IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM & SHRI SANDEEP GOSAIN, JM

आयकरअपीलसं./ I.T.A. No. 4776/Mum/2014
(**निर्धारणवर्ष** / Assessment Year: 2010-11)

DCIT – 24(2) C-13 6th floor, Pratyakshkar Bhavan, BKC, Bandra(E), Mumbai	**बनाम**/ Vs.	Yogen D. Sanghvi 1003/04 Rustomje Adarsh Excellence Off. Marve Rd. Malad (W), Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AIEPS6791A		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri V. Vidhyadhar
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri K. Shivaram

सुनवाईकीतारीख/ **Date of Hearing**	:	7/08/2017
घोषणाकीतारीख / **Date of Pronouncement**	:	01/11/2017

आदेश / O R D E R

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Commissioner of Income Tax (Appeals)-34, Mumbai

dated 15.04.14 for AY 2010-11 on the grounds mentioned herein below:-

GROUNDS OF APPEA

1. "On the facts and in the circumstances of the case and in law, the Ld. C.I.T. (A) erred in directing the Assessing Officer to allow the claim of deduction of Common Area Maintenance Charges of Rs. 11,36,069/-, while computing the Annual Letting Value ignoring the fact that the said expenses are not allowable u/s 23 while computing the Annual Letting Value.

2. "On the facts and in the circumstances of the case and in law, the Ld. C.I.T. (A) erred in directing the Assessing Officer to allow the claim of deduction of Common Area Maintenance Charges of Rs. 11,36,069/- , while computing the Annual Letting Value ignoring the fact that the computation of house property is governed by self contained code and no other expenditure other than what is specified u/s 23 is allowable while computing the Annual Letting Value.

3. "On the facts and in the circumstances of the case and in law, the Ld. C.I.T. (A) erred in directing the Assessing Officer to allow the claim of deduction

of Common Area Maintenance Charges of Rs. 11,36,069/-, while computing the Annual Letting Value ignoring the fact that the assessee himself had disallowed the proportionate expense and treated the same as income in Asst. Year 2011 —2012 and offered the same for taxation.

4. On the facts and in the circumstances of the case and in law, the Ld. C.I.T. (A) erred in directing the Assessing Officer to treat the amount of Rs. 81,59,061/- received from K Raheja Universal Construction Pvt. Ltd., as capital receipt and exempt it from tax, ignoring the fact that the amount of Rs. 81,59,061/- was compensation received by the assessee towards loss of rental income, which is a revenue receipt.

5. On the facts and in the circumstances of the case and in law, the Ld. C.I.T. (A) erred in directing the Assessing Officer to treat the amount of Rs. 81,59,061/- as capital receipt relying on the judgment of CIT V/s. Abhasbhoy V Dehgamwali, the facts of which are distinguishable from the facts of the present case.

6. On the facts and in the circumstances of the case and in law, the Ld. C.I.T.

(A) erred in directing the Assessing Officer to treat the amount of Rs. 81,59,061/- as capital receipt ignoring the decision of the Hon'ble Madras High Court in the case of CIT Vs Deepak Kumar Agarwal (2000) 244 ITR 448 wherein it was held that lump sum payment received as compensation is in the nature of revenue receipt

7. On the facts and in the circumstances of the case and in law, the Ld. C.I.T.

(A) erred in directing the Assessing Officer to treat the amount of Rs. 81,59,061/- as capital receipt ignoring the decision of the Hon'ble Delhi Tribunal in the case of CIT Vs Khanna & Annadhnam (2008) 305 IGTR (AT) 336 (Delhi) wherein it was held that compensation received for probable loss had to be treated as revenue receipt"

8. The appellant prays that the order of the CIT(A) be set aside and matter may be decided according to law. The appellant craves leave to amend or alter any ground or add new ground which may be necessary".

2. As per the facts of the present case, the assessee is engaged in the business of financial services. Apart from that the assessee also derived income from house property, capital gain and also from other sources i.e. interest income. The return of income was filed on 15.10.10, declaring total income of the assessee at Rs. 4,27,1,350/-. Subsequently, the case of the assessee was selected for scrutiny and after serving statutory notices and seeking reply of assessee, the AO passed assessment order u/s 143(3) of the I.T. Act, thereby making additions.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Now before us, the revenue has preferred the appeal by raising the above grounds.

Ground No. 1 TO 3.

3. Since all the above grounds raised by the revenue are inter-connected and inter-related and relates to challenging the order of Ld CIT(A) in directing AO to allow the deduction of

maintenance charges and non-occupancy charges paid to the society, from the rent received by the assessee, therefore we thought it fit to dispose of the same through the present common order.

4. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 2.1 to 2.3 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 2.2 & 2.3 of its order and the same is reproduced below:-

> *2.2. During the course of appellate proceedings, the Authorized*
> *Representative of the appellant has made the following submissions:-*
>
> ***"Deduction of Cam Charges and other charges from house øroperty income.***
> *a The Appellant has let out two properties. As far as agreement is concerned with MSCI services pvt.ltd, the license fee is inclusive of CAM (including Municipal Taxes) charges. In .other words, CAM charges is payable by the Appellant.*

b. In the return, the Appellant has claimed CAM charges alongwith municipal taxes as deduction from the rent for computing the annual value of the premises let out.

C. The basis of Annual letting value is to be computed on the basis of rent received or receivable u/s 23(1)(b). The. Muncipal Taxes and other common maintenance charges which are to be borne by the owner out of such rent, the ALV is to be computed after deducting such CAM charges from the rent received or receivable by the owner.

d. The expenses where incurred to let out the property without which the rent would not have been received and hence same should be allowed.

e. In fact the expenses are nothing but reimbursement of the expenses incurred on behalf of the tenants of the building.

f. In the recent decision of Hon'ble Delhi High court in the case of CIT Vrs. R.J. Woods P. Ltd 334 ITR 358, it has been held that the maintenance & other charges are deductible from rent while calculating the Annual Letting value of the property.

g. The Ahemdabad Tribunal in case of J.B. Patel & Co. (Co-owners) Vrs DCIT (2009) 118 ITD 556 (Ahd) para 5.2 held that

"What s. 22 attempts to assess is the annual value of the property

consisting of any building or land appurtenant thereto, of which the appellant is the owner,, and which has not been put to use for the purposes of its business or profession by it. The rent being charged by the appellant, if so, is only a surrogate measure of the said annual value. The expenditure on the aforesaid items,

i.e., the salary (including bonus) to the maintenance staff of the facilities as electric motors, lift, cIaning, etc., as well as that on the electricity consumed in respect of any common area and the electric motors, is not attributable directly to the house property.as such, but to its enjoyment by the tenants/users thereof. In a given case it may well be that the said expenditure is incurred, by the tenant or tenants (collectively), with the landlord having no locus standi or role therein, so that who incurs the same in the first instance, is only a matter of mutual arrangement or convenience and, thus, of no consequence where the bona fides thereof are, as in the present case, not'in doubt. The rent being charged by the appellant, which represents the measure of its annual value, would, being only decided under the said arrangement, in such a case, stand correspondingly reduced. As such, though the appellant, being entitled only to the deductions in. respect the said expenditure in the computation of the income under the.said head' of income only in terms of its provisions, would not be entitled to the impugned deductions, the annual value of its house property be assumed at the reduced' value, i.e., after deducting the impugned amounts (from the rental), being only in relation to the expenditure required to be necessarily incurred for the enjoyment/user of the relevant property and, therefore, can only be considered as having been included - at the said amount, i.e., at cost, by the two parties in the reckoning/determining of the same (rental)."

h. The'Muribai Tribunal in case of Realty Finance & Leasing (P.) Ltd. vs. ITO (2006) 5 SOT 348 (Mum) held that society charges paid by appellant in respect of its let out properties are allowable while computing

annual value. This was followed in case of ITO vs. Farouk D. Vevaina (2009) 121 Ui 510 (Mum).

i. The Gauhati' Tribunal in case of ITO vs. Vijay Kumar Bawari 19 1TJ 562 (Gau) held that where electricity charges payable by the tenants are borne by the landlord by an agreement, such charges will have to be reduced from the actual rent received or receivable.*

j. The Delhi Tribunal in case of Neelam Cable Manufacturing Co. vs. CIT (1997) 63 lTD 1 (Del) held that security service charges borne by the owner of the property should be deducted to arrive at the ALV to be determined with rexe to actual rent.

k. The Murnbai Tribunal in case of Sharmila Tagore vs. JCff (2005) 93 UJ 483 (Mum) held that maintenance charges and non-occupancy charges paid to the society is to be deducted from the rent received by the Appellant.

L. The appellant therefore submits that the expenses may be deducted while computing the net annual rental, income under section 22."

2.3. I have carefully considered the submissions made by the appellant and the impugned assessment order on this issue. I find force in the arguments "of the appellant. The ITAT Mumbai Bench 'D' in the case of Sharmila Tagore vs. JCIT relied on by the appellant supports the case of the appellant in which it was held that held that. maintenance charges and non-occupancy charges paid to the society is to be deducted from the rent received by the Appellant. In view of the above, this ground of appeal is allowed.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and hearing the parties at length, we find that Ld. CIT(A) while deciding these grounds have taken into consideration the facts of the present case as well as judgments passed by the Coordinate Bench of Hon'ble ITAT in the case of **Sharmila Tagore Vrs. JCIT** wherein it has been held that the maintenance charges and non-occupancy charges paid to the society is to be deducted from the rent received by the assessee.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands **dismissed**.

Ground No. 4 to 7.

5. Since all the above grounds raised by the revenue are inter-connected and inter-related and relates to challenging the order of Ld. CIT(A) in directing the AO to treat the amount of Rs. 81,59,061/- received from M/s K. Raheja Universal Construction Pvt. Ltd as capital receipt, therefore we thought it fit to dispose of the same through the present common order.

6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 4 to 6 of its order. The operative portion of the order of Ld. CIT(A) is contained in para no. 3.4 of its order and the same is reproduced below:-

> *3.4. I have carefully considered 'the submissions made by the appellant and the impugned assessment order on this issue and also perused the material on record and duly considered the factual matrix of the case also the applicable legal position. The Assessing Officer was of the view that the compensation has been-paid for probable loss of*

higher rental receipts to be received by letting the said unit to IMITES firm and therefore the compensation received by the appellant is definitely is of revenue nature. The Assessing Officer further opined that the loss on account of receiving of lesser rental income by letting out the said unit to an IT firm is clearly revenue loss. The ownership and right in the said unit to an IT. firm is clearly revenue loss. The ownership and right irl the said unit No.302 was not at all disturbed and thus there is no capital toss in the form of any relinquishment of any, right/ownership in Unit No.302. In view of this revenue loss to him, the appellant has been given compensation of .81.,59,061/- and the Assessing Officer was of the view that any compensation received for revenue loss has to be treated and assessed as revenue receipt: It is seen that MIs S. C. Brothers, is a partnership firm, in which Mr. Yogen Sanghavi, the appellant was a partner & it owned a vacant plot located at Goregaon, Western Express Highway. Subsequently, the plot was given for redevelopment by MIs S.C. Brothers on 28.11.2005 to M/s K. Raheja Universal Construction Pvt. Ltd. for developing an iT Park. As per the agreed terms MIs K. Raheja Univeral Construction Pvt. Ltd. had settled the consideration as follows:

C. Rs. 4.80 Crs by way of cheque

d. 50% of the constructed area to be handed over to M/s S.0 Brothers free-tcost.

The 50% of the constructed area was handed over to M/s S C Brothers on 19 March 2008 and as per terms of retirement by agreement dt. 31st Dec 2006 , by which Mr. Yogen Sanghavi had retired from the firm and as per the distribution of the,Assets decided thereon, he was handed over Unit No-202 & 302 towards his share in the Firm. The firm, (M/s SC Brothers) had paid Capital gain tax on the retirement of the partner. One of the conditions laid down by the Government Of Maharashtra Directorate of Industries Authorities as set out in G.R. dated 03.05.2007, was

that the building would be treated as IT Park Building, only if 50% of the total area constructed is utilized for Financial Services and the balance 50% for purpose of I.T. Services. The Local Authority was only concerned about the overall distribution between I.T. & Financial Services and unit wise commitment was not required. To fulfill this conditions the members of the building had entered into an Memorandum of Understanding, and arrived at an agreement within themselves as to the method of utilization of the property. As per the Memorandum of Understanding, M/s K Raheja Universal Pvt Ltd. was supposed to hbld Unit No-602 under LT. Services. However, without acknowledging any other members, they let out the unit for Financial Services to Bharti Axa Life Insurance Thus they breached the MOU. When the Appellant Mr.Yogen D Sanghavi wanted to let out his property i.e. Unit no. 302 for Financial Services, he was surprised to learn that it was not possible since M/s K Raheja Universal Pvt Ltd had already utilized the slot of Financial Services which belonged to him, because of which Mr. Sanghavi could let out his unit only for IT/ITES purpose, otherwise the status of IT park would have been lot. The matter was taken up with M/s K Raheja Universal Pvt Ltd and it was settled that they would compensate Mr.•Yogen D Sanghavi for a sum of Rs.81.59 Lacs for the change of usage of the premises, that had happened. Since the above receipt is a capital receipt, and was not taxable, it was directly credited to capital account of the appellant which is found to be correct. The Bombay High Court decision relied on by the appellant in the case of CIT' vsc Abhasbhoy A Dehgamwalla supports the case of the appellant. By signing the agreement, the appelrant has accepted an impairment or injury to Its right of 'more beneficial enjoyment' of his own property. The amount of .81,59,061/- received by.the appellant in 'settlement of this dispute, can therefore be treated as compensation for the impairment of this right. Since the immovable

> *property itself is capital in the hands of the appellant, the right to 'more enjoyment' of this property should also be capital in nature. Thus in the facts of the case, it is capital receipt as held by the Bombay High Court in the case of CIT(V) Abhasbhoy A Dehgamwalla and hence not eligible to tax. Accordingly, this ground is allowed.*

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and hearing the parties at length, we find that Ld. CIT(A) while deciding these grounds have taken into consideration the facts of the present case as well as judgments passed by the jurisdictional Bombay High Court in the case of CIT vrs. Abhasbhoy A Dehagamwalla.

As per the facts of the present case the AO while dealing with these grounds, was of the view that the compensation has been paid for probable loss of higher rental receipts to be received by letting the said unit to I.T/I.T.E.S firm and therefore the compensation received by the assessee is of revenue in nature. However, the Hon’ble Bombay High Court in the case of CIT vrs. Abhasbhoy A Dehagamwalla supported the case of the assessee as by signing the agreement, the assessee has accepted

an impairement or injury to its right of 'more beneficial enjoyment' of his own property. Therefore, the Ld. CIT(A) has rightly concluded that the amount of Rs. 81,59,061/- received by the assessee in 'settlement of the dispute was rightly taken as compensation for the impairment of the right of more enjoyment. It was also rightly concluded that since the immovable property itself is capital in the hands of the assessee, therefore the right to 'more enjoyment' of this property should also be capital in nature.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands **dismissed**.

Ground No. 8

7. This ground raised by the revenue is general in nature, thus requires no specific adjudication.

8. In the net result, the appeal filed by the revenue stands **dismissed.**

Order pronounced in the open court on 1st Nov, 2017

Sd/- Sd/-

(Shamim Yahya) (Sandeep Gosain)
लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member
मुंबई Mumbai;दिनांकDated : 01.11.2017
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**