

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.853/Bang/2018
Assessment Year :2013-14

Dr. Paul Christadas Salins, No. 186, Amarjyothi Layout, Off Ring Road, Domlur, Bangalore – 560 071. PAN: BAWPS0815E	Vs.	The Assistant Commissioner of Income Tax, Circle – 2 (3) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Lokesh Jain, CA
Respondent by	:	Shri Abdul Hakeem .M, JCIT (DR)

Date of hearing	:	26.04.2018
Date of Pronouncement	:	11.05.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and it is directed against the order of Id. CIT (A)-3, Bangalore dated 11.01.2018 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“1. The order of the Ld. Commissioner of Income Tax (Appeals) is opposed to law, facts and circumstances of the case.

2. The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.

3. The order is passed against the principle of natural justice and thus liable to be quashed.

4. The Ld. CIT(A) erred in confirming the order of Ld. AO who had disallowed the vacancy allowance claimed by the Appellant to the extent of Rs. 6,00,000/-.

5. The Ld. CIT(A) ought to have appreciated that the vacancy allowance claimed by the Appellant was apropos to provision of section 23(1)(c) of the Income Tax Act, 1961.

6. The Ld. CIT(A) ought to have considered the fact that the vacancy allowance claimed on the similar facts were accepted by the Ld. AO during the course of scrutiny proceedings for the subsequent assessment year.

7. The Ld. CIT(A) ought to have appreciated that there was no expense incurred which was attributable to earn the exempt income. Thus, disallowance of Rs. 13,930/- made under section 14A of the Act is bad in law.

8. The Ld. CIT(A) erred in approving the action of Ld. AO of disallowing a sum of Rs. 50,070/- on account of vehicle maintenance without providing a sufficient reason for such disallowance.

The Appellant seeks your leave to add, alter, amend or delete any of the grounds urged at the time of hearing.”

3. It was submitted by Id. AR of assessee that ground nos. 7 and 8 are not pressed and accordingly these grounds are rejected as not pressed. He also submitted that in the remaining grounds, only one issue is involved i.e. regarding allowability of assessee's claim for vacancy allowance to the extent of Rs. 6,00,000/-. He submitted that this property was actually let out by the assessee in the earlier years and in the immediate preceding year i.e. Assessment Year 2012-13 also, it remained let out for two months and the assessee claimed vacancy allowance of 10 months in that year and it was allowed also. He submitted a copy of computation of income for Assessment Year 2012-13 as per which the assessee had declared annual value of the property at Rs. 9.60 Lakhs and claimed vacancy allowance for 10 months at Rs. 8 Lakhs and net income under the head income from house property was declared at (-) Rs. 1,26,000/- after claiming standard deduction u/s. 24a and interest u/s. 24b of Rs. 48,000/- and Rs. 2,38,000/- respectively. He submitted that in that year, there was no scrutiny and hence, return filed by the assessee was accepted by the department. He submitted that under these facts, it has to be accepted that property was of a let out property and therefore, vacancy allowance has to be allowed u/s. 23(1) (c) of IT Act. In support of his contention, he placed reliance on the following Tribunal decisions.

- A) Smt. Shakuntala Devi Vs. DDIT in ITA No. 1524/Bang/2010 dated 20.12.2011, copy available on pages 33 to 38 of paper book.
- B) Premsudha Exports (P) Ltd. Vs. ACIT as reported in 110 ITD 158 (Mum), copy available on pages 39 to 45 of paper book.
- C) Shri Vikas Keshav Garud Vs. ITO in ITA No. 747/PN/2014 dated 31.03.2016, copy available on pages 47 to 52 of paper book.
4. Regarding various judgements noted by CIT(A) in his order, he submitted that these judgements are not applicable in the facts of the present case. He also submitted some additional evidences as per which the assessee is trying to establish that the assessee was making efforts to let out the property in present year and future years and ultimately, the assessee could let out the property on 28.03.2015 for a period of 11 months commencing from 01.04.2015 to 28.02.2016 as per copy of this deed is made available in the additional evidence. He also submitted that in the paper book on pages 17 to 22 of paper book is the copy of Leave and License agreement dated 15.07.2017 for a period of 11 months from 15.07.2017 to 15.06.2018. As against this, Id. DR of revenue supported the order of CIT(A). He drawn my attention to paras 4.3 and 4.4 of order of CIT(A) and pointed out that it is noted by CIT(A) in these paras that the issue is covered against the assessee by the judgement of Hon'ble Apex Court rendered in the case of Susham Singla Vs. CIT as reported in [2017] 81 taxmann.com 167 (SC) as per which the SLP filed by the assessee against the judgement of Hon'ble Punjab & Haryana High Court in the case of Susham Singla Vs. CIT as reported in 244 Taxman 302 was dismissed. He submitted that these two judgements of Hon'ble Punjab & Haryana High Court and Hon'ble Apex Court should be followed in preference to various Tribunal orders cited by Id. AR of assessee.
5. I have considered the rival submissions. I find that as per the computation of income brought on record by Id. AR of assessee for the previous Assessment Year 2012-13, the property was let out in that year for two months and from the annual value of that property in that year of Rs. 9.60 Lakhs @ Rs. 80,000/- per month, the assessee claimed vacancy allowance to the extent of Rs. 8 Lakhs

for 10 months and therefore, the property was actually let out in the preceding year. The claim of the assessee is this that in the present year, the property in question remained vacant for the whole of the year. In the light of these facts, I now examine the applicability of section 23(1)(c) of IT Act and hence, I reproduce the provisions of this section for ready reference. The same are as under :-

“(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:”

I find that if it is accepted that the property in question is a let out property then as per the provisions of section 23 (1) (c) of IT Act as reproduced above, since the property was vacant during the whole of the previous year in question, actual rent received should be considered for the purpose of section 23 (1) (a) of IT Act. Hence as per the provision of this section, actual rent received by the assessee being Nil should be taken as Annual Value because of the vacancy of the property in question for the whole of the year and accordingly, no income can be brought to tax u/s. 22 and 23 for this property in the present year. But the question is this as to whether in the facts of the present case, it can be said that it is a let out house property? Now, I examine the applicability of the judgement of Hon'ble Punjab & Haryana High Court rendered in the case of Susham Singla Vs. CIT (supra). In this case, there was only one question of law raised before the Hon'ble High Court and for this, Para 2 of the judgment is relevant and it is reproduced herein under:-

2. At the time of hearing of the appeals, Mr. Pankaj Jain, learned senior counsel appearing on behalf of the appellant-assessee sought to press only the following substantial question of law for our consideration, which, according to him, was common and arose to all the present appeals:-

“Whether under the facts & circumstances of the case, pursuant to the explanation there is no chargeability of rent which cannot be realized resultingly according to Section 23(1) (c) of the Act, the lessor of the amount expected to be let & as receivable shall be charged whereby not realizable is less resultingly no charge ?”

The appeal is admitted on this question of law.

6. As per the facts noted in this case, it is found that before the Tribunal, it was contended on behalf of the assessee that the property has not been let out and remained vacant in the respective previous year and therefore, no value could be determined u/s. 23(1) (a) of IT Act and it was also urged that as per provisions of section 23 (1) (c), the annual value of property has to be taken as Nil. The Hon'ble Punjab & Haryana High court held that section 23 (1) (c) would apply only to those property which was actually let out and for which rent was actually received / receivable by the assessee. In that case, the property in question was not a let out property and therefore, the issue was decided against the assessee but in the present case, it is seen that in the preceding year, the property was actually let out and therefore, in my considered opinion, this judgement of Hon'ble Punjab & Haryana High Court is not applicable in the present case and as a consequence, the dismissal of SLP filed by the assessee in that case before Hon'ble Apex Court is also not relevant.
7. Now I examine the applicability of the Tribunal order rendered in the case of Shri Vikas Keshav Garud vs. ITO (supra). In that case also, it is noted by the Tribunal in para 7 of this Tribunal order that property in question was actually let out in Financial Year 2006-07 but in the relevant Assessment Year i.e. 2009-10, the assessee could not let out the property and thus it remained vacant throughout the year and hence, it is seen that the facts of the present case are similar. The Tribunal in that case has also considered the judgement of Hon'ble Andhra Pradesh High Court rendered in the case of Vivek Jain Vs. ACIT as reported in 337 ITR 74 and even after considering that judgement, it was held in that case that the assessee is eligible for vacancy allowance for whole of the year u/s. 23 (1) (c) of IT Act. Hence respectfully following this Tribunal order rendered in the case of Shri Vikas Keshav Garud vs. ITO (supra) in which the judgement of Hon'ble Andhra Pradesh High Court rendered in the case of Vivek Jain Vs. ACIT (Supra) is also considered, the issue in present case is decided in favour of the assessee.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th May, 2018.
/MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.