



IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.4428/Mum./2016
(Assessment Year : 2012-13)

Income Tax Officer
Ward-1(2)(3), Mumbai Appellant

v/s

M/s. Metaoxide Pvt. Ltd.
5th Floor, New India Centre
17, Cooperage Road Respondent
Mumbai 400 001 - AAACM4043L

ITA no.5771/Mum./2016
(Assessment Year : 2008-09)

Income Tax Officer
Ward-1(2)(3), Mumbai Appellant

v/s

M/s. Metaoxide Pvt. Ltd.
5th Floor, New India Centre
17, Cooperage Road Respondent
Mumbai 400 001 - AAACM4043L

ITA no.5772/Mum./2016
(Assessment Year : 2009-10)

Income Tax Officer
Ward-1(2)(3), Mumbai Appellant

v/s

M/s. Metaoxide Pvt. Ltd.
5th Floor, New India Centre
17, Cooperage Road Respondent
Mumbai 400 001 - AAACM4043L

ITA no.5773/Mum./2016
(Assessment Year : 2010-11)

Income Tax Officer
Ward-1(2)(3), Mumbai

..... Appellant

v/s

M/s. Metaoxide Pvt. Ltd.
5th Floor, New India Centre
17, Cooperage Road
Mumbai 400 001 – AAACM4043L

..... Respondent

ITA no.5774/Mum./2016
(Assessment Year : 2011-12)

Income Tax Officer
Ward-1(2)(3), Mumbai

..... Appellant

v/s

M/s. Metaoxide Pvt. Ltd.
5th Floor, New India Centre
17, Cooperage Road
Mumbai 400 001 – AAACM4043L

..... Respondent

ITA no.5775/Mum./2016
(Assessment Year : 2013-14)

Income Tax Officer
Ward-1(2)(3), Mumbai

..... Appellant

v/s

M/s. Metaoxide Pvt. Ltd.
5th Floor, New India Centre
17, Cooperage Road
Mumbai 400 001 – AAACM4043L

..... Respondent

Revenue by : Shri Aarju Garodia
Assessee by : Shri B.N. Rao

Date of Hearing – 07.03.2018

Date of Order – 28.03.2018

ORDER**PER BENCH**

Aforesaid appeals by the Revenue arise out of two separate orders dated 28th March 2016 and 30th June 2016, passed by the learned Commissioner (Appeals)-2, Mumbai, for the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

2. Since all these appeals pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, except variation in figures, therefore, as a matter of convenience, these appeals were heard together and are being disposed-off by way of this consolidated order.

2. The solitary grievance of the Revenue in the present appeals relates to determination of annual lettable value (ALV) of the house property.

3. Facts relating to the issue in dispute are more or less common in all these years. However, considering the fact that the substantive order of the Assessing Officer and learned Commissioner (Appeals) are for the assessment year 2012-13, we propose to deal with the facts emanating from the appeal being ITA no.4428/Mum./2016, for the assessment year 2012-13.

4. The assessee a company is stated to be a re-seller in chemicals, dyes, solvents, plastics and adhesives. For the assessment year 2012-13, the assessee filed its return of income declaring loss of ₹ 10,76,248. In the course of assessment proceeding, the Assessing Officer while verifying the return of income filed by the assessee noticed that it has shown income of ₹ 50,229, under the head income from house property. From the Balance Sheet of the company, the Assessing Officer found that it is in possession of two flats valued at ₹ 1.33 crore and ₹ 8.62 crore respectively. He, therefore, called upon the assessee to furnish the full details of flats owned by it. After verifying the details furnished by the assessee, the Assessing Officer found that one of the flats is having an area of 2349 sq.ft. and the other one is of 3,600 sq.ft. He also found that the flats are located at Malabar Hill which is a very posh area in the city of Mumbai and the prevailing real estate price is very high. In view of the above, the Assessing Officer was of the opinion that the income from house property shown by the assessee was very meagre. Accordingly, he called upon the assessee to explain why the fair market value of the property as per section 23(1)(a) should not be taken as ALV. Further, he found that in respect of duplex flat having area of 3,600 sq.ft., the assessee has not shown any income. From the information obtained from the Secretary of the Society where the flats were located, the

Assessing Officer found that the flats in the same building having floor were of 2041 sq.ft. were let out for monthly rent of ₹ 3 lakh with interest free security deposit of ₹ 3 lakh. Another flat admeasuring 2330 sq.ft. was let out for monthly rent of ₹ 1.50 lakh with interest free security deposit of ₹ 3 crore. From the information available with him, the Assessing Officer concluded that in the area where assessee's flats were located, the monthly rental is in the range of ₹ 140 to ₹ 160 per sq.ft. Thus, invoking the provisions of section 23(1)(a), the Assessing Officer determined the ALV of the flat admeasuring 2,349 sq.ft. at ₹ 146 per sq.ft. and that of the flat admeasuring 3,600 sq.ft. at ₹ 160 per sq.ft. In the aforesaid manner, the Assessing Officer computed net house property income in respect of both the flats at ₹ 28,80,814 and ₹ 48,38,400 respectively and added back to the income of the assessee. On the basis of assessment completed as aforesaid for assessment year 2012-13, the Assessing Officer proceeded to complete assessment for the other assessment years under appeal determining the ALV in identical manner. Being aggrieved of the assessment orders so passed the assessee preferred appeals before the first appellate authority.

5. In the course of hearing before the learned Commissioner (Appeals) for the assessment year 2012-13, the assessee advanced arguments contesting the ALV determined by the Assessing Officer. It

was submitted by the assessee that since the properties were vacant for whole of the year, the ALV worked out in whatever manner would be allowable as deduction under section 23(1)(c) of the Act. It was submitted by the assessee that it was having two flats, therefore, in respect of one flat no income is assessable as it is used as a self-occupied property. Further, it was submitted that as per the rules of the society, the property could only have been let out to corporate entities and not individuals. Therefore, the assessee found it very difficult to get corporate entities as tenant for letting out the property. For that reason alone, the flat remained vacant during the relevant previous year. It was submitted, in the subsequent assessment year, the assessee was able to let out the flat and offered rental income to tax. Thus, it was submitted by the assessee, when the flats were capable of being let out but remained vacant during the relevant previous year, the assessee is entitled for deduction under section 23(1)(c) of the Act. In support of such contention, the assessee relied upon a number of case laws. The learned Commissioner (Appeals), after considering the submissions of the assessee in the light of the decisions relied upon, observed that the assessee was holding two properties out of which one is a self-occupied property. Referring to the provisions contained under sections 22, 23 and 24 of the Act and the judicial precedents cited before him including the decision of the

Tribunal, Delhi Bench, in ACIT v/s Prabha Singhi, ITA no.2217/Del./2010, dated 18th September 2012, the learned Commissioner (Appeals) held that in respect of both the properties, income from house property will have to be taken as nil and accordingly directed the Assessing Officer to delete the addition. Similar directions were issued by the learned Commissioner (Appeals) in respect of other assessment years under appeal as well.

6. The learned Departmental Representative strongly relying upon the observations of the Assessing Officer submitted that since the properties were not let out earlier, the Assessing Officer has rightly worked out the ALV under section 23(1)(a) of the Act. She submitted, the provisions of section 23(1)(c) of the Act will not be applicable to the assessee, hence, the vacancy allowances as provided under the said provision would not be allowable to the assessee.

7. Learned Authorised Representative strongly relying upon the finding of the learned Commissioner (Appeals) submitted, through, the properties were capable of being let out but could not be let out due to genuine difficulties faced by the assessee in getting tenant due to stringent conditions put by the housing society. He submitted, in subsequent assessment year, the assessee has not only let out the property but also derived rental income therefrom and offered it to

tax. He submitted, since the property was ready to be let out but could not be let out during the relevant previous year, the assessee was entitled to get deduction of ALV under section 23(1)(c) of the Act. In support of such contention, the learned Authorised Representative relied upon the following decisions:-

- i) *ACIT v/s Dr. Prabha Sanghi, [2012] 139 ITD 504 (Del.);*
- ii) *Premudha Exports Pvt. Ltd. v/s ACIT, [2007] 110 TTJ 89 (Mum.); and*
- iii) *Can Properties Pvt. Ltd. v/s ITO, M.A. no.323/Mum./2017 dated 26.12.2017.*

8. We have heard rival submissions and perused material on record. Undisputedly, the flats in respect of which the Assessing Officer has determined the ALV under section 23(1)(a) remained vacant during the relevant previous year. It is evident, the Assessing Officer on the basis of information obtained under section 133(6) with regard to the rental income received in respect of some other flats in the same area has determined the ALV in terms of section 23(1)(a) of the Act, which provides that the annual value of any property shall be deemed to be the same for which the property might reasonably be expected to let from year-to-year in other words, the market value of the rent received / receivable. However, the issue which is to be decided is, when the properties were admittedly remained vacant during the relevant previous year, whether the assessee can avail deduction

under section 23(1)(c) of the Act of ALV determined under section 23(1)(a) of the Act. For the better clarity, sub-clause (c) of section 23(1) of the Act is reproduced below:–

Annual value how determined.

23. (1) (c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation.—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.”

9. A reading of the said provision reveals that where any part of the property is let out and was vacant during the whole or any part of the previous year and due to such vacancy rent received / receivable by the owner is less than the ALV determined under section 23(1)(a) in that case the actual rent received or receivable is to be treated as the ALV. Therefore, the issue to be considered is, whether the provisions of section 23(1)(c) is applicable or not. In this regard, the submissions of the learned Departmental Representative is, since the properties in dispute were not let out earlier, the assessee will not be eligible to avail the benefit of section 23(1)(c) of the Act. However, we are

unable to accept the aforesaid contention of the learned Departmental Representative. The expression *"the property or any part of the property is let as used in clause (c) of section 23(1) does not mean that for availing the benefit of the said sub-clause the property must have been let out earlier. The Tribunal, Mumbai Bench, in Premsudha Exports Pvt. Ltd. (supra) has also held that the expression "property is let under clause (c) of section 23(1) does not mean that the property should have been actually let in the relevant previous year or during any time prior to the relevant previous year. But it will mean the property is intended to be let out.* Similar view was also expressed in case of Dr. Prabha Singhi. Therefore, applying the ratio laid down in the decisions referred to above, we hold that the learned Commissioner (Appeals) was justified in directing the Assessing Officer to allow the deduction under section 23(1)(c) to the assessee. Thus, grounds raised in all these appeals are dismissed.

10. In the result, all these appeals are dismissed.

Order pronounced in the open Court on 28.03.2018

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28.03.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai