

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.7377/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Rockcastle Property Private Ltd</b> 3 <sup>rd</sup> Floor, Sunama House 140, August Kranti Marg Opp. Shalimar Hotel, Kemps Corner Mumbai – 400 026.	<b>बनाम/</b> <b>Vs.</b>	<b>ITO-5(3)(1)</b> Room No.21, 3 <sup>rd</sup> Floor B-Wing Mittal Court, Nariman Point Mumbai – 400 021.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AABCR-9466-M</b>		
(आपीलकर्ता/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Gopal Sharma-Ld. AR
<b>Revenue by</b>	:	Ms. Smita Verma – Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	17/03/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	18/05/2021

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. In this appeal for Assessment Year (AY) 2012-13, the assessee is aggrieved by the order of Ld. Commissioner of Income-Tax (Appeals)-10, Mumbai, [in short referred to as ‘CIT(A)’] dated 25/10/2018 which has held that the assessee is not eligible to claim ‘society maintenance charges’ from rental income.

2. The Ld. AR advanced argument in support of assessee’s claim and relied upon various decisions of this Tribunal, a copy of which has been

placed on record. It was urged that gross rent received by the assessee included society maintenance charges which were to be paid by the assessee. Therefore, in computing the annual value, the amount of rent which actually goes into the hands of the owner should be taken into consideration since the provisions of Sec. 23(1)(b) uses the expression actual rent received or receivable by the owner.

The Ld. DR, on the other hand, submitted that the assessee's claim is not admissible as per statutory provisions.

We have carefully considered the same. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The assessee being resident corporate assessee has been assessed u/s 143(3) on 19/09/2014 wherein it transpired that it earned rental income from a commercial property which is situated in a condominium. The assessee credited an amount of Rs.91.42 Lacs as rental income in Profit & Loss Account as against receipts of Rs.93.65 Lacs. The differential of Rs.2.23 Lacs was due to the fact that the assessee credited rental receipts net of 'society maintenance charges'. The Ld. AO opined that the same is not allowable since the assessee is already allowed deduction of 30% u/s 24(a). Consequently, the rental income was taken on gross basis.

4. The Ld. CIT(A) noted that the action of Ld. AO was in line with the decision of Mumbai Tribunal in **Township Real Estate Developers India Private Limited V/s CIT (51 SOT 411 04/04/2012 AY 2004-05)** which considered the decisions of Hon'ble Delhi High Court in **H.G. Gupta & Sons (149 ITR 253)**, the decision of Hon'ble Punjab & Haryana High court in **Aravali Engineers P. Ltd. (200 Taxman 81)** and the decision of Chandigarh Bench in case of **Piccadilly Hotels Private Ltd.**

**(97 TTJ 411).** The decision of Mumbai Tribunal in Sharmila Tagore (93 TTJ 483) was held to be not applicable since this decision did not consider the decision of Hon'ble Delhi High Court in H.G.Gupta & Sons. Resultantly, the action of Ld. AO was upheld. Aggrieved, the assessee is in further appeal before us.

5. Upon perusal of clause-9 of Leave & License agreement dated 15/11/2004 entered into by the assessee with one of the Licensee, we find the assessee as a licensor was liable to pay municipal taxes and any outgoings and any further increase thereof to the respective and appropriate local authority / organizations save and except electricity, water and telephone connection / usage charges in respect of the licensed premises. The licensee is obligated to pay lump sum license fees to the assessee. The assessee is also providing certain amenities and facilities of varied nature to the users under separate agreement against lump sum monthly payment as well as against interest free security deposit. All these charges have been offered as well as accepted under the head 'Income from House Property'. Similar are the terms of the other agreements as placed before us.

6. Upon perusal of the agreements, it could be gathered that the payment of municipal taxes and other outgoings was the liability of the assessee. Any increase was also to be borne by the assessee. The licensee was required to pay fixed monthly lump sum payment to the assessee as license fees irrespective of assessee's outgoings. Therefore, to say that the actual rent received by the assessee was net of 'society maintenance charges', would not be correct as per the terms of the agreement entered into by the assessee.

7. We find that as per the provisions of Section 23(1)(b), annual value shall be deemed to be the actual rent received or receivable by the assessee. The proviso provides for deduction of municipal taxes levied by any local authority. As per Explanation, the actual rent received or receivable would not include the amount of rent which owner could not realize. We find that the statutory provisions are quite clear and provide for deduction of only specified items i.e. taxes paid to local authority and the amount of rent which could not be realized by the assessee, from the expression 'actual rent received or receivable'. No other deduction is permissible. Allowing the other deduction would amount to distortion of the statutory provisions and such a view could not be countenanced. To accept the plea that rent which actually goes into the hands of the assessee is only to be considered, would enable the assessee to claim any expenditure from rent actually received or receivable since the same would ultimately reduce the amount which actually goes into the hands of the assessee. The same is not the intention of the legislatures. The statutory provisions, as noted earlier, provide for deduction of specified items only.

8. Proceeding further, we are of the considered opinion that the 'society maintenance charges' as paid by the assessee, by no stretch of imagination, could be held to be taxes paid to local authority. This view has already been expressed by this very bench in the case of Sterling & Wilson Property Developers Pvt. Ltd. V/s ITO (ITA NO.1085/Mum/2015 dated 11/11/2016) as under: -

3. Ground No. 1 to 3 pertains to claim of the assessee with respect to maintenance charges against lease income. The assessee has not contested the assessability of lease income under the head 'Income from House property' and hence, the only dispute is with respect to allowability of impugned charges/taxes

from lease income which has been disallowed by revenue primarily on the ground that the assessee has offered income only against one property. First of all, to delve into the matter properly, we find that the assessee has debited a sum of Rs.3,74,100/- in Profit & Loss Account under the head 'Sterling Seaface Maintenance Charges', the break-up of which is as follows:-

<i>Flat No.</i>	<i>Maintenance Charges (Rs.)</i>	<i>Municipal Taxes (Rs.)</i>
704	0 (since recovered from tenant)	0 (since recovered from tenant)
1101	61,036	61,920
1102	46,000	Nil
1202	61,036	61,920
Godown	Nil	82,188
Total	1,68,072/-	2,06,028/-

Therefore, we find that CIT(A) has erred in allowing two deductions to the extent of Rs.1,22,956/- & Rs.61,920/- separately on account of maintenance charges and municipal taxes respectively which pertained to Flat No. 1101 whereas in fact the total amount pertaining to Flat No. 1101 was, in fact, Rs.1,22,956/- inclusive of municipal taxes. Further, when Income is calculated under the head House Property, then besides statutory deduction of 30% u/s 24, an assessee is entitled only for deduction with respect to *taxes levied by any local authority*. Therefore, society maintenance charges levied by the Society which is not a local authority are not at all allowable to the assessee. Therefore, we held so and accordingly, maintenance charges of four flats amounting to Rs.1,68,072/- are not allowable under the head 'Income from House Property'. Further, the assessee has contended that Godown has been used by assessee for business purposes and therefore, we restore this matter to file of AO for limited purpose of verifying assessee's claim that the godown was used for business purpose during impugned AY or not and if so, allow the deduction for municipal taxes under the head 'Business Income'. So far as regarding, municipal taxes for four properties are concerned, a combined perusal of Statement of Total Income for AY 2006-07 & 2005-06 strengthens the claim the assessee that lease income has been offered on receipt basis as per TDS certificates to avoid mismatch of TDS credit. Therefore, we held that municipal taxes relating to four properties are allowable under the head 'Income from House Property'. The appeal of the assessee against Ground Nos. 1 to 3 is partly allowed.

The decisions as referred to by Ld.CIT(A) also supports the same view. The decision of this Tribunal in **Township Real Estate Developers India Private Limited V/s CIT (supra)** has been passed after considering the two decisions of Hon'ble High Courts. The case law of Sharmila Tagore (93 TTJ 483) as cited by Ld.AR, has already been distinguished therein. The other case laws as cited by Ld. AR primarily

follow the ratio of Sharmila Tagore (supra). In any eventuality, we are inclined to follow our earlier view taken in the cited order as extracted above.

9. Therefore, on the facts & circumstances of the case, finding no infirmity in the impugned order, we dismiss the appeal.

10. The appeal stands dismissed.

*Order pronounced on 18<sup>th</sup> May, 2021.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 18/05/2021

*Sr.PS, Jaisy Varghese*

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

**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/सहायक पंजीकार (Dy./Asstt.Registrar)**

**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**