No deduction of brokerage paid for procuring tenant as standard deduction under sec. 24 covers all exp.

Summary – The Mumbai ITAT in a recent case of Radiant Premises (P.) Ltd., (the Assessee) held that While computing taxable income under 'income from house property', no expenditure in respect of brokerage paid by assessee on account of arrangement of lease, could be allowed as a deduction for determination of actual rent

Facts

- The assessee-company was engaged in the business of finance and leasing of premises. In the books of account, the assessee had shown rental income of Rs. 1.29 crore on letting out of office premises to M/s. Dow Jones Consulting India (P.) Ltd.
- While working out the 'House property income', the assessee had shown the annual value of the property at Rs. 17.21 lakhs after reducing an amount of Rs. 1.12 crore being brokerage paid for procuring tenant. Thereafter, the assessee claimed standard deduction of 30 per cent under section 24 and accordingly the "Income from house property" was shown at Rs. 12.05 lakhs.
- To justify the claim of brokerage, the assessee deducted an amount of Rs. 1.12 crore being two months license compensation and 2 per cent of security deposit being paid as brokerage to CB Richard for sourcing and securing a licensee for its office from gross rent and only the net amount as per section 23(1)(b) had been shown.
- The Assessing Officer disallowed the claim of brokerage paid by assessee holding that the computation requires to be done only in accordance with section 23 and standard deduction is allowable under section 24 and, hence, computed the income at Rs. 90.39 lakh after giving standard deduction at the rate of 30 per cent under section 24.
- The Commissioner (Appeals) confirmed the findings of the Assessing Officer.
- On appeal to the Tribunal:

Held

- The case of the assessee is that under section 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 under section 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 per cent 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.

- 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 law. 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. Thus, the payment of brokerage cannot be allowed as deduction either under section 23 or under section 24. The Commissioner (Appeals) has therefore, rightly confirmed the disallowance of such a payment of brokerage and no such deduction can be allowed while computing the income from house property.