



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANDEEP GOSAIN, JM

ITA No.4242/Mum/2014

(Assessment Year :2010-11)

Shri Harsh Anand Jain 82, Maker Chambers III Nariman Point Mumbai – 400 021	Vs.	The Deputy Commissioner of Income Tax, Central Circle-39, Room No.32(1), Aayakar Bhavan, Mumbai - 400020
PAN/GIR No.AFBPJ0984J		
Appellant)	..	Respondent)

ITA No.9834/Mum/2014

(Assessment Year :2010-11)

The Deputy Commissioner of Income Tax, Central Circle-39, Room No.32(1), Aayakar Bhavan, Mumbai - 400020	Vs.	Shri Harsh Anand Jain 82, Maker Chambers III Nariman Point Mumbai – 400 021
PAN/GIR No.AFBPJ0984J		
Appellant)	..	Respondent)

Assessee by	Shri Anuj Kisnadwala
Revenue by	Shri Omi Ningshen
Date of Hearing	19/04/2018
Date of Pronouncement	06/07/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the cross appeals filed by assessee and Revenue against the order of CIT(A)-41, Mumbai dated 28/02/2014 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. The following grounds have been taken by the assessee:-

1. *The order passed by the learned CIT (A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts of the case and without appreciating the facts of the case in their proper perspective.*

2. *On the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition made by the Assessing Officer to the extent of Rs.2,16,077/- by increasing the municipal rateable value offered by the Appellant.*

3. *It is therefore prayed that the order of the learned CIT(A) be cancelled and direction be issued to allow the appeal on the grounds raised before him.*

4. *Each one of the above grounds of appeal is without prejudice to the other.*

5. *The Appellant reserves the right to amend, alter or add to any of the above grounds of appeal.*

3. The grounds taken by Revenue are as under:-

(1) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that ratable value as determined by- the municipal authorities shall be the yard stick by following the order of Hon'ble Bombay High Court in the case of Smitaben N. Ambani Vs. CWT 323 ITR 104. By doing so he has ignored the decision in the following cases wherein it has been held that the annual letting value as determined by the municipal authorities is only one of the factors and the same can be ignored if it does not reflect the true ALV. These decision are:

i. ITO Vs. Spearhead Properties (P) Ltd. 46 SOT 208

ii. Tivoli Investment and Trading company Pvt. Ltd. Vs. AICT 130 ITD 521

iii. ITO Vs. Hansa motors Works 46 SOT 160.

(2) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that determination of ALV of House property at Rs.1,71,94,824/- is not correct and same cannot be exceed Rs.12,96,463/- ALV as determined by municipal corporation when in the present case there are evidences to suggest that the Assessing Officer determined the ALV by taking comparable rent as per inspector's report dated 23.12.2010."

The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above grounds be set aside and that the ITO/AC/DC be restored. The appellant craves leave to amend or alter any grounds or add new ground which may be necessary.

4. Rival contentions have been heard and record perused.

5. In the course of assessment proceedings, it was observed that the assessee had declared the net annual value of the flats at Central Garden Complex, Tower No.5, Chunabhatti, S.M. Road, Mumbai as per the municipal rateable value at Rs.10,80,384/-. It was seen that the said flats had been shown by the assessee as vacant. It is informed that the possession of flats was given to the assessee on 04.04.2008 and since then these have been lying vacant. In the opinion of the A.O., the annual value of the property as per the provisions of Section 23(l)(a) shall be deemed to be the sum for which the property might reasonably be expected to let from year to year. The A.O. took the view that municipal value was not binding on the A.O. for determining the reasonable rent. The A.O. pointed out that in A.Y.2009-10, the Inspector attached to his circle had conducted field enquiry and submitted his report dated 23.12.2010 on the basis of which a rental rate of Rs.42/- per sq. ft. was determined by the A.O. and accordingly, the ALV of the flats owned by the assessee was worked out at Rs.1,71,94,824/- for that A.Y. After considering the submissions of the AR of the assessee, the A.O. held that the same value of Rs.1,71,94,824/- would be taken as the annual value of the Central Garden Complex Flats u/s.23(l)(a) for the A.Y. under consideration as well. After allowing deduction of Municipal Taxes, deduction u/s. 24 and income offered by the assessee in respect of the said flats, net addition of Rs, 1,11,96,0767- was made to the assessee's income.

6. By the impugned order, CIT(A) restricted the addition to the extent of Rs.12,96,463/- as against Rs.1,71,94,824/- considered by the AO. Considering the fact that municipal rateable value for the F.Y.2009-10 was determined at Rs.12,96,463/- should be adopted as ALV of the said flats subject to further addition of 1/9th of the said value after having the following observation:-

5.3.1 I have considered the submissions of the appellant and perused the materials available on record. It is a matter of record that the flats in question owned by the appellant have been lying vacant since April, 2008 when he took possession of the same. Since the said flats have not been let out, what would be relevant is provisions of Section 23(1)(a) rather than Section 23(1)(c) of the Act. At the outset, it would be pertinent to take into account the settled legal position in regard to determination of ALV under Section 23(1)(a) of the Act. It is evident from plain reading of Section 23(1)(a) of the Act that the annual value of the house property is to be determined on notional basis as "the sum for which the property might reasonably be expected to let from year to year". The rent which the owner might realize if the property were let from year to year is made the basis for fixing the annual value of the property. The word 'reasonably' used in Section 23(1)(a) is very important. What the owner might reasonably expect to get from a hypothetical tenant if the property were let from year to year affords the statutory yardstick for determining the annual value or ALV of the property. It is now well-established that (i) ALV would be the sum at which the property may reasonably be let out from year to year by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances; (ii) actual rent received would be a reliable yardstick in normal circumstances and (iii) such ALV, however, cannot exceed the standard rent as per the Rent Control Legislation applicable to the property. It is a settled law that where the property is subject to the Rent Control Act, the fair rent cannot exceed the standard rent [Mrs. Shiela Kaushish (supra), Dewan Daulat Rai Kapoor (supra) and Dr. Balbir Singh v. MCD 152 ITR 388 (SC)]. In the case of a building subject to Rent Control Legislation, neither the owner can claim to recover from the hypothetical tenant nor can the latter be assumed to be willing to pay to the former anything more than the standard rent. Therefore, the reasonable expectation of the owner of the property must be limited by the measure of the standard rent lawfully recoverable from such tenant. An analysis of the judicial pronouncements of the Hon'ble Apex Court on the subject also reveals that the annual value of the property in a given case will be the higher

of: (a) the municipal valuation, (b) the standard rent determinable under the Rent Control Act and (c) the actual rent received or receivable by the assessee.

5.3.2 In light of the aforesaid legal position, let us now examine whether the action of the A.O. in determining the ALV of the flats at Rs.1,71,94,824/- is in accordance with law. As stated above, the flats in question have never been let out in the past and, therefore, the actual rent reasonably receivable by the appellant therefrom (which has been held by the Hon'ble Courts to be a reliable yardstick of fair rent) is not known. It is also observed that the said flats owned by the appellant but lying vacant since April, 2008 are not subject to the provisions of the Maharashtra Rent Control Act, 1999. Section 6 of the Maharashtra Rent Control Act, 1999 provides that the provisions of the said Act will not apply, if a property is not let or given on licence for a continuous period of one year. As the flats in question have not been let out since possession thereof was taken in April, 2008, the case of the appellant falls under the exceptions as a result of which there is no statutory requirement of having the standard rent determined so that the same can be used for ascertaining the ALV of the said flats for the purpose of Section 23(l)(a) of the Act. Since the flats owned by the appellant are not covered by the Maharashtra Rent Control Act, 1999 the standard rent determinate under that Act also cannot be taken as the ALV of the said flats.

5.3.3 It is in this background that the question of taking the rateable value determined by the municipal authorities as the fair rental value of the said flats has got to be decided. It is observed that Section 154(1) of the Bombay Municipal Corporation Act, 1888 ('BMC Act') dealing with the determination of the rateable value of a land or building also contains the words the annual rent "for which such land or building might reasonably be expected to let from year to year" which are to be found in Section 23 of the Act. Thus, it is clear that the provisions of the BMC Act are pan materia with Section 23(l)(a) of the Act. Since the provisions of fixation of annual rent under the BMC Act are materially at par with Section 23 of the Act, the annual value fixed by the municipal authorities can be treated as a rational and reasonable yardstick of ALV u/s.23(l)(a). In this connection, it deserves to be noted that the Hon'ble Bombay High Court in the case of **Smitaben N. Ambani** (supra) in the context of Rule 1BB of the Wealth Tax Rules which uses the same expression "the sum for which the property might reasonably be expected to let from year to year" as is found in Section 23(l)(a) has held that the rateable value as determined by the municipal authorities would be the yardstick.

5.3.4 In the case of **Mom" Kumar Subba** (supra), it is recognized that the rateable value under the municipal laws can be taken as the basis of adopting the ALV u/s.23(l)(a), if it is correctly determined and

*the annual value so fixed bears a close proximity to the F.Y. relevant to the A.Y. in question in respect of which the assessment is to be made under the Act. It is observed from the record that the municipal rateable value of his flats amounting to Rs.10,80,386/- as returned by the appellant was fixed in 2006-07. In the course of appellate proceedings, the appellant was asked to furnish the latest annual value determined by the municipal authorities. In response, it is submitted that the Municipal Authorities have not revised the rateable value of the said flats since 2006-07. Taking an annual increase of 5% to be fair and reasonable, the rateable value returned by the appellant is enhanced by 20% and thereby worked out at Rs.12,96,463/-. As held by the Hon'ble ITAT, Mumbai Bench in the case of **Parkpaper Industries (P) Ltd.** (supra), in the case of property which is not let out, municipal value would be a proper yardstick for determining the annual value. In that case, the action of the A.O. in adopting the annual value on the basis of inquiries regarding market rent in the vicinity of the property was held to be not in accordance with law. It is noticed from the record that similar view upholding the municipal rateable value as the ALV u/s.23(1)(a) was taken on identical facts by the then CIT(A)-41, Mumbai while deciding the first appeal in the connected case of Shri Virendra Jain for A.Y.2009-10 vide order dated 09.01.2012. The plea of the appellant that the facts of Woodland Associates Pvt Ltd. (supra) followed by my predecessor while deciding the issue against the assessee in the connected case of Shri Anand Jain in his appeal for A.Y.2009-10 vide order dated 16.01.2013 are different and distinguishable from those of the appellant is found to be not without substance for the reasons given in para 5.2.2 above. I also find merit in the further plea of the appellant that the A.O. can make enquiries about prevailing market rent in the locality only in a case where there is receipt of actual rent so as to see whether the actual rent received or receivable by the assessee is less than the fair rent. Therefore, in view of the above discussion, the action of the A.O. in determining the ALV of the flats owned by the appellant at Rs.1,71,94,824/- as against Rs.10,80,386/- offered by the appellant cannot be sustained and it is held that the municipal rateable value of Rs.12,96,463/- as worked out above for F.Y.2009-10 should be adopted as the ALV of the said flats, subject to further addition of 1/9th of the said value. The A.O. is, therefore, directed to substitute the ALV of the said flats at Rs.12,96,463/- (as enhanced by 1/9th of said value) as against Rs.1,71,94,824/- considered by him in the impugned assessment order. Hence, Ground No.2 of the present appeal is allowed to the extent indicated above.*

7. Against the above order of CIT(A) both assessee and revenue are in appeal before us. Assessee is aggrieved for further addition of 1/9th of

the said value and Revenue is aggrieved for determining the ALV @Rs.12,96,463/-.

8. We have considered rival contentions and carefully gone through the orders of the authorities below. We have also deliberated on the judicial pronouncements cited by learned AR and DR during the course of hearing before us. We found that issue is squarely covered by the decision of Co-ordinate Bench in case of another family member of assessee Shri Virendra Jain vide order dated 14/11/2017 wherein Tribunal have held as under:-

6. I have considered rival contentions and carefully gone through the orders of the authorities below and found from record that rateable value was offered by assessee at Rs.3,86,376/- in respect of premises situated at Central Garden Complex, Chunabhatti, Mumbai. The said premises were vacant throughout the previous year. The ALV so offered by the assessee was based on the Municipal rateable value. However, the AO did not accept the same and recomputed ALV at Rs.68,36,502/-. The CIT(A) considered various judicial pronouncements including the decision of Bombay High Court in the case of Tip Top Typography 368 ITR 330 and also decision of the Co-ordinate Bench in case of other family members of the assessee directed the AO to adopt ALV as per the rateable value fixed by Municipal Authority at Rs.4,63,651/-. Considering the decision of Hon'ble Bombay High Court and other High Courts as discussed by CIT(A) in his order and after applying the same to the facts of the case reached to the conclusion that ALV of the house property should be as per the rateable value fixed by Municipal Authority. I do not find any infirmity in the order of the CIT(A). The CIT(A) after considering the fact that in the immediately preceding year 2010-11, the ALV has been determined at Rs.4,63,651/-, enhanced the same by 5% and worked out to Rs.4,86,834/-. The detailed reasoning given by CIT(A) is as per material on record, therefore, do not require any interference on our part.

7. In the result, both the appeals by the assessee and Revenue are dismissed.

9. As the facts and circumstances are same, respectfully following the order of the Tribunal vis-à-vis detailed finding recorded by CIT(A) we upheld the order of CIT(A).

10. In the result, both the appeals of assessee and Revenue are dismissed.

Order pronounced in the open court on this 06/07/2018

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 06/07/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai