

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Shri B R Baskaran, AM & Shri Amit Shukla, JM

ITA No.5494/Mum/2013
Assessment Year : 2010-11

M/s. Radiant Premises Pvt. Ltd., Maker Tower, 1 st Floor, Cuffe Parade, Mumbai – 400 005 PAN AADCR4862M	Vs.	The Asst. CIT Cir. 3(3), Mumbai
(Appellant)		Respondent)

Appellant By : Ms Mrugakshi K Joshi
Respondent By : Mr. Akhilendra P Yadav

Date of Hearing : 23.03.2015

Date of Pronouncement : 05.06.2015

ORDER

Per Amit Shukla, Judicial Member

The aforesaid appeal has been filed by the assessee against order dated 29.04.2013 passed by the CIT(A) 7, Mumbai, for the quantum of the assessment passed u/s. 143(3) for the A.Y. 2010-11 on the following grounds of appeal:

"The Learned Commissioner of Income Tax (Appeals) has erred in not allowing Brokerage paid amounting to Rs.1,11,92,127 for arrangement of lease, to be reduced from Rent received for Determination of Actual Rent as per Provisions of section 23(1)(b) of the Income tax Act.

The Appellant Submits that the Assessing Officer be Directed to Reduce Brokerage from Rent Received for Determination of Actual Rent as per provisions of section 23(1)(b) of the Income tax Act."

2. The brief facts of the case are that the assessee company is in the business of finance and leasing of premises. In the books of account the assessee had shown rental income of Rs.1,29,13,475/- on letting out of office premises at 93, 9th

floor, 2 North Avenue at Maker Maxity, Bandra Kurla Complex to M/s. Dow Jones consulting India Pvt. Ltd. While working out the "House property income" the assessee had shown the annual value of the property at Rs.17,21,348/- after reducing an amount of Rs.1,11,92,127 being brokerage paid for procuring tenant. Thereafter, the assessee has claimed standard deduction of 30% u/s. 24 of the Act of Rs.5,16,404/- and, accordingly, the income from house property was shown at Rs.12,04,944/-. In response to the show cause notice to justify the claim of brokerage as allowable expenditure under sections 23/24, the assessee submitted that an amount of Rs.1,11,92,127/- being two months license compensation and 2% of the security deposit was paid as brokerage to M/s. C B Richard Ellies South Asia P. Ltd., for sourcing and securing a suitable licensee for its office. This brokerage amount has been deducted from the gross rent amount and only the net amount which is received/receivable in terms of provisions of section 23(1)(b) has been shown. In support, reliance was placed on the decision of the Tribunal, Mumbai bench in the case of Govind S Singhania vs. ITO (ITA No. 4581/Mum/2006), wherein the Tribunal has held that the annual letting value should be taken net of stamp duty and brokerage paid by the assessee. Apart from these, various other decisions of the Tribunal were also relied upon. However, the Assessing Officer did not agree with the contention of the assessee and held that as per the expressed provisions of section 23, the computation has to be done only in accordance with the said section and standard deduction is allowable u/s. 24. There is no express provision regarding allowance of any expenditure like brokerage, commission, etc., for determination of annual value of the property except the taxes levied by the local authority on payment basis in respect of the

said property. Accordingly, he disallowed the claim of brokerage paid by the assessee. In support, the Assessing Officer relied upon the decision of the ITAT Delhi Bench in the case of Tube Rose Estates Pvt. Ltd. Vs. ACIT (2010) [123 ITD 498] and Chandigarh Bench in the case of CIT vs. Piccadily Hotels Pvt. Ltd. [97 ITD 564]. Thus, the Assessing Officer computed the income from house property at Rs.90,39,432/- after giving standard deduction @30% u/s. 24.

3. Before the CIT(A) same submissions were reiterated and further decisions of ITAT Mumbai Bench were relied, which has been incorporated by the CIT(A) at pages 3 and 4 of the appellate order. The learned CIT(A) confirmed the findings of the Assessing Officer on the same ground that such deduction of brokerage against income from house property has nowhere been specified either in section 23 or in section 24. Therefore, such a claim is contrary to the provisions of law.

4. Before us, the learned counsel submitted that brokerage was paid by the assessee company for sourcing the licensee and letting out the premises. The payment of Rs.1,11,92,127/- was paid to C B Richard Ellies South Asia Pvt. Ltd. as profession fees/brokerage. Such a payment is directly related to the earning of rental income and, therefore, the same has to be deducted from the gross rent because section 23(1)(b) contemplates the actual rent received/receivable. She submitted that in various decisions, the Tribunal has held that stamp duty charges on license agreement, maintenance charges paid to the housing society etc., are allowable within section 23 itself, on the same analogy, brokerage paid also be allowed. In the case of Govind S Singhania vs. ITO (supra), the Tribunal has

allowed brokerage on account of renewal of lease agreement. The list of the decisions relied upon by the learned counsel are as under:

- i. Govind S Singhania vs. ITO (ITA No. 4581/Mum/2006)
- ii. Aloo Bejan Daver vs. ITO in ITA Nos. 2381 & 2382/Mum/2010 for A.Y. 2005-06 & 2006-07
- iii. Varma Family Trust vs. ITO (1984) 7 ITD 392 (Mum)
- iv. Suman Didwania vs. ACIT in ITA No. 5805/Mum/2010 for A.Y. 2006-07
- v. Sharmila Tagore vs. JCIT (2005) 93 TTJ (Mum) 483
- vi. Lekh Raj Channa vs. ITO (1990) 37 TTJ (Del) 297

5. On the other hand, the learned DR strongly relied upon the order of the Assessing Officer as well as the CIT(A) and submitted that while computing income from house property only those deductions/expenses are allowed as are specified in sections 23 and 24. Beyond that no expenditure can be allowed. He further submitted that most of the decisions are in respect of maintenance charges paid to society, which stand on a different footing because it is for the maintenance of property itself so that rights in the property can be enjoyed.

6. We have heard the rival submissions and also perused the relevant findings given in the impugned orders. The main issue involved is whether the payment of brokerage amounting to Rs.1,11,92,127/- can be deducted from the rental income of Rs.1,29,13,475/- while computing the taxable income under the head "income from house property". The assessee has rented its office premises on leave and license basis to M/s. Dow Jones Consulting India Pvt. Ltd., vide leave and license agreement dated 22.11.2008 for a period of five years. For giving the property on rent, the assessee has used the services of M/s. C B Richard Ellis South Asia Pvt. Ltd. for sourcing and securing a suitable licensee for the said office premises. The assessee had paid two months license compensation and 2% of the security deposit

as professional fees/brokerage. Section 22 is the charging section of income from house property which provides that annual value of the property shall be charged to income tax. Section 23 provides for determining of annual value and section 24 provides for deductions from income from house property. The case of the assessee is that, u/s. 23(1)(b), for the purpose of determination of annual letting value of the property, envisages that the property which has been let out, then the actual rent received or receivable is to be taken as rental income. The phrase "actual rent received" or "receivable" means net of deductions and the actual rent received in the hands of the assessee. Such a plea of the assessee cannot be accepted, because what is contemplated u/s. 23 is that the annual value of the property which is let out should be the portion of rent received or receivable by the owner from the tenant/licensee. The first and foremost condition is that it should be in the nature of rent as mutually agreed upon between the two parties for the enjoyment of rights in the property let out in lieu of rent. The deduction envisaged in the proviso to section 23(1) is that, taxes levied by any local authority shall be deducted in determining the annual letting value of the property in that previous year in which said taxes have actually been paid. Section 24 provides two kinds of deductions, firstly, 30% of the actual value and secondly the interest payable on the capital borrowed for acquiring, construction, repair, etc., subject to the conditions laid down in the provisos thereto. The word 'rent' connotes a return given by the tenant or occupant of the land or corporeal hereditaments to the owner for the possession and use thereof. It is a sum agreed between the tenant and the owner to be paid at fixed intervals for the usage of such property. The phrase rent received and receivable contemplates the amount received for the enjoyment of the

property and certain rights in the said property by the tenant. If there is charge directly related to the rental income or for the property without which the rights in the property cannot be enjoyed by the tenant then it can be construed as part and parcel of enjoyment of the property from where rent is received then such charges can be held to be allowable from the rent received or receivable. However, the brokerage paid to the third party has nothing to do with the rental income paid by the tenant for enjoying the property to the owner. Brokerage cannot be said to be a charge that has been created in the property for enjoying the rights and at best it is only an application of income received/receivable from rent.. ITAT Delhi Bench in the case of Tube Rose Estates Pvt. Ltd. (supra), as relied upon by the AO, clearly bring out this distinction between the brokerage and other charges payable in respect of services provided. This is evident from the following observations of the Tribunal :

"2.8 It is thus clear that the annual value of the property, which has been let out is the rent received or receivable in respect of the user of the property and only deduction allowable while computing the annual value under s.23 on account of any expenditure incurred by the assessee is the payment of municipal taxes. Deduction from the annual rent received/receivable can however, be considered in cases where rent also includes the payment in respect of any other services provided by the landlord in addition to renting out of the property and rent is inclusive of consideration for such services. For instance, there may be situations where the land lord in addition to letting out the property has also provided some services such as lift facilities, services of sweeper and darwan, electricity etc., and the rent fixed includes consideration in respect of these services also. In that case, the charges payable in respect of the services provided by the landlord have to be excluded from the composite rent while computing the income from house property because under the head 'house property' only the income from rent in respect of the bona fide use of the property can be taxed, as held by the Hon'ble High Court of Calcutta in case of CIT vs. Delhi State Industrial Development (2007) 295 ITR 419 (Del). But in this case, there is no other services provided by the assessee and, therefore, inclusion of any consideration on this account in the rental value does not arise. In fact, in this case, the services have been provided by a third party to whom the brokerage is payable by the assessee

and this is not included in the rent. There may also be cases where part of the rent may become payable to a third party before the same accrued to the assessee in terms of some overriding charge. In such cases, there may be diversion of rent at the source and the rent to that extent could be claimed as deduction while computing the income from house property. But in this case, as we have held earlier, there is no charge created on the property, much less an involuntary charge enforceable by law, which can be claimed as a deduction."

7. If such a nature of expenses like brokerage, professional fee, etc., is held to be allowable, then numerous other expenses like salary or commission to an employee/agent who collects the rent can also be held to be allowable. This is not the mandate of the law. So far as the decisions relied upon by the learned counsel before us are mostly pertaining to maintenance charges paid to the society, wherein it has been held to be allowable as deduction u/s. 23 itself. There is distinction between maintenance charges and the brokerage paid because such a charge is given/paid for the very maintenance of the property so as to enjoy the property itself; whereas brokerage has nothing to do with the property or the rent which is given to a third party who has facilitated the landlord and the tenant on agreeable terms to rent the property. Therefore, these decisions will not apply in the assessee's case. Further in the cases where payment of stamp duty has been held to be allowable will not apply also as the same is directly related in connection with the lease agreement for renting of the property. Hence, said cases and instances will not apply in the present case. Thus, in our opinion, the payment of brokerage cannot be allowed as deduction either u/s. 23 or u/s. 24. The CIT(A) has therefore, rightly confirmed the disallowance of such a payment of brokerage and we hold that no such deduction can be allowed while computing the income from house property. Accordingly, the ground raised by the assessee is dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this day of 5th June 2015.

Sd/-

(B R Baskaran)
ACCOUNTANT MEMBER

Mumbai; Dated : 5th June, 2015.

Sd/-

(Amit Shukla)
JUDICIAL MEMBER

SA

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
Income Tax Appellate Tribunal, Mumbai