

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
&
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 194/Ahd/2020
(निर्धारण वर्ष / Assessment Year : 2017-18)

Smt. Taraben Jayantilal Patel Lane No.18, B. No. 359, Satyagrah Chhavni, Satellite, Ahmedabad – 380015 (Gujarat)	बनाम/ Vs.	The DCIT-CPC Bengaluru
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEHPP4269F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri V. K. Mangla, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	06/09/2022
घोषणा की तारीख /Date of Pronouncement	31/10/2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 09.01.2020 passed by the Ld. Commissioner of Income Tax (Appeals) – 3, Ahmedabad (in short ‘CIT(A)’) arising out of the intimation under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) dated

06.08.2019 passed by the DCIT(CPC), Bengaluru for Assessment Year 2017-18.

2. The assessee has filed its return of income on 11.10.2017 declaring total income of Rs.1,71,74,560/-. The assessee received notice under Section 143(1)(a) of the Act on 08.10.2018. Further received intimation under Section 143(1) of the Act on 24.01.2019, whereby and whereunder, the computation of income under the head 'income from house property' was made at Rs.34,18,839/- instead of Rs.32,86,544/- as computed by the appellant. A rectification application thereafter was filed by the assessee against the intimation order under Section 143(1) of the Act explaining the reason of difference. The appellant has computed 'income from house property' excluding of service tax whereas in Form 26AS it is inclusive of service tax. The order dated 06.08.2019 upon rectification under Section 154 of the Act, the income under the head 'income from house property' was computed at Rs.37,12,839/- instead of Rs.32,86,544/- as computed by the appellant. The assessee in regard to the addition of Rs.4,26,295/- submitted the following before the Ld. CIT(A):

Name of Parties from whom rent received	Rent Amount excluding Service Tax (As stated in statement of total income)	Service Tax	Rent Amount including Service Tax (As stated in Form 26AS)	TDS Amount
Ashish Chemicals	8,50,000	1,27,000	9,77,000	97,700
Shell Energy India Private Limited	18,37,908	2,74,168	21,12,076	2,10,976
Meghamani	15,50,000	1,93,500	17,43,500	1,74,350

<i>LLP</i>				
<i>Otto Bock Healthcare Pvt Ltd</i>	<i>4,57,154</i>	<i>16,635</i>	<i>4,73,789</i>	<i>47,385</i>
Total	46,95,062	6,11,303	53,04,055	5,30,411

3. However, the Ld. CIT(A) did not accept the explanation rendered by the assessee and confirmed the addition with the following observations:

“2.2 I have considered the order of CPC, Bangalore and submission mad by the appellant. The appellant has filed appeal against the order passed by CPC u/s. 154/143(1) by making adjustment in the 'house property income' of Rs.4,26,295/-, The appellant has contended that CPC has considered the annual value of property including the service tax on the basis of Form 26AS whereas the appellant has shown the rent received after reducing the service tax. The appellant has relied upon the CBDT Circular No. 1/2014 dated 13th January, 2014 in support of her contention, it is seen that the appellant has let out commercial properties to 4 persons from which she has received rent of Rs.53,04,055/-. However, the appellant in the return of income has shown the rent at. Rs.46,95,062/- excluding the service fax of Rs,6,11,303/-. The CPC on the basis of: from 26AS in which rent was shown to be Rs.53,04,055/- has made the adjustment in the house property income taking the rent received /receivable at Rs..53,04,055/-, The appellant has relied upon the CBDT Circular in which it has been clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid/payable without including such service tax component. The Circular is on TDS. The appellant has not submitted the copy of agreement to the effect that service tax was payable by the tenant, In any case the service tax Is a liability of the appellant i.e. the landlord and not of the tenant, in view of the above, the CPC has correctly adopted the rent received at Rs.53,04,055/-.. The ground of appeal is accordingly dismissed.”

4. We have heard the parties and perused the materials available on record.

5. This issue is, thus, nothing but the difference in regard to the service tax computed by the assessee and shown in Form 26AS by the assessee. In fact, service tax was included in the income from house property computed by the

assessee but the amount mentioned in Form 26AS is inclusive of service tax. This is because the reason that assessee has deducted TDS on rent inclusive of service tax instead of exclusive service tax which has been duly reconciled by the assessee with sufficient evidence adduced before the authorities below as it appears from materials available before us, in our considered opinion, which has not been taken into consideration with its proper perspective. Thus, the addition, is not found to be sustainable. Hence, deleted.

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

This Order pronounced on 31/10/2022

Sd/-
(P. M. JAGTAP)
VICE PRESIDENT
Ahmedabad; Dated 31/10/2022

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

S. K. SINHA

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad