

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI

सर्व श्री राजेन्द्र, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2907/M/2010
(निर्धारण वर्ष / Assessment Year: 2006-07)

Shri Ajay Marwah, Marwah Bhavan, 114A, Turner Road, Bandra West, Mumbai – 400 050 PAN: AADPM5934E	बनाम/Vs.	AC CIT 19(3), Mumbai-400 012
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.738/M/2013
(निर्धारण वर्ष / Assessment Year: 2006-07)

Shri Ajay Marwah, Marwah Bhavan, 114A, Turner Road, Bandra West, Mumbai – 400 050 PAN: AADPM5934E	बनाम/Vs.	AC CIT 19(3), Mumbai-400 012
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Present for:

Assessee by : Shri S.M. Agarwal, A.R.
Revenue by : Madanappa Raghuvver, D.R.

सुनवाई की तारीख/Date of Hearing : 19.02.2016
घोषणा की तारीख /Date of Pronouncement : 29.02.2016

आदेश / ORDER

Per Sanjay Garg, Judicial Member:

The above titled appeals have been preferred by the assessee against two separate orders dated 05.01.2010 & 04.10.2012 of the Commissioner of

Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

No.2907/M/2010:

2. The assessee in this appeal has taken the following grounds :

“THE LEARNED CIT(APPEAL) has erred in considering the sum of Rs.132000/- (50% share of appellant) as annual value of property on the ground of rent received overlooking that the whole amount received from the tenant is not the rent but the same includes reimbursement of (a) Water Charges (b) Maintenance charges (c) Non Occupancy charges (d) Cable charges (e) Car parking charges and therefore while arriving at ANNUAL VALUE the actual rent received should be considered as per section 23(1) (b) and therefore the amount of rent received from tenant should be reduced by the amounts for extra facilities included in the amount of rent.

2. The learned CIT(appeal) as erred in considering rent of Rs.132000/- as annual value of the property against the municipal ratable value of Rs. 2500/- p.a. overlooking the sum of Rs.132000/- received from tenant as on account of reimbursement of following amounts charged by society which are allowable as deduction to arrive at actual rent receivable by the appellant.

a) Water Charges	Rs.12420
b) Society Maintenance Charges	Rs. 17460/-
c) Non Occupancy Charges	Rs. 52380/-
d) Cable Charges	Rs.5796/-
e) Car Parking Charges	<u>Rs. 4550/-</u>

Total Rs.92606/-

50% of appellant share comes to Rs.46303/-

3. The Learned A.O. as well as Learned CIT(A) have erred in considering 50% share of appellant in case AKASH TALKIES at Rs.134723/- as against rent of Rs.24000/- received by the appellant overlooking that the property was given on rent in the year 1969-70. and as per Rent Control Act the appellant could not increase the rent but the increase of municipal taxes have been paid by the tenant on account of increase in municipal ratable value and therefore the annual ratable value should be considered as only the amount of rent received by the appellant amount to Rs.24000/per annum.

4. ALTERNATIVELY without prejudice the learned A.O. as well as the learned CIT(A) have erred on not considering that when the ratable value was increased by BMC, the tenant did not increase the rent but agreed to pay the increase portion of Municipal Taxes and therefore the annual value should be reduced to the extent the increasing Municipal Taxes borne by the tenant instead of increasing the amount of rent and therefore if the notional amount is consider as annual value then the Municipal Taxes payed by tenant directly should be reduced from annual value of the property.

5. APPELLANT CRAVES leave to add and or alter the above grounds of appeal.”

Ground Nos.1 & 2

3. The issue raised vide ground Nos.1 & 2 is relating to the adoption of annual rental value of the property. The Assessing Officer (hereinafter referred to as the AO) noted that the assessee in respect of his house property income at Pleasant Park, Peddar Road, Mumbai had deducted society charges from the rental income of the said property. The AO, after considering the submissions of the assessee, held that against the property income only municipal taxes are to be allowed and not the society charges. He accordingly allowed the municipal taxes at Rs.1,917/- and disallowed Rs.48,484/- on account of society charges. Being aggrieved by the order of the AO, the assessee preferred appeal before the Ld. CIT(A).

4. It was contended by the assessee before the Ld. CIT(A) that the annual letting value on account of 50% share of the assessee in the property in question at Rs.1,32,000/- was the gross rent receipt and that the said amount included reimbursement of various society charges and further that the rateable value fixed by the BMC of the said property was at Rs.2500/- approximately. The Ld. CIT(A), however, observed that the AO had taken the actual figure of rent received by the assessee and that no deduction of society charges was available. He accordingly upheld the annual rental value taken by the AO qua the share of the assessee at Rs.132000/-. Being aggrieved the assessee has come in appeal before us.

5. The Ld. A.R. of the assessee has submitted that the said receipt of Rs.132000/- being the 50% share of the assessee towards the rent of the property included the reimbursement of water charges of Rs.12,420/-, society maintenance charges of Rs.17,460/-, non occupancy charges of Rs.52,380/-, cable charges of Rs.5796/- and Car Parking Charges of Rs.4,550/- totaling Rs.92,606/- out of which the 50% of the same came to Rs.46,303/- which were

required to be deducted from the annual rent received by the assessee.

6. We are of the view that the above description of charges such as water charges, society maintenance charges, cable charges and car parking charges is the liability of the tenant. Further, the non occupancy charges paid by the landlord are the liability of the owner/landlord. Since a standard deduction is claimed in relation to expenditure incurred towards maintenance etc. of the house property and hence no separate deduction in respect of non-occupancy charges is admissible out of the rent received. In view of the above, we direct the AO to verify the claim of the assessee regarding the water charges, society maintenance charges, cable charges and car parking charges and reduce the same from the rent received by the assessee. However, no deduction will be made in respect of non occupancy charges from the annual rent receipt. The above grounds therefore partly allowed.

Ground No.3

7. Vide ground No.3, the assessee has agitated the action of the lower authorities in adopting the fair rental value of the property Akash Talkies at Rs.1,34,723/- as against actual rent of Rs.24,000/-. The AO noted that the rateable value of the Akash Talkies was at Rs.1,34,723/- and the municipal tax paid was at Rs.3553/-, whereas, the actual rent received by the assessee in relation to said property was Rs.24,660/-. The AO observed that the higher of the municipal rateable value and actual rent received should be treated as gross annual value. He, therefore, computed the income from house property at municipal rateable value at Rs.1,34,723/- and after giving rebate of municipal taxes and standard deduction of 30%; he computed the rental income qua the 50% share of the assessee in the the property at Rs.91,819/-.

8. The Ld. CIT(A) confirmed the above finding of the AO. The assessee has, thus, come in appeal before us.

9. The Ld. A.R. of the assessee has submitted that the property was given on rent for the year 1969-70 and as per the provisions of Rent Control Act, the assessee could not increase the rent but the increase of municipal taxes have been paid by the tenant on account of increase in municipal rateable value and therefore the annual rateable value should be considered as only the actual amount of rent received by the assessee amounting to Rs.24,000/- per annum.

10. We find force in the contention of the Ld. A.R. of the assessee. It is not the case of the AO that the assessee is receiving any amount more than the actual rent shown to have been received by the assessee. It is the case of the assessee that the property was rented in the year 1969 and the tenant has been protected by the provisions of the Rent Control Act. The assessee, thus, could not claim more rent than that was agreed with the tenant except with the intervention of the court or in the event if the tenant agrees or consents to enhance the same. The assessee cannot be burdened with the taxes on the income which he has not received and is also not supposed to have received and the same otherwise has not accrued to him during the year. Even, it is not the case of the AO that the assessee can realize any amount more than the actual rent of Rs.24,660/- received by the assessee during the year under consideration for the property in question. We, therefore, do not find any justification on the part of lower authorities in adopting the annual rental property of the Akash Talkies at Rs.1,34,723/- instead of Rs.24,660/-. However, it is made clear that the assessee will not be entitled to any deductions in relation to municipal taxes not actually paid by the assessee but paid by the tenant. With the above observations, this ground of the assessee's appeal is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

ITA No.738/M/2013

12. This appeal has been preferred by the assessee agitating the levy of penalty under section 271(1)(c) of the Act in relation to the addition made by

the AO while assessing the annual rental value of the property in question. As discussed above, we have already accepted most of the claim of the assessee in relation to deduction of certain amounts received by the assessee from the tenants which could not be considered as part of the annual rental value except the amount of Rs.52380/- in relation to non occupancy charges. However, we find that it is neither a case of furnishing of inaccurate particulars of income nor concealment of income. We, therefore, do not find any justification for levy of penalty under section 271(1)(c) of the Act in this case. The penalty levied under section 271(1)(c) is therefore ordered to be deleted in this case. This appeal of the assessee is therefore allowed.

13. In the result, the ITA No.2907/M/2010 is partly allowed and ITA No.738/M/2013 is allowed.

Order pronounced in the open court on 29.02.2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 29.02.2016 को की गई ।

Sd/-

(राजेन्द्र / **Rajendra**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई/Mumbai; दिनांक/Dated 29.02.2016

Sd/-

(संजय गर्ग / **Sanjay Garg**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

* Kishore

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 / The DR Concerned Bench,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai