the Ld. AR explained that supplementary agreement was filed before the Ld. Commissioner of Income Tax (Appeal) but remand report was sought from the Assessing Officer.

4. We have heard rival contentions and perused the relevant documents and found that the supplementary agreement (available on pages 36 to 38 of the paper book) is on plain paper which is neither registered nor signed by the witnesses. It is also noted that the supplementary agreement was made in August, 2009 which was between Shri Sanjay Kantilal Patel and M/s Clear Channel Communications India Pvt. Ltd. whereas it is signed by power of attorney holder, Shri Gurunath R. Korgaonkar. This supplementary agreement was also not filed before the Assessing Officer, therefore, without going into much deliberation, the Assessing Officer is directed to verify the

genuineness of the various documents filed by the assessee like leave and license agreement, supplementary leave and license agreement, power of attorney, declaration of power of attorney before registrar, by ensuring personal attendance of all the signatories including witnesses, if any. The Assessing Officer is also directed to compare the filed documents with original documents. The Assessing Officer is directed to examine the ownership rights of Sanjay Kantilal Patel, S/O Shri Kantilal Ambalal Patel and after satisfying himself with respect to genuineness of the documents, rightful ownership of the tenanted property and after providing due opportunity of being heard, decide in accordance with law. The assessee is at liberty to furnish necessary evidence, in support of his claim, thus, this ground of the assessee is allowed for statistical purposes.

5. **Ground No.2** is related with classification of rental income under the head 'income from house property'. The assessee is aggrieved by the action of AO in treating rental income under the head 'Income from other sources' as against 'Income from House Property' claimed by the assessee. The assessee reflected rental income from two properties as per the details given below:-

| No. | Property | Rental Income | Name of Tenant |
|-----|--------------------------------|---------------|---|
| 1. | 52, Film Center Building (same | 53,03,720/- | M/s Clear Channel Communications India Pvt. |

| | | | |
|----|---------------------------------|--------------------|--------------|
| | building as in Ground No. 1) | | Ltd. |
| 2. | Sunrise bungalow Flat No.1A | 1,20,000/- | Bharat Patel |
| | Total | 54,23,720/- | |

After claiming statutory deduction of 30%, the income was offered at Rs.37,96,604/-. The AO noted that the assessee was not the owner of the said buildings and thus, failed to fulfill precondition for chargeability of income under the head income from house property. Further, the assessee was not in the business of leasing of property and hence, concluded that the same was chargeable under the head 'Income from other sources.' The action of AO was confirmed by the CIT(A) and aggrieved by change of head of income, the assessee has raised second ground of appeal. Before us, the Ld. AR contended that the assessee has oral lease of property from the original owner but nevertheless deemed owner within the meaning of Section 27 (iiib) and hence, the impugned income is rightly offered under the head 'Income from House Property. The Ld. DR supported the stand of lower authorities.

6. We have heard the rival contentions. First of all, it would be prudent to reproduce relevant extract of Section 27 which is as follows:-

27. For the purposes of sections 22 to 26—

- (i)
- (ii)
- (iii)
- (iiia)
- (iiib) *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, shall be deemed to be the owner of that building or part thereof;*

Thus, a person who acquires any right in or with respect to any building or part thereof, by virtue of any transaction as is referred to in sec. 269UA(f), i.e., transfer by way of lease for not less than 12 years shall be deemed to be the owner of that building or part thereof. This will not cover the case where any right by way of lease is acquired on month-to-month basis or for a period not exceeding one year. Per query from the Bench, the Ld. AR fairly conceded that the assessee was not the lease holder of the above properties for a term of not less than twelve years as per requirement of Section 27 & Section 269UA(f) of the Act. The properties in question were under oral agreements and on month to month basis. Therefore, we have no hesitation in confirming the action of the lower authorities and dismiss this ground of assessee's appeal.

7. Finally, the appeal of the assessee is partly allowed for statistical purpose.

This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 16/01/2017.

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16/01/2017

Shekhar, P.S/नि.स.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
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