

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

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL
MEMBER,
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER.

ITA. No. 334/Mum/2014
(Assessment Year:2010-11)

Asstt. Commissioner of Income-tax-16(3),
Matru Mandir, Tardeo Road,
Mumbai – 400 007

Appellant

Vs.

Shri Ravjibhai L. Kakadia
1001, Prasad Chambers, Opera House,
Tata Road No.2, Mumbai - 400004

Respondent

PAN: AGQPK5038G

अपीलार्थी की ओर से /By Appellant : Shri Vivek Anand Ojha,
D.R.

प्रत्यर्थी की ओर से/By Respondent : None

सुनवाई की तारीख/Date of Hearing : 07.10.2015

घोषणा की तारीख/Date of
Pronouncement : 28.10.2015

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

This appeal has been filed by Revenue against the order of
Commissioner of Income-Tax (Appeals)-27, Mumbai, dated
31.10.2013 for A.Y. 2010-11 on following grounds:

- “1. Whether on the facts and circumstances of case and in law, the Ld. CIT(A) was correct in holding the assessee was eligible for Municipal Ratable Value even though the assessee has NOT offered the notional income on deemed let out property of the total investment made to acquire such residential and commercial properties?
2. Whether on the facts and circumstances of case and in law, the Ld. CIT(A) was correct in holding the assessee was eligible for Municipal Ratable Value even though the assessee has NEVER offered the notional income on deemed let out property and Assessing Officer computed notional rent @ 8.50% of the total investment made to acquire such residential and commercial properties in order to bring the same under the head income from House Property and allowed mandatory deduction u/s 24(a) to meet the both the ends of justice?”

2. Assessee is dealing in shares and derivatives and has derived income from house property and income from other sources. The return of income for the year under appeal was filed on 07.10.2010 declaring total income at Rs.78,19,640/-. Assessment u/s.143(3) was completed by Assessing Officer on determining total income at Rs.80,76,900/-. Assessing Officer observed that assessee was having 11 flats and shops at different locations and total investments made was shown at Rs.2,02,94,506/-. Assessee had offered Rs.12,50,000/- as house property income. One flat at Delad Olpad, Surat was in ready possession and total investment value in this property was Rs.13,24,929/- but no income was offered on the same. The notional income for deemed let out properties was computed @ 8.50% of total investment of this property. Thus,

notional income determined was Rs.78,333/- [Rs.13,24,929 X 8.50% - 30% u/s.24(a)] and added the total income under the head 'Income From House Properties'.

3. Matter was carried before the First Appellate Authority, wherein various contentions were raised on behalf of assessee and having considered the same, CIT(A) granted relief to assessee. Same has been opposed on behalf of Revenue, inter alia stating that CIT(A) was not correct in holding that assessee was eligible for Municipal Ratable Value, even though the assessee has not offered the notional income on deemed let out property of total investment made to acquire such residential and commercial properties. Accordingly, order of CIT(A) be set aside and that of Assessing Officer be restored. None appeared on behalf of assessee, so, matter is being decided ex parte on the basis of arguments of Learned Departmental Representative and material on record.

4. After going through arguments of Learned Departmental Representative and material available on record, we find that stand of assessee has been that Assessing Officer could have at best adopted the Municipal Ratable Value as deemed value of property in question. It has been held in various cases that what is to be brought to tax as income from house property u/s.23(1) is higher of rent actually received or Municipal Ratable Value or the standard rent as per Rent Control Act. In view of above, CIT(A) held that value, which could be adopted

by Assessing Officer as Municipal Ratable Value even while bringing to tax deemed annual letting value in respect of vacant properties. Accordingly, Assessing Officer was rightly directed to verify the Municipal Ratable Value in respect of above properties and modify his order. This view is fortified by the decision of Hon'ble Supreme Court in case of Sheila Kaushish vs. CIT [1981] 131 ITR 435 (SC). In view of this, order of CIT(A) needs no interference from our side. We uphold the same.

5. As a result, appeal filed by Revenue is dismissed.

Pronounced in the open Court on this the 28th day of October, 2015.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SHAILENDRA KUMAR YADAV)
JUDICIAL MEMBER

Mumbai: Dated 28/10/2015

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार,
आयकर अपीलीय अधिकरण, मुंबई ।