



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.670/Mum./2018
(Assessment Year : 2013-14)

Kohinoor Industrial Premises Co-
operative Society Ltd.
Kohinoor Industrial Estate
Western Express Highway
Goregaon (E), Mumbai 400 063
PAN - AAAAK4970G

..... Appellant

v/s

Income Tax Officer
Ward-31(2)(2), Mumbai

..... Respondent

Assessee by : Shri Shankarlal Jain
Revenue by : Shri Swapan Kumar Bepari

Date of Hearing - 24.09.2018

Date of Order - 05.10.2018

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 30th November 2017, passed by the learned Commissioner (Appeals)-42, Mumbai, for the assessment year 2013-14.

2. The only issue in dispute in the present appeal is confined to disallowance of deduction claimed towards repairs and maintenance under section 24 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee a Co-operative Society filed its return of income for the impugned assessment year on 9th October 2013, declaring income of ₹ 8,20,970. During the assessment proceedings, the Assessing Officer on examining the return of income filed by the assessee noticed that in the relevant previous year, the assessee has derived rental income from mobile towers which has been offered as income from house property. Further, against such income assessee has claimed deduction under section 24(a) of the Act. Being of the view that the assessee has not let-out any house premises, the Assessing Officer called upon the assessee to justify its claim of offering rental income from mobile tower under the head income from house property. In response, it was submitted by the assessee that the society is the owner of the property where it has permitted the mobile service providers to install their mobile towers / antenna. It was submitted, the assessee has rented out its space in the roof or terrace to the mobile companies for installing their antenna. Thus, it was submitted, the rental income received from letting out the space for installation of mobile towers is assessable as income from house property and the assessee is eligible to claim deduction under section 24(a) of the Act. The Assessing Officer, however, did not find merit in the submissions of the assessee. The Assessing Officer observed, the terrace cannot be termed as house

property as it is the common amenity for members. Further, the Assessing Officer observed that the assessee cannot be considered to be owner of the premises since as per the tax audit report, conveyance is still not executed in favour of the society. He also observed that the annual letting value of the terrace is not ascertainable. Accordingly, he concluded that the income received by the assessee from the mobile companies towards installation of mobile towers / antenna is to be treated as income from other sources. Thus, the Assessing Officer disallowed assessee's claim of rental income as house property income and consequent claim of deduction under section 24(a) of the Act. Being aggrieved of the assessment order so passed, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) after perusing the agreement entered by the assessee with mobile companies observed that the assessee has invited the service providers to provide indoor cellular network coverage solution / in-building solution for providing uninterrupted cellular coverage inside the premises of the assessee. He observed, as per the terms of the agreement, the cellular operators have been specifically denied any right as a tenant, sub-tenant, joint or co-tenant, lessee or sub-lessee. He observed, the assessee has not been paid the rent for letting out the terrace rather the assessee has

been compensated for permitting the cellular operator to install, use, operate the cellular base station on the top terrace of the building for providing services to cellular operators. Thus, ultimately the learned Commissioner (Appeals) concluded that the income received by the assessee from the mobile companies is a compensation for providing facilities and services to the cellular operators to install, use and operate the cellular base station. Thus, he held that such income derived by the assessee has to be assessed as income from other sources.

5. The learned Authorised Representative submitted, the assessee has let-out the terrace to the mobile operators for installing their tower / antenna, therefore, the income derived from such activity is to be treated as income from house property. The learned Authorised Representative submitted, except the impugned assessment year, in no other assessment year the Assessing Officer has disturbed assessee's claim of rental income received from mobile companies as income from house property. Thus, he submitted that even as per rule of consistency, the income derived by the assessee has to be treated as income from house property. In support of his contention, the learned Authorised Representative relied upon the decision of the Tribunal, Mumbai Bench, in *Matru Ashish Co-operative Housing*

Society Ltd. v/s ITO, [2012] 144 TTJ 446 (Mum.) and Manpreet Singh v/s ITO, [2015] 168 TTJ 502 (Mum.).

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals) and the Assessing Officer.

7. I have considered rival submissions and perused materials on record. Undisputedly, the assessee has derived rental income from letting out space in the terrace of the building to mobile companies for installing their mobile tower / antenna. It is also a fact that the assessee has offered such rental income as income from house property and has claimed deduction under section 24(a) of the Act. The Assessing Officer has rejected assessee's claim and treated the rental income as income from other sources basically for three reasons. Firstly, the assessee is not owner of the building; secondly, the terrace cannot be considered as house property and thirdly, annual letting value of the terrace is not ascertainable. Whereas, the learned Commissioner (Appeals) has upheld the decision of the Assessing Officer on the reasoning that the income received by the assessee is in the nature of compensation received for providing facilities and services to cellular operators on the terrace of the building. Thus, from the aforesaid facts, it is clear that the assessee has let-out some

space on the terrace of the building to the cellular operators for installing and operating the mobile towers / antenna for the purpose of providing mobile telecom services. The issue before me is, what is the nature of income received by the assessee for letting out such space to the cellular operator/mobile company for installing and operating mobile towers/antenna? In my view, the terrace of the building cannot be considered as distinct and separate but certainly is a part of the house property. Therefore, letting-out space on the terrace of the house property for installation and operation of mobile tower / antenna certainly amounts to letting-out a part of the house property itself. That being the case, the observation of the Assessing Officer that the terrace cannot be considered as house property is unacceptable. As regards the observation of the learned Commissioner (Appeals) that the rental income received by the assessee is in the nature of compensation for providing services and facility to cellular operators, it is relevant to observe, the Departmental Authorities have failed to bring on record any material to demonstrate that in addition to letting-out space on the terrace for installation and operation of antenna the assessee has provided any other service or facilities to the cellular operators. Thus, from the material on record, it is evident that the income received by the assessee from the cellular operators/mobile companies is on account of letting out space on the

terrace for installation and operation of antennas and nothing else. That being the case, the rental income received by the assessee from such letting-out has to be treated as income from house property. The decisions relied upon by the learned Authorised Representative also support this view. Further, the contention of the learned Authorised Representative that in no other assessment year, assessee's claim of such income as house property has been disturbed by the Assessing Officer has not been controverted by the Departmental. Therefore, there being no material difference in fact, applying rule of consistency also, assessee's claim deserves to be allowed. Accordingly, I direct the Assessing Officer to treat the rental income received by the assessee from cellular operator as income from house property and allow deduction under section 24(a) of the Act. Ground raised is allowed.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 05.10.2018

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 05.10.2018

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai