

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C " BENCH, CHENNAI

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2064/Mds/2015
निर्धारण वर्ष /Assessment year : 2011-12.

Shri. Arava Subba Rao,
Flat No.6A, Yamini Buildings,
153, Velachery Main Road,
Velachery,
Chennai 600 042.

Vs. The Assistant Commissioner of
Income Tax,
Salary Circle IV
Chennai.

[PAN ANAPS 9313D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. Babu Peram, C.A.
: Shri. A.V.Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of
Pronouncement

: 01-02-2016
: 01-04-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-4, Chennai in ITA No.1144/13-14, dt 27.07.2015 for the assessment year 2011-2012

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act')

2. The substantive ground raised by the assessee that the Commissioner of Income Tax (Appeals) erred in confirming the findings of the Assessing Officer on self occupied house property assessed u/s.23(1) of the Act treated as deemed let out on estimated annual value.

3. The Brief facts of the case that the assessee is an individual and employee of M/s. Blue Dart Aviation Ltd, and filed Return of income admitting total income of ₹64,64,739/- on 30.07.2011 and was processed u/s.143(1)(a) of the Act on 29.08.2012 Under scrutiny norms the case was selected and notice u/s.143(2) of the Act was issued and further notice u/s.142(1) and summons u/s.131 of the Act dated 26.12.2013 was served on the assessee. In compliance, the Id. Authorised Representative of the assessee appeared from time to time and produced documentary evidences and furnished details. The Assessing Officer found assessee owns two residential properties a flat in East Andheri, Mumbai and flat at Velacherry, Chennai. The Chennai property is self occupied and claimed 'Nil' Annual value, whereas for the Mumbai flat the assessee has not offered annual value

and claimed under self occupation due to employment during the relevant assessment year. The Id. Assessing Officer considering the provisions of Sec. 24 of the Act, the assessee is a owner of more than one property under his occupation and value of other house has to be determined u/s.23(1) of the Act and estimated annual value of flat at Mumbai ₹3,00,000/- per annum and allowed deduction u/s.24(a) of the Act; and assessed total income including other disallowances ₹67,47,676/-. Aggrieved by the order of Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of the assessee explained the property situated in Mumbai cannot be treated as deemed let out and estimating rent is bad in law. The assessee Resides at Velacherry flat in Chennai with family members and visits frequently to office Headquarters i.e. M/s. Blue Dart Aviation Ltd, Mumbai and occupy the flat for official residential purpose. The Id. Counsel further argued that the adoption of "Nil" annual value u/s.23(2) of the Act is allowed for own residence and relied on the various judicial decisions where the stay of family members in a house is considered as stay of the assessee himself and assessee due to office works occupy the Bombay flat as official

residence. The Id. Commissioner of Income Tax (Appeals) considered the submissions and findings of the Assessing Officer and has dealt the provisions of Sec.22 to 27 of the Income Tax Act and find the legislative intent 'provides the computation of annual value at 'Nil' for one self occupied house property and where assessee owns more than one residential house the assessee is allowed concessional tax treatment u/s.23(2) of the Act and other self occupied house property assessed u/s.23(1) for the purpose of normal annual letting value and concurred with findings of the Assessing Officer and dismissed the appeal. Aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee assailed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative reiterated the submissions of assessment and appellate proceedings and supported the case with judicial decisions and Tribunal decisions. The assessee is having more than one residential house and used the flat at Mumbai as official residence purpose. The courts have considered the stay of family members is to be treated as assessee himself. The flat is situated at East Andheri (outskirts of Andheri) Mumbai where the assessee stays frequently because of his headquarters work and also submitted written submissions to consider under self occupation. But

the Id. Assessing Officer treated the flat as deemed let out and estimated annual value of ₹3,00,000/- per annum, which is very much on higher side as Actual let out value will not yield rent more than ₹5,000/- per month and supported the arguments with Apex Court and High Court decisions and CBDT circular and pleaded to treat Annual value of both as 'Nil' and delete the addition.

6. Contra, the Id. Departmental Representative relied on the orders of the lower authorities and opposed to the grounds of the assessee.

7. We heard the rival submissions and perused the material on record. The contentions of the Id. Authorised Representative that the assessee due to employment has to shuttle to Mumbai which is the headquarters of M/s. Blue Dart Aviation Ltd whereas Velacherry flat at Chennai is occupied by family members and claimed as self occupied and the flat at Eat Andheri Mumbai occupied only during his official visit. The question arises the assessee has not filed number of days stay details and circumstances of travel to Mumbai in previous year. The provisions of law specifies in case a person having more than one self occupied property, one house is treated as self occupied and annual value considered 'Nil' and other self occupied house property is

assessed u/s.23(1) of the Act on deeming annual let out value. The Id. Authorised Representative contested the issue relying on the judicial decisions but the preamble of legislative intent is to allow annual value 'Nil' for self occupied property and the provisions of Sec. 23(2) of the Act provides as under:-

*“(2) Where the property consists of a house or part of a house which—
 (a) is in the occupation of the owner for the purposes of his own residence; or
 (b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,*

the annual value of such house or part of the house shall be taken to be nil.

*(3) The provisions of sub-section (2) shall not apply if—
 (a) the house or part of the house is actually let during the whole or any part of the previous year; or
 (b) any other benefit therefrom is derived by the owner.*

*(4) Where the property referred to in sub-section (2) consists of more than one house—
 (a) the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;
 (b) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.]”*

On perusal of the assessment order, the Assessing Officer has estimated the Annual let out value at ₹3,00,000/- per annum without any evidence or any comparables of the same area and the flat is situated at East Andheri in outskirts of Andheri and as per the assessee submissions the rental income shall not exceed ₹5,000/- per

month and using the property for his official residence at Mumbai. The Assessing Officer has estimated the annual value of ₹3,00,000/- without considering the actual rent receivable, fair market value of the property and municipal valuation as per the provisions in respect of residential flat at East Andheri and completed the assessment. Considering the apparent facts and provisions of law, we set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue to the file of the Assessing Officer for calculation of annual value of the flat as per law and assessee should be provided with adequate opportunity of hearing before passing the order.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced on Friday, the 1st day of April, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 1st April, 2016.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF