

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**IT(IT)A No.26(Bang) 2014
(Assessment year : 2009-10)**

Smt Mithravinda Bindu,
No.43, 39th Cross,
8th Block, Jayanagar,
Bangalore
PAN No.ATKPB1376P

Appellant

Vs

The Income-tax Officer,
International Taxation,
Bangalore

Respondent

**Assessee by : Shri R.B.Krishna, Advocate
Revenue by : Shri P. Dhivahar, JCIT**

Date of hearing : 04-06-2015

Date of pronouncement : 22-06-2015

ORDER

PER SHRI VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order dated 26-03-2014 of CIT(A)-IV, Bangalore for the assessment year 2009-10. The assessee has raised the following grounds;

"1. The order is opposed to law and to facts in as much as the AO has estimated the fair rental value of the property at K.K.Nagar, Chennai ad the disposed off property at Jubilee Hills, Hyderabad without any basis.

2. The disallowance of vacancy allowance is opposed to law and to facts”.
3. The disallowance of 50% of cost of improvement is opposed to law and to facts specially wherein an affidavit in this regard has been produced.
4. For these and other reasons that may be adduced at the time of hearing this appeal may be allowed.

2. Ground no.1 & 2 are regarding computation of annual letting value and vacancy allowance. The assessee is a Non-resident India and earned income from house property as well as capital gain from the sale of property. During the year under consideration, the two properties one at Chennai and the other at Hyderabad were vacant. Assessee declared the annual let out value of properties at Bangalore at Rs.30,000/-, whereas the annual letting value of property at Jubilee Hills, Hyderabad was declared 'nil'. The AO accepted the annual let out value declared by the assessee in respect of the property at Bangalore, but did not accept the annual let out value adopted by the assessee as 'nil' in respect of the property at Jubilee Hills, Hyderabad and computed the same at the rate of 10,000/- per month. Thus, the annual letting value estimated by the AO at Rs.90,000/- for a period of nine months, because the assessee had sold the property during the year under consideration. The assessee challenged the action of the AO before the CIT(A) and also claim vacation allowance in respect of

property at Jubilee Hills, Hyderabad. The CIT(A) has confirmed the action of the AO, while passing the impugned order.

3. Before us, learned counsel for the assessee has submitted that the AO has accepted the Municipal value in respect of other properties but estimated the annual letting value in respect of the property at Jubilee Hills, Hyderabad on the ground that the assessee did not produce the property tax receipt in support of the Municipal value of the property. The learned counsel has pointed out before the CIT(A) the assessee has produced the property tax receipt in respect of the property situated at Jubilee Hills, Hyderabad. However, the CIT(A) has not considered the said evidence produced by the assessee in respect of municipal value of the property. Thus, learned AR has submitted that the annual letting value if at all adopted in case of Hyderabad property of the assessee, the same should be by considering the municipal value of the property. He has further submitted that since the property remains vacant during the year, the assessee is also entitled for vacation allowance.

4. On the other hand, learned DR has submitted that the assessee has not produced any evidence of payment of property tax to show the Municipal value of the property before the AO. Further, the CIT(A) has also not discussed any additional evidence filed by the assessee.

5. As regards the vacation allowance, learned DR submitted that when the property was never let out by the assessee, then the vacation allowance is not available to the assessee in respect of that property. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the material available on record. The AO has given the details of the property and the annual letting value estimated by the assessee in para-3 of the order as under;

“3. It was seen from the return of income that the assessee is the owner of the following property and has estimated the annual let out value of the immovable property as under;

<i>Property addresses</i>		<i>ALV</i>
<i>(a)</i>	<i>Property at B-3, II Floor, Krishn a garden apartment, Kaval Byrasandra, Bangalore (Co-ownership with Sri Aravapalli Bindu)</i>	<i>24,000</i>
<i>(b)</i>	<i>Property at 1933, 5th Cross, Sarakki, Bangalore (CO-ownership with Sri Aravapalli Bindu)</i>	<i>30,000</i>
<i>(c)</i>	<i>Property at No.43,39th Cross, 9th Block,</i>	<i>Claimed as self occupied</i>

	Jayanagar, Bangalore	
(d)	Property at 8-2- 293/82/BE/131 Road No.71, Jubilee Hills, Hyderabad (sold on December, 2008) (252 s.ft)	Nil

7. As it is clear from the above table, the assessee has estimated the annual letting value in respect of property at Jubilee Hills, Hyderabad as 'nil'. The AO, while considering the issue of annual letting value in respect of the property at Sl.No. a & b of the table situated at Bangalore has accepted the claim of the assessee being Municipal value as under;

"The assessee was asked to furnish copies of the returns of assessment of the property submitted to the Municipal/Corporation authorities. The assessee has furnished the copies of the return only in respect of the property at J.P.Nagar and Kaval byrasandra, Bangalore. Hence the assessee's claim relating to these two properties is acceptable keeping in view the judgments relied on by the assessee. However, similar view cannot be taken in respect of the other property at Jubilee Hills, Hyderabad as the assessee has not produced the proof of Municipal valuation in respect of the properties at Jubilee Hills, Hyderabad. In the

absence of production of Municipal valuation the annual value of the properties is computed as under u/s 23(1)(a)”.

8. Thus, it is clear that the AO accepted the estimation of annual letting value given by the assessee based on Municipal value of the property situated at Bangalore, because the assessee has furnished the return of the assessment of the property. The claim of the assessee in respect of the property at Jubilee Hills, Hyderabad was rejected by the AO on the ground that the assessee has not produced the proof of Municipal valuation in respect of the said property. The assessee produced the receipt of the property tax as well as the summary of the property tax due demand in respect of the property at Jubilee Hills, Hyderabad before the CIT(A), but the CIT(A) has not considered the Municipal valuation of the said property while deciding the issue. As it is manifest from the assessment order, the AO accepted the annual letting value based on the Municipal value in respect of the properties situated at Bangalore. Therefore, the Municipal value in respect of the property at Jubilee Hills, Hyderabad is also required to be considered while determining the annual let out value u/s 23(1)(a) of the Act. Therefore, in the facts and circumstances of the case, as well as the in the interest of justice, we set aside this issue of determination of annual letting value in respect of the property at Jubilee Hills, Hyderabad to the record of the AO to re-do the exercise of computation of annual let

out value, after considering the property tax payment record filed by the assessee.

9. As regards the vacancy allowance claimed by the assessee, we note that the assessee never let out the property at Jubilee Hills, Hyderabad. Therefore, the question of remaining the property vacant during the year for the purpose of vacancy allowance does not arise. Accordingly, the claim of the assessee is devoid of any merit, when the assessee never let out the property in question. Hence, the claim of vacancy allowance is rejected.

10. Ground no.3, regarding disallowance of cost of improvement, while computing the capital gain. The assessee is a joint owner with her husband Shri Aravapalli Bindu of property no.71, Jubilee Hills, Hyderabad. During the year assessee sold the said immovable property for a consideration of Rs.1.20 Crores and claimed cost of improvement of Rs.1,50,000/-lacs for FY: 2003-04 and Rs.2.00 lacs for FY: 2004-05. The AO disallowed the claim of the assessee on the ground that the assessee failed to discharge its onus to prove the genuineness of the claim, as the assessee has not produced any evidence in support of such expenditure on account of cost of improvement. The CIT(A) had concurred with the findings of the AO.

11. Before us, learned counsel for the assessee has submitted that the assessee has purchased the property in question vide sale deed dated 19-10-1995 without any construction. He has referred the schedule of the

property as part of the sale deed dated 19-10-1995 and submitted that as per the schedule of the property, there is no mention of any house on the said plot of land. Learned counsel for the assessee then referred the schedule of the property as per sale deed dated 2nd December, 2008, whereby the assessee had sold the property in question as a house. Thus, the learned counsel for the assessee submitted that the assessee has accepted the cost of construction and claimed the same as cost of improvement. The learned counsel has further submitted that the assessee has explained the authorities below and submitted that this expenditure was incurred by the assessee through one Mr.Prabhanjan Rao, whose affidavit has been filed by the assessee in confirmation of the said expenditure. The AO issued summons u/s 131 to Shri prabhanjan Rao, and in response to the notice Mr. Prabhanjan Rao, filed an affidavit and stated that he had not maintained any bill or documentary evidence as he was not aware that it was necessary to keep this evidence to claim the benefit. Thus, the learned counsel for the assessee submitted that when there is construction on the property in question, subsequent to the acquisition, then the claim of the assessee cannot be denied by treating the same as not genuine.

12. On the other hand, learned DR has relied upon the orders of the authorities below and submitted that the assessee has not filed any documentary evidence to show that any expenditure incurred on the

improvement of the property in question. Therefore, in the absence of any documentary evidence the claim of the assessee cannot be accepted.

13. We have considered the rival submissions and the material available on record. Though, assessee has not produced any supporting evidence regarding the expenditure incurred by the assessee on account of improvement of the property in question, however, as pointed out by the learned counsel for the assessee, the property in question was purchased by assessee vide sale deed dated 19-10-1995 and as per the schedule of the property, there is no mention of any construction or any structure on the said property purchased by the assessee. We note that the assessee had sold the property vide sale deed dated 2nd December, 2008 and as per the schedule of the property, being part of the sale deed dated 2nd December, 2008 the property is described as 'House No.'. Therefore, prima facie it appears that what is sold by the assessee is a constructed property. However, it is a matter of verification and examination. Accordingly, this issue is set aside to the record of the AO to examine the facts of any construction physically existing on the property in question at the time of sale, in comparison to the state of property at the time of purchase vide sale deed dated 19-10-1995. In case, it is found that the assessee has carried out any construction or improvement work in the property and also produced the record of payment of money then the claim of the assessee cannot be brushed aside, merely because the assessee has not produced

the bills of the expenditure. This ground of the assessee's appeal is allowed for statistical purpose.

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

Pronounced in the open court on 22nd June, 2015.

Sd/-
(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

Bangalore:

D a t e d : 22-06-2015

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

By order

AR, ITAT, Bangalore