IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI E BENCH, NEW DELHI

[Coram: Pramod Kumar AM and A. T. Varkey JM]

I.T.A. No.: 3976/Del/13
Assessment year: 2009-10

Manpreet Singh ***……Appellant***
26/113, West Patel Nagar
New Delhi 110 008
[PAN AYBPS4339R]

Vs.

Income Tax Officer
Ward 33(3), New Delhi ***……Respondent***

Appearances by:

Satish Aggarwal, *for the appellante*
Gaurav Dudeja, *for the respondent*

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 26th April 2013 passed by the learned Commissioner (Appeals) in the matter of assessment under section 143(3) of the Income Tax Act, 1961 for the assessment year 2009-10.

2. The short issue that we are really required to adjudicate in this appeal is whether or not deduction under section 24(a) @ 30% of the annual value is available in respect of computation of income under the head 'income from

house property' in respect of income from renting of terrace for installation of mobile antenna.

3, Briefly stated, the relevant material facts of the case are as follow. The assessee before us, an individual, had received sums aggregating to Rs. 2,91,723 from Bharati Airtel Limited and Idea Cellular Limited, towards renting out its terrace for the use by these companies as places where as, mobile communication service providers, the companies had installed antennas. The assessee had also claimed a deduction @ 30%, under section 24(a), from the rental income so received. However, this claim for deduction did not find favour with the Assessing Officer. In the course of scrutiny assessment proceedings, the Assessing Officer rejected this claim for deduction on the ground that, "income regarding installation of antenna" was taxable under the head "income from other sources" whereas deduction under section 24(a) could only be allowed in respect of such income as was taxable under the head "income from house property". The deduction of Rs 87,516 was thus added back to income of the assessee. Aggrieved by the stand so taken by the Assessing Officer, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) upheld the stand of the Assessing Officer, and, while doing so, observed as follows:

> **5. I have considered the facts of the case and the submissions made on behalf of the appellant. I have also perused the case law relied upon by the AR of the appellant. A question was posed before the Hon'ble High Court of Calcutta in the case of Mukherjee State Pvt. Ltd. vs. CIT (2000) 244 ITR 1 (Cal) that when the hoardings are fixed to the building, the rent derived from such hoardings meant for advertisement purposes, be treated as income from property? The Hon'ble High Court has held that if the rent is only for fixing the hoarding, it cannot be treated as part of the building, nor could it be treated as land appurtenant thereto, therefore such income will have to be separately considered as income from other sources. On the same analogy, rent from the installation of mobile antennae which has been erected on the top at the building would not be taxable**

under the head "income from property" as the rent was only for providing space for installation of the mobile antennae on the top of building, and the same cannot be treated as part of the building nor can it be treated as land appurtenant thereto. Therefore, such income is taxable under the head income from other sources. The Assessing Officer has thus rightly treated the income from installation of mobile antennae as income from other sources and denied the deduction u/s 24(a) of the IT Act, 1961 claimed by the appellant. Accordingly, the Assessing Officer's action is upheld

4. The assessee is not satisfied and is in further appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We find that Section 22 of the Act provides that "annual value of property consisting of a building or land appurtenant thereto of which the assessee is owner" is taxable under the head "income from house property". There is no dispute on the facts of this case that the assesse is owner of the property but the authorities below have rejected the taxability under the head "income from house property" only on the ground that the rent in question is not in respect of any part of the building but for an unrelated attachment, i.e. mobile antenna, to the roof. It is thus contended that the rental income in question can only be taxed as "income from other sources", i.e. residuary head. In other words, according to the stand taken by the revenue, the rent in question cannot form part of the annual value as it is *sine qua non* for its such inclusion that the rent must be for "the property or any part of the property", whereas the rent in question is not for any part of the property but an unrelated attachment to the roof or terrace. The revenue implications of this change of head lie in the fact that whereas an income from house property is eligible for standard deduction, under section 24(a), @ 30% of the annual value, the taxability under the head

'income from other sources' does not entitle the assessee for such a deduction. The basis on which learned CIT(A) has upheld that taxability under the head 'income from other sources' and thus reject the claim of deduction under section 24(a), is his understanding of the law laid down by Hon'ble Calcutta High Court in the case of **Mukerjee Estates Pvt Ltd Vs. CIT [244 ITR 1 (2000)].**

7. We find that so far as Hon'ble Calcutta High Court's judgment in the case of **Mukerjee Estates Pvt Ltd *(supra)*** is concerned, it is wholly misplaced inasmuch as it was a case in which the Tribunal had given a categorical finding that the assessee had **"let out the hoardings"** and in which the assessee's claim that he had let out the roof for advertisement and hoarding remained to be unsubstantiated inasmuch as when "**a query was put to him** *(i.e. the assessee)* **whether there was an agreement to this effect to conclude whether the hoarding was let out or the roof is let out**", the assessee **"failed to produce that agreement nor there is** *(was)* **any reference to such an agreement before the authorities below".** It was in this backdrop that Hon'ble Calcutta High Court concluded as follows:

> **"…….Therefore, considering the finding of the Tribunal that the assessee has let out the hoarding, these are neither part of the building nor land appurtenant thereto. Therefore, permitting some companies to display their boards on hoardings cannot be taken as income from the house property as hoardings cannot be taken as part of the building"**

8. Learned CIT(A) was thus clearly in error in observing, in the impugned order, that **"Hon'ble High Court has held that if the *rent is only for fixing the hoarding,* it cannot be treated as part of the building, nor could it be treated as land appurtenant thereto, therefore such income will have to be separately considered as income from other sources** (Emphasis by

underlining supplied by us)**".** As is clearly discernible from the extracts from the observations of Their Lordships of Hon'ble Calcutta High Court, the rent was taken as rent for hoardings *per se* rather than rights on the roof where hoardings could be installed or, as the learned CIT(A) puts it, 'fixed'. There was a categorical finding to that effect in the order of the Tribunal as well and this finding remained uncontroverted before Hon'ble Calcutta High Court as well. It was based on this uncontroverted finding that Hon'ble Calcutta High Court reached the conclusion that the income in question is taxable as income from other sources. This decision, therefore, cannot even be an authority for the proposition that the income from renting out the roof for placing the hoardings can be treated as income from other sources. Quite to the contrary to this interpretation, the observations made in this decision unambiguously show that when it can be demonstrated, as Their Lordships wanted the assessee to demonstrate in that case, that the consideration received is rent for letting out the roof rather than the hoardings, the legal position will be materially different. Such being the correct position, it is certainly stretching the things a bit too far to suggest that rent for roof, for installation of mobile antennas, cannot be taxed under the head 'income from house property'. Learned CIT(A)'s observations to the effect that "**On the same analogy, rent from the installation of mobile antennae which has been erected on the top at the building would not be taxable under the head "income from property" as the rent was only for providing space for installation of the mobile antennae on the top of building, and the same cannot be treated as part of the building nor can it be treated as land appurtenant thereto"** is a classic case of fallacious logic. Once learned CIT(A) agrees that **"rent was only for providing space for installation of the mobile antenna",** there is no occasion to consider whether antenna will be a part of a building or land appurtenant thereto as the true test is whether such a space, as has been rented out, is part of the building or land appurtenant thereto. The rent is not for the antenna but for the space for installation of antenna. It is not the case of the Assessing Officer that the rent is for the antenna, and, therefore, it is wholly irrelevant

whether antenna is part of the building or land appurtenant thereto. What is relevant is the space which has been rented out and, therefore, as long as the space, which has been rented out, is part of the building, the rent is required to be treated as "income from house property". Learned counsel for the assessee has filed copies of leaves and licence agreements with the Bharti Airtel Limited and the Idea Cellular Limited. In both of these agreements, it is specifically mentioned that the rent is for use of "roof and terrace" area (not more than 900 sq ft in the case of Bharti Airtel Ltd and approx 800 sq ft in the case of Idea Cellular Limited). The agreement with Bharti Airtel Ltd mentions that the assessee "**permits the licences to install, establish, maintain and work on the licenced premises, inter alia, including the following – (a) transmission tower/pole, with multiple antennas; (b) pre-fabricated equipment shelter; (c) D G Set upto 25 KVA: and (d) two earthing connection and laying of other cables to ground an one lightning arrestor, necessary cabling and connecting to each antenna/ equipment, and space for installation of electricity meter and power connectivity etc**". Similarly, agreement with Idea Cellular Ltd, inter alia, states that the assessee gives permission and licence "**to use and occupy a portion admeasuring approx. 800 sq ft terrace and roof area for installation of prefabricated temporary assembled air conditioned shelter, tower/antenna poles and such other equipment as may be necessary**". All these installations are to be done by the related companies and the obligation of the assessee does not extend beyond permitting use of space for such installations. It is thus clear that the rent is for space to host the antennas and not for the antennas. As long as the rent is for the space, terrace and roof space in this case and which space is certainly a part of the building, the rent can only be taxed as 'income from house property'.

9. In view of the above discussions, and as the rent received by the assessee for use of space, by Bharti Airtel Limited and Idea Cellular Limited, in a building, or part thereof, owned by the assessee, in our considered view, the rent so received must be taken into account in computation of annual value to be taxed

under the head "income from house property". Accordingly, as learned counsel for the assessee rightly contends, the deduction under section 24(a) is admissible on the facts of the present case. We, therefore, reverse the stand of the authorities below and uphold the stand of the assessee. The Assessing Officer is, accordingly, directed to delete the impugned disallowance.

10. Learned counsel for the assessee has taken pains to compile several unreported and reported judicial precedents in support of the stand taken by the assessee, and with a view to distinguish Hon'ble Calcutta High Court's decision in the case of Mukerjee Estates *(supra),* but, having reached our conclusions on the first principles and not having found any judicial precedent coming in the way of these conclusions, we see no need to deal with this meticulous work. We leave it at that.

11. In the result, the appeal is allowed. It is so pronounced in the open court today on 6th January, 2015

Sd/xx ***Sd/xx***
A. T. Varkey **Pramod Kumar**
(Judicial Member) (Accountant Member)

New Delhi, the 6th day of January, 2015.

Copies to : *(1)* *The appellant* *(2)* *The respondent*
(3) *Commissioner* *(4)* *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Delhi benches, New Delhi