

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 7001/Mum/2018
(Assessment Years: 2013-14)**

Transmarine Corporation 15, Dubash House, J.N. Heredia Marg, Ballard Estate, Mumbai.	बनाम/ Vs.	ACIT – 17(3) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFFT6088G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Madhur Agarwarl Advocate
प्रत्यर्थी की ओर से/Respondent by :	Shri Amit Pratap Singh, CIT DR

सुनवाई की तारीख / Date of Hearing	19/10/2020
घोषणा की तारीख /Date of Pronouncement	20/10/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed the appeal against the order of the Ld. Commissioner of Income Tax (Appeals)-28, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

“1. The CIT(A) erred in upholding the addition of Rs. 37,97,657/- towards BPT lease rent made by the A.O while computing the income under the head Income from House Property.

2. The CIT(A) erred in upholding the annual value of the property determined by the A.O without considering the lease rent paid by the Appellant firm to BPT.

3. The appellant craves leave to add, alter and or amend all any foregoing grounds of appeal”.

2. The brief facts of the case are that the assessee is a partnership firm and has income from House property interest on deposits and income from other sources. The assessee firm filed the return of income on 25.07.2013 disclosing the total income of Rs. 1,72,64,680/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questioner were issued. In compliance to the notice, the Ld. AR of the assessee appeared in the assessment proceedings from time to time and furnished the details as called for and the case was discussed. The A.O on perusal of the financial statements, found that the assessee has obtained the building Dubash House on lease from Bombay Port Trust (BPT). Further, the assessee firm has given the building on rent to various parties /tenants and such

rental income is assessed under income from house property. The A.O found that, the assessee firm is offering the rental income after claiming deduction of lease rent paid to Bombay Port Trust (BPT) of Rs. 37,39,000/-.The A.O is of the opinion that the assessee is not eligible to claim the deduction of lease rent paid to the BPT. The assessee has filed the submissions on the disputed issue on 16.03.2016 along with supporting documents. The assessee explained the provisions of Sec. 23 of the Act for the purpose of calculation of Annual letting value of the property and the facts that the assessee has received the rent/license fee from it tenants as per agreements but at the same time the assessee firm has to pay mandatorily lease rent to Bombay Port Trust (BPT).Further,the A.O has dealt on the clauses of lease agreement between the assessee firm and tenants. The assessee has paid the lease rent to the BPT and receiving license fee from the tenants. The lease rent is paid to BPT irrespective of the license fee earned. The A.O is of the view that the assessee has claimed statutory deduction of 30% of NAV u/s 24(a) of the Act and therefore no other deduction is allowed.

Hence disallowed the claim of lease rent paid to BPT and computed the total income of Rs. 1,98,81,630/- and passed the order u/s 143(3) of the Act on 26-03-2016. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas, the Appellate Authority considered the grounds of appeal and submissions of the assessee but concurred with the action of the A.O in disallowing the claim of the assessee and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal with the Tribunal.

3. At the time of hearing, the Ld. AR has submitted that the CIT(A) has erred in confirming the action of the assessing officer and overlooked the major facts and the legal position that the assessee is only a lease holder of the property and has to pay the lease rent to Bombay Port Trust (BPT) and the assessee receives licence fees as per the agreements with various tenants. The Ld. AR referred to the submissions made in the assessment proceedings and before the CIT(A), in particular at page 6 para 3.1 of the CIT(A) order. The contentions of the Ld. AR are that the annual value of the property shall be

determined u/s 23(1)(b) were the actual rent is received or receivable by the assessee. The Ld. AR supported his arguments with the judicial decisions and prayed for allowing the assessee appeal.

4. Contra, the Ld. DR relied on the orders of the CIT(A).

5. We heard the rival submissions and perused the material available on record. The sole matrix of the disputed issue is in respect of claim of deduction of lease rent paid by the assessee to Bombay Port Trust (BPT). Whereas, the assessee firm has claimed the lease rent paid as deduction from the rental income/licence fee received from its tenants. The assessee has filed the detailed explanations on the clauses of the leave and license agreements. The LdAR emphasized on the fact of payment of additional rent to be charged irrespective of the actual rent received. The Ld. AR mentioned that the annual value of the property has to be determined as per provisions of Sec. 23(1)(b) of the Act. We consider it appropriate to refer to Sec. 23(1)(b) of the Act, which is read as under:

“(1) For the purposes of Sec. 22, the annual value of any property shall be deemed to be-

- (a) the sum for which the property might reasonably be expected to let from year to year; or*
- (b) Where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or”*

6. Further, We find that the assessee firm has to pay the lease rent of building to its owner Bombay Port Trust (BPT) and also the assessee has entered into the leave and license agreement with tenants and receiving the rent. The A.O dealt on the clauses and agreements entered with the tenants and are not disputed. The Ld. AR relied on the judicial decision.

“1. CIT Vs. RJ Woods P. Ltd (334 ITR 358)

2. DCIT Vs. State Trading Corporation of India Ltd. (ITA No. 822/Del/2010 dated 28.10.2011), Del Trib.

3. M/s. Suman Didwania Vs. ACIT (ITA No. 5805/Mum/2010, dated 15.02.2012), Mum Trib.

4. Krishna Bhojwani Vs. ACIT (ITA No. 1463/Mum/2012, dated July 3, 2017).

5. Sharmial Tagore Vs. JCIT (150 Taxman 4) Mum. Mag.

6. *ITO Vs. Gopichand P. Godhwani (1 SOT 374) Mum Trib*".

7. We find in the case of CIT Vs. RJ Woods P. Ltd (supra) the Hon'ble Delhi High Court has observed as under:

"Section 22 of the Income-tax Act, 1961 - Income from house property - Chargeable as -Assessment years 1996-97 to 2000-01 - In respect of premises leased out by assessee, maintenance and other charges paid by assessee were to be deducted from rent while computing annual letting value of said property [In favour of assessee]

I.

The assessee had leased out its premises to five tenants. Lease agreements were entered into in this behalf wherein rent to be received by the assessee from those tenants was specified. The tenancies became operative with effect from October, 1992. However, dispute arose about payment of the said rent. Said premises were in a multi-storey building and maintenance charges were payable by the occupier to the agency/builder maintaining the building. The tenants claimed that the rent payable by them to the assessee included maintenance charges and, therefore, it was the obligation of the assessee to pay the maintenance charges. The assessee, on the other hand, wanted these tenants to pay the maintenance charges exclusive of contractual rent. Because of this dispute, the tenants filed a suit in Small Causes Court for fixation of standard rent. In that case, the Small Causes Court passed an interim order in 1994 fixing the rent at Rs.30,000 per month, which was less than the contractual rent agreed upon between the parties

in the rent agreement. Since the rent was fixed on lump sum basis at Rs. 30,000 per month, the assessee had to pay the maintenance charges, which were claimed as deduction. The Assessing Officer disallowed the claim on the ground that as per the lease agreement these maintenance charges were to be borne by the tenants. The Commissioner (Appeals), however, allowed this claim which view of the Commissioner (Appeals) was affirmed by the Tribunal as well.

Held that since the maintenance and other charges were paid by the assessee, it was rightly held to be deductible from the rent while computing the annual letting value.

7.1 We also find in the case of M/s. Suman Didwania Vs. ACIT (supra), Hon'ble Tribunal has held as under:

“3. We have heard the parties. The Ld. Counsel placed his reliance on the decision of the ITAT in the case of Sharmila Tagore vs. JCIT 93 TTJ 483 and in the case of ITO vs. Gopichand P. Godwani 1 SOT 374 (Mum). The Ld. D.R. placed reliance on the orders of the authorities below. We find that the assessee's claim is covered by the decision of the ITAT, Mumbai in the case of Sharmila Tagore (supra) in the said case it is held that the maintenance charges paid by the assessee have to be deducted even determining the annual value of the property u/s.23. We, accordingly, following the decision of the co-ordinate Bench allow the grounds taken by the assessee and direct the A.O. to re-compute the income under the head 'income from house property'.

7.2 We find in the case of ITO Vs. Gopichand P. Godhwani (supra) the Hon'ble tribunal has held as under:

"5. We have carefully considered the rival submissions in the light of material placed before us. It is the contention of the assessee that the actual rent received by it is in excess of fair rent or standard rent under the rent control legislation. If this contention of assessee is correct, then the house property income has to be determined under the provisions of [section 23\(1\)\(b\)](#), otherwise the house property income has to be assessed under [section 23\(1\)\(a\)](#). [Section 23\(1\)\(a\)](#) & (b) being relevant provisions applicable for deciding the present controversy are reproduced below :

"23. (1) For the purposes of [section 22](#), the annual value of any property shall be deemed to be

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable;"

It will be relevant to reproduce below the observations of jurisdictional High Court in the case of [CIT v. J.K. Investors \(Bombay\) Ltd.](#) (2001) 248 ITR 723 (Bom) relating to the above provision of Income-tax :

"In this matter, we are required to consider the scheme of taxation of income from house property. [Section 22](#) says

that the measure of income from house property is its annual value. The annual value is to be decided in accordance with [section 23](#). Sub-section (1) of [section 23](#), by virtue of the amendment with effect from the assessment year 1976-77, has two limbs, namely, clauses (a) and (b). Clause (a) states that the annual value is the sum for which the property might reasonably be expected to be let from year to year. Clause (b) covers a case where the property is let and the actual rent is in excess of the sum for which the property might reasonably be expected to be let from year to year. In other words, insertion of clause (b) by the [Taxation Laws \(Amendment\) Act, 1975](#), covers a case where the rent for a year actually received by the owner is in excess of the lawful rent which is known as the fairrent or standard rent under the rent control legislation. The provisions of [section 23\(1\)\(a\)](#) of the Income Tax Act apply both to owner-occupied property as also to property which is let out and the measure of valuation to decide the annual value is the standard rent or the fair rent. However, [section 23\(1\)\(b\)](#) only applies to cases where the actual rent received is more than the reasonable rent under [section 23\(1\)\(a\)](#) of the Act and it is for this reason that [section 23\(1\)\(b\)](#) contemplates that in such cases the annual value should be decided on the basis of the actual rent received."

6. It is not disputed by revenue that only [section 23\(1\)\(b\)](#) is applicable to the present case as it is also not the case of assessing officer as he has computed the house property income as per actual rent received. In this view of the situation, if the outgoings in respect of which additions have been deleted by CIT (A) were the liability of the assessee, the same should be excluded from the assessable income as the net amount only can be

considered which is received by the assessee or is receivable by the assessee as per express provisions of [section 23\(1\)\(b\)](#). However, this fact has not been ascertained that whether the amounts claimed by the assessee and disallowed by the assessing officer in respect of car-parking, water charges and municipal charges and other charges were the actual liability of the assessee or not. This factual aspect has to be examined as per the terms of agreement as well as keeping in view the factual aspect of the matter. We, therefore, consider it necessary to restore these appeals as well as Cross Objections to the file of assessing officer to determine the fact that whether expenses claimed by the assessee on account of car parking, water charges, municipal charges and other charges (as shown in the charts framed by the assessee and reproduced above) were the liability of the assessee and were outgoings from the assessee's rental income shown in respect of the property. If it is so, the same are rightly allowed by the CIT (A) as the assessee is entitled to get the same. The assessing officer will determine the house property income of the assessee in accordance with the above directions. We may point out here that the learned authorised representative of the assessee also accepted that for the purpose of examining this factual aspect, the matter may be restored to the assessing officer. We order accordingly. The appeals filed by the revenue and Cross Objections filed by the assessee are considered allowed for statistical purposes.

8. We considering the Ratio of judicial decisions, the factual aspects and provisions of Section 23(1)(b) of the Act are of the view that the assessee is entitled for claim of deduction of lease rent paid to the

Bombay Port Trust(BPT) against the Leave and License fee/rent received from the tenants in determining the annual value of the property. Accordingly, we set aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal of the Assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.10.2020

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20/10/2020

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai