

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 7417/DEL/2017 (A.Y 2014-15)

(THROUGH VIDEO CONFERENCING)

Amar Chand Garg 1-C, Court Road, Civil Lines, New Delhi PAN No. AAJPG0019L (APPELLANT)	Vs	ACIT Circle 35(1) New Delhi (RESPONDENT)
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Appellant by	Sh. Salil Agarwal, Sr. Adv
Respondent by	Sh. Kanav Bali, Sr. DR

Date of Hearing	22.02.2022
Date of Pronouncement	24.02.2022

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee against the order dated 25.09.2017 passed by the CIT(A)-12, New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

“1. That the learned Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of Rs.2,91,270/- made by the Assessing Officer in respect of the claim made by the assessee for deduction annual of mixed use charges paid by the

assessee to the Municipal Corporation of Delhi, in respect of property rented out by the assessee.

2. *That the learned Commissioner of Income Tax (Appeals) has erred in holding that such annual mixed use charges are not in the nature of taxes levied by any local authority.*

3. *That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the assessee was able to realize higher commercial rent in respect of the property only because of the statutory payment of mixed land use charges and accordingly such charges so paid by the assessee stood diverted at source by an overriding charge on the receipt of such commercial rent derived by the assessee and accordingly ought to have been allowed as deduction.*

3. The brief facts of the case is that, the assessee is the joint owner of the property bearing municipal No. 2713-16, Bank Street, Karol Bagh, New Delhi-110088 having 50% share and ownership over the said property. During the year under consideration, assessee had claimed credit of Rs. 4,18,636/- towards taxes paid to Municipal Corporation of Delhi including mixed use charges of Rs. 2,91,270/-.

4. The Assessee was show caused to explain the basis on which mixed use charges had been treated as property tax and also to explain why 50% of amount of Rs. 5,82,540/- paid as mixed use charges not to be disallowed.

5. The assessee replied to the A.O contending that, Assessee is the joint owner of the property having 50% share and ownership. Further contended that *'the taxes comprised a sum of Rs. 5,82,540/- which has to be paid annually as Annual Mix Use charge. This tax is payable for making commercial use of the*

property and the payment of tax is an allowable expense from rental income as per the proviso under section 23(1) of the Income Tax Act, 1961'. The Ld. A.O. after considering the reply filed by the assessee, disallowed Rs.2,91,270/- (50% of Rs. 5,82,540/-), by assessing income at Rs.89,84,510/- as against the returned income of Rs. 86,93,240/-.passed assessment order on 31/08/2016.

6. The Assessee has preferred an Appeal against the Assessment Order before the CIT (A)-12 New Delhi. The CIT (A) by its order dated 25-09-2017, confirmed the disallowance of Rs. 2,91,270/- on the ground that the mixed use charges are in the nature of conversion charges and the same is not a 'tax levied by the local authorities' which is not deductible u/s 23 of the IT Act, but allowed the alternative plea of the Assessee and held that the said mixed use charges are deserves to be considered u/s 24(a) of the I.T. Act by giving 30% standard deduction.

7. Aggrieved by the Order of the CIT (A) dated 31/08/2016, the assessee has approached this Tribunal by way of present appeal.

8. The Ld. Counsel for the assessee contended that the annual mixed used charge paid by the assessee to the Municipal Corporation, Delhi has to be treated as 'tax' levied by the local authority and the same is allowable expense from out of rental income as per proviso under section 23 (1) of the Act. Further contended that the Ld.CIT(A) has erred in upholding the disallowance of Rs. 2,91,270/- made by the A.O.

9. Per contra Ld. DR by relying the Orders of the lower authorities, justified the findings, discussions and the conclusion made thereon.

10. We have heard the parties, perused the records gave our thoughtful consideration. The only question arising for consideration is that: whether the

annual mixed use charges paid by the assessee to Municipal Corporation of Delhi is amounts to 'tax' and allowable u/s 23 of IT Act, 1961?.

11. To address the above issue, it is handy to examine the definition of "Tax" under the "Delhi Municipal Corporation (Property Tax) bye Laws 2004 which reads as follows:-

Section 2(1)(e) "Tax" means property tax, i.e. to say building tax or a vacant land tax or both.

The definition of the 'tax' under the Delhi Municipal Corporation (Property Tax) bye Laws 2004 means and includes only building tax or vacant land tax or both, which does not include the "*Annual Mixed Used Charge.*"

12. In the present case, the collection of 'mixed used charges' is for the purpose of regularizing the usage of residential premises for certain commercial purposes as prescribed under the Delhi Development Authority (Fixation Of Charges For Mixed Use And Commercial Use Of Premises) Regulations, 2006. The said charges is in the nature of regularization of the usage of the property, which cannot be construed as tax levied by the local authority/Municipal Corporation of Delhi. Further, the collection of the annual mixed used charge will not make any difference in the annual let out value of the property, therefore the same is not allowable as per the proviso under section 23(1) of the Income Tax Act, 1961.

13. For the above discussions, we are of the view that, the CIT (A) has rightly upheld the disallowance of Rs. 2,91,270/- made by the A.O. in respect of the claim made by the assessee for deduction of annual of mixed use charges paid by the assessee to Municipal Corporation of Delhi, in respect of the property of the Assessee.

14. For the above said reason, the grounds of appeal is dismissed, consequently, the appeal is dismissed.

Order pronounced in the Open Court on this 24th Day of February, 2022

Sd/-

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

(YOGESH KUMAR US)
JUDICIAL MEMBER

Dated: 24/02/2022
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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