

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'जे', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANJAY GARG, JM

आयकर अपील सं./ITA No.4503/Mum/2014

(निर्धारण वर्ष / Assessment Year :2006-07)

Gupta Family Trust, Sruti Chambers, 2 nd Dhobhi Talao Lane, 18, Mumbai-400002	Vs.	ITO-21(3)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATG 2939 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Nishit Gandhi
राजस्व की ओर से /Revenue by : Miss Shabana Parveen
सुनवाई की तारीख / Date of Hearing : 03/05/2016
घोषणा की तारीख/Date of Pronouncement 11/05/2016

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-Mumbai, for the assessment year 2006-07.

2. Only grievance of the assessee relates to taxing rental income in the hands of assessee trust in spite of the fact that shares of each beneficiary is determined and each beneficiary has included their share of income so received from the trust in their individual return of income.

3. Rival contentions have been heard and record perused. The facts of the case are that the assessee is a private Trust having income mainly in the form of rental income. The rental income derived by the trust is allocated to the beneficiaries in respect of the ratio of shares given in the trust deed. During the year, the assessee trust has derived gross rent of

Rs.25,91,803/- and after claiming deduction of municipal taxes of Rs.5,90,438/-, bank charges of Rs.2,278/- and deduction @ 30% u/s.24(a), the income from house property has been computed at Rs.13,99,360/- and after allocating the whole income to the beneficiaries, the trust has filed return of income showing Nil income. However, the AO has taxed the income in the hands of the trust.

4. By the impugned order the CIT(A) confirmed the action of the AO.

5. It was argued by Id. AR that beneficiaries have already included their share in their respective returns and also paid tax thereon, therefore, the AO was not justified in again taxing the trust with respect to the same income. Further Id. AR placed reliance on the order of jurisdictional High Court in the case of Marsons Beneficiary Trust, 188 ITR 224, wherein it was held as under :-

“In the applications which are before us, the shares of the beneficiaries in the trust income are known and determinate. There can, therefore, be no question of section 164 being attracted. Looking to section 161(1) and the decisions of our High Court and the Supreme Court, the income of the trust, whether it is business income or any other income, will therefore, have to be treated as if it were distributed to the beneficiaries. Tax on the share of each beneficiary will have to be separately calculated as if it formed a part of the beneficiary's income. Tax payable by the trustees will be the sum total of the tax so calculated on the share of each beneficiary. In fact, under section 166, the Revenue has the option to assess the beneficiary directly. This does not make any difference to the quantum of tax which is liable to be paid. But the income cannot be taxed in the hands of the trustees as one unit under section 161 (1).”

6. On the other hand, Id. DR relied on the order of lower authorities.

7. We have considered rival contentions, carefully gone through the order of Hon'ble Bombay High Court as relied by Id. AR. We found that share of beneficiaries are determined, therefore, provisions of Section

164(1) shall not be applicable for taxing the assessee at maximum marginal rate. However, at the very same time, under provisions of Section 161(1), the assessee being a representative assessee is liable to tax in respect of income of the trust in the same manner as if income accruing to the beneficiary and shall be taxed subject to other provisions. Section 161(1) specifically requires income received by the representative assessee to be assessed in the hands of representative of assessee and recovery of tax from such representative assessee. Provisions of Section 166 gives a discretion to the AO to make assessment to the income received by the representative assessee on behalf of the beneficiaries.

8. A plain reading of provisions of Section 160 to 165 suggests that the trust, even if share is determined, is still liable to assess u/s.161(1) read with Section 160(1)(iv) of the Act. The only exception to this is when the AO assesses the beneficiary u/s.166 then same income cannot be assessee in the hands of representative assessee u/s.161(1). As the facts are not clear as to whether the AO has assessed beneficiary u/s.166 of I.T.Act, we restore the matter back to the file of AO to find out if the beneficiaries have been assessed u/s.166 and for deciding afresh as per law.

9. Next grievance of the assessee relates to disallowance of addition of Rs.90,726/- being made of municipal tax on the plea that assessee has not filed proof of payment of municipal tax to the extent of Rs.90,726/- During the course of hearing Id. AR drew our attention to a letter dated 28-9-2008 addressed to the Manager Syndicate Bank, Vile Parle, Mumbai

for issue of a certificate of payment made from their account, out of which pay order was issued in favour of Thane Municipal Corporation. As per the bank statement placed on record at page 51 of the paper book, we found that pay order of Rs.90,865/- was issued. In the interest of justice, we restore this matter also back to the file of AO for verifying the actual payment as per the bank statement and to decide the issue afresh as per law.

10. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 11/05/ 2016.

**Sd/-
(SANJAY GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 11/05/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

सत्यापित प्रति //True Copy//

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai