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Tax Alert -

Are outer maintenance charges a part of "rent"?

Direct Tax

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ARE OUTER MAINTENANCE CHARGES A PART OF "RENT"?

In today's modern times, everyone aspires for a dream home with a bundle of amenities to enjoy like a swimming pool, gymnasium, play area, security, car parking and elevators, and they are ready to bear higher rentals for it. The cost of such facilities and maintenance of common areas, terrace etc. are usually charged in the form of "maintenance charges" allocated to every flat in the complex or apartment and where a unit or a flat is let out, the ultimate burden to bear the said cost is put upon the tenant by adding the same to the rent, although the bill/ receipt for such maintenance charge may be issuedin the name of the flat-owner. Thus, what is actually charged from the tenant is a sum of the rent and the outer maintenance charges.

Therefore, the flat-owner while computing his income from house property is faced with an issue as to whether he will be allowed a deduction of such outer maintenance charges while deriving the "annual value" of the property as contemplated under Section 23 of the Income Tax Act, 1961 ("the Act") or he will have to pay tax for the amenities he did not actually enjoy. The maintenance charges are simply collected from the tenant and paid to the society or residential association or builder maintaining the premises. In effect, the maintenance charges simply exchange hands through the owner and the owner does not retain the receipts thereof.

However, a deeming fiction is attached to the determination of the annual value of a property under Section 23 for the purpose of charging the same to tax under Section 22 as income from house property. The said Section 23 provides that that the annual value of the property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year or where the property is let, the actual rent received or receivable by the owner whichever is higher.The proviso to the said section provides for deduction of municipal taxes from the annual value of the property if such taxes are borne by the owner. Further, Section 24 provides for a standard deduction of 30 percent from the annual value, the deduction being an all-inclusive deduction for expenses that may have been borne by the owner on account of repairs, insurance, expenses for collection of rent or any such incidental charges incurred with respect to the house property. However, neither the proviso nor Section 24 specifically provides for deduction of outer maintenance charges from the annual value. Therefore, the tax authorities take a view that such maintenance charges are also factored in the standard deduction and assessee is not entitled to any further deduction as the same has not been specifically provided for in the Statute.

The Punjab & Haryana High Court in the case of *Sunil Kumar Gupta v. Asst. CIT[2016] 73 taxmann.com 374* had opined that if the maintenance charges are not included in the rent, it would enable an assessee to avoid paying tax on the true annual value of the property. The Tribunal bench at Gauhati in *ITO v. Vijay Kumar Bawri[1984] 19 TTJ 562 (Gau.)*held that the computation of the income under the head 'Property' is not based on actuals. It is a notional income which has to be computed in accordance with the various provisions of sections 23 and 24. If an allowance is not mentioned as deductible while computing the assessee's income from

property, a deduction in respect thereof cannot be allowed to the assessee on general principles.Thus, no deduction could be allowed on account of salary of chowkidar. Similar views were expressed in *ITO v. Barodawala Properties Ltd.[2002] 83 ITD 467 (Mum.)*and*VidyasagarSamabayAbasanSamiti Ltd. v. CIT[2000] 244 ITR 841/113 Taxman 35 (Cal.).* Owing to these judgements, the aggrieved owner/lessor have been made to pay tax on an expense the benefits of which have been reaped by the tenants and more so even the same is not actually an "income" to the assessee.

The Hon'ble Bombay Tribunal in the case of *Sharmila Tagore vs. Jt. CIT (Mumbai) (2005) 93 TTJ (Mum) 483*, has taken a view in favour of the assessee wherein it has been observed and held as under:

"The assessee is in further appeal before the Tribunal. As regards the maintenance charges we find that the issue is covered in favour of the assessee by the order of the Tribunal dt. 15th Nov., 2000, in the case of *Bombay Oil Industries Ltd. in ITA 550/Mum/2000.* In this case, the decision of the Delhi Bench of the Tribunal in the case of N*eelam Cable Mfg. Co. vs. Asst. CIT (1997) 59 TTJ (Del) 474: (1997) 63 ITD 1 (Del), LekrajChanna vs. ITO (1990) 37 TTJ (Del) 297* and the decision of the Bombay Bench of the Tribunal in the case of *Blue Mellow Investment & Finance (P) Ltd. (ITA No.1757/Bom/1993 dt. 6th May 1993)* were followed and it was held that the maintenance charges have to be deducted even while arriving at the annual letting value of the property under S. 23.

Favourable view was also taken in *CIT v. R J Wood (P.) Ltd.[2011] 334 ITR 358/[2012] 20 taxmann.com 599* by the Delhi High Court and in *Saif Ali Khan Mansurali, Mumbai vsAssessee, ITAT- Mumbai I.T.A.No.1653/Mum/2009, (A.Y.2004-05),* by the Mumbai Tribunal**.**

It is an admitted fact that the gross rent receipt by the assessee also include the society charges/maintenance charges which are to be paid by the assessee. However, while computing the annual value the amount of rent which actually goes to the hands of the owner in respect of leased property should be taken into consideration, especially keeping it view the cost of modern amenities and the exorbitantly high maintenance charges that are incurred to secure these facilities for the tenants.