

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4947/MUM/2014
Assessment Year: 2010-11**

Satish Hazarilal Agarwal
110 Narayan Dhuru Street
Mumbai-400003.

Vs.

ACIT-13(1)
Room No. 418, 4th floor,
Aayakar Bhavan, M.K.
Road
Mumbai

PAN No. AANPA2587R

Appellant

Respondent

Assessee by : Shri Tarun Bansal, AR
Revenue by : Shri K. Ravi Kiran, DR

Date of Hearing: 16/05/2017
Date of pronouncement: 10/08/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under: -
1. On the facts & circumstances of the case the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs,1,42,280/- (being 50% of the total amount of Rs.2,84,559/-) under the head 'Income from salary' treating the credit card payments as the perquisite. The appellant prays that the addition made by the Learned Assessing Officer is not justified and be deleted.
 2. On the facts & circumstances of the case the Learned Commissioner of Income Tax(Appeals) has erred in confirming the addition of income under the head 'Income from House Property'. The appellant prays that the addition made by the Learned Assessing Officer is not justified and be deleted.
 3. On the facts & circumstances of the case the Learned Commissioner Income Tax (Appeals) has erred in taxing the income in respect of Flat No.41 and Flat No.51 under the head 'Income from House Property'. The appellant prays that Flat No.41 and Flat No.51 together with other two flats belonging to his family members are used exclusively for residential purpose and they are part of one residential unit. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the deemed income under the head 'Income from House Property' in respect of Flat No.41 and Flat No.51.
 4. On the facts & circumstances of the case and without prejudice to grounds Nos. 2 and 3, the appellant prays that the estimation of the rent at Rs.45,000/- per month is excessive and not justified. The Learned Commissioner of Income Tax (Appeal) has erred in confirming the rent per month at Rs.45,000/- for the purpose of computing the income chargeable to tax under the head Income from House Property.
 5. On the facts and circumstances of the case the appellant denies the additional liability of payment of interest u/s 234B. On the facts &

circumstances of the case the appellant submit that levy of additional interest u/s 2348 of Rs.74,202/- is not justified and be deleted.

3. We begin with the 1st ground of appeal. The Assessing Officer (AO) asked the assessee during the course of assessment proceedings to explain the credit card expenses of Rs.2,84,559/-. The AR of the assessee explained to the AO that the said amount represented the use of credit card bearing No. 5176375206601000 issued by ICICI Bank. He also furnished to the AO copies of bills raised by ICICI Bank and cheques issued by M/s Agarwal Fasteners Pvt. Ltd. The AO was told that these expenditures have been incurred for the business of his employer-company M/s Agarwal Fasteners Pvt. Ltd. The AO on perusal of the bills found that the payments made by the company are in respect of hotel bills, resorts and restaurants like Hotel Regency Jewel of India, ITC Ltd., Hongkong Hotel, Status Restaurants, ITC Grand Central, Blue Waters, Novotel Mumbai Juhu, Indian Palace, Aramark Restaurant, Taj Lands End Chingari, The Resort Hightide, The Leela, Sheetal Bukhara and some are for Make My Trip and other airlines for travel. As the assessee failed to explain that the above expenses were incurred on behalf of the company of which he is an employee, the AO brought to tax the amount of Rs.2,84,559/- as perquisite u/s 17(2)(iv) of the Act.

3.1 Aggrieved by the order of the AO the assessee filed an appeal before the Ld. CIT(A). On examination of the facts, the Ld. CIT(A) held 50% of Rs.2,84,559/- as the reasonable amount to be taxed u/s 17(2)(iv) of the Act. Thus he restricted the amount to Rs.1,42,280/-.

3.2 Before us, the Ld. Counsel of the assessee submits that the assessee had incurred expenses of Rs.2,84,559/- on behalf of M/s Agarwal Fastners Pvt. Ltd. as sales promotion expenses and payment was made through his own credit card and payment of credit card was made directly by M/s Agarwal Fastners Pvt. Ltd. through cheque. Reliance is placed by him on the order of the ITAT 'B' Bench, Mumbai in the case of *ACIT vs. M/s Meerwanjee Poonjiajee & Sons Pvt. Ltd* (ITA No. 2721/M/2009).

3.3 On the other hand the Ld. DR supports the order passed by the Ld. CIT(A).

3.4 We have heard the rival submissions and perused the relevant materials on record. We mention that the nature of expenditure incurred has been delineated at para 3 here-in-above. A perusal of the same indicates that the case of the assessee is distinguishable from the decision in *M/s Meerwanjee Poonjiajee & Sons Pvt. Ltd (supra)* relied on by the Ld. Counsel. There is merit in the finding of the Ld. CIT(A) that the said expenses were purely personal expenses of the assessee which have been made good by his employer-company. The Ld. CIT(A), taking into account the facts and circumstances of the case has restricted the disallowance to 50% of the above sum which comes to Rs.1,42,280/-. We uphold the same and dismiss the 1st ground of appeal.

4. We now turn to the 2nd, 3rd & 4th ground of appeal and discuss them together as they address a common issue. Briefly stated, the facts of the case are that the AO found that the assessee was having more than

one house property. The property at Premodayan Co-op Housing Society was purchased on 29.12.2009 by the assessee and he occupied the property for only three months during the FY 2009-10. Besides this, the assessee was also a co-owner of Flat No. 41 on 4th floor of the building Durga Prasad, Khar with 25% share and in Flat No. 51 on the 5th floor of the same building with 50% share. However, the assessee had not offered any income from these partly owned properties.

It was submitted by the AR of the assessee before the AO that the family consists of Mr. Satish Agarwal, Mr. Surendra Agarwal, their spouse and children. There is one common kitchen, all these four flats are not separate residential unit and the ownership of the four flats vests with different family members. Therefore, it was submitted that the assessee is not liable to offer any income on the basis of the deemed let out principle as there is one single residential unit which is occupied by the family members.

However, the AO was not convinced with the above explanation of the assessee and calculated the deemed property income as under;

Flat No. 41-Rs.60,000 x 3 x 25/100	=	Rs.45,000/-
Flat No. 51- Rs.60,000 x 12 x 50/100	=	<u>Rs.3,60,000/-</u>
Gross notional rent		Rs.4,05,000/-
Less: Statutory deduction u/s 24 @ 30%		<u>Rs.1,21,500</u>
Deemed income from property		<u>Rs.2,83,500/-</u>

The AO thus made an addition of Rs.1,33,500/- after reducing SOP allowance of Rs.1,50,000/- from the above amount of Rs.2,83,500/-.

4.1 In appeal the Ld. CIT(A) has held that the monthly rent of Rs.60,000/- appears to be very high and it will be reasonable if the same is adopted at Rs.40,000/- per month and deductions u/s 23 to 25 are allowed as per law. Therefore, he directed the AO to allow deduction u/s 23 to 25 r.w.s 26 after calculating annual letting value by adopting monthly rent of Rs.40,000/- on the same basis as done in the assessment order for the two properties namely 41 and 51, Ganga Prasad, Khar West, Mumbai.

4.2 Before us, the Ld. Counsel of the assessee submits that (i) the assessee is a co-owner having 25% of share in the residential unit bearing Flat No. 41 situated on 4th floor in the building Durga Prasad, Khar, Mumbai, (ii) the assessee is also a co-owner having 50% of share in residential unit bearing Flat No. 51 on 5th floor in the building Durga Prasad, Khar, Mumbai, (iii) the assessee and his family members are residing in Flat No. 41, 42, 51 and 52, (iv) the assessee and his elder brother Shri Surendra Agarwal are residing together in Flat No. 41, 42, 51 and 52, (v) the family consists of Shri Satish Agarwal, Shri Surendra Agarwal, their spouse and children, (vi) there is one residential unit comprising of four flats, one common kitchen and all these four flats are not separate residential units, and (vii) the ownership of four flats vests with different family members.

4.3 In view of the above, the Ld. Counsel submits that the assessee is not liable to offer any income on the basis of deemed let out principle as there is one single residential unit which is occupied by the family members. Different family members own the residential units having co-ownership rights. Even if there are more than one residential unit but if the co-owners have co-ownership rights and all the family members are residing together and using as one residential unit then it will be construed that the assessee is having one residential unit. Just because the family members have entered into agreement owning co-ownership rights jointly over residential units it will not be treated as separate residential units. Therefore, he submits that the Ld. CIT(A) has erred in confirming the rent per month at Rs.45,000/- for the purpose of computing the income chargeable to tax under the head 'Income from House Property'.

4.4 On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

4.5 We have heard the rival submissions and perused the relevant materials on record. We find that neither the AO nor the CIT(A) has examined the contentions of the assessee delineated at para 4.2 & 4.3 here-in-above, which are having a direct bearing on the instant issue. Therefore, we set aside the order of the Ld. CIT(A) on this issue and restore it to the file of the AO to make a fresh assessment after examining the contentions mentioned at para 4.2 & 4.3 and after giving a reasonable opportunity of being heard to the assessee. The assessee is

also directed to file the relevant details before the AO. Thus the 2nd, 3rd and 4th grounds of appeal are allowed for statistical purposes.

As the matter has been restored to the file of the AO, we are not reverting to the case-laws referred by the Ld. Counsel.

5. The 5th ground of appeal relates to levy of interest u/s 234B. The levy of interest is mandatory though consequential. We order accordingly.

6. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 10/08/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/08/2017

Rahul Sharma. Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai