



IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no. 1702/Mum./2017
(Assessment Year : 2013-14)

Smt. Kajol Vishal Devgan
5/6, Sheetal Apartment
Opp. Chandan Cinema
Juhu, Mumbai 400 049
PAN – AAHPM3098F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-16(1), Mumbai

..... Respondent

Assessee by : Shri Raturaj H. Gurjar
Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 23.08.2018

Date of Order –

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the assessee challenging the order dated 5th December 2016, passed by the learned Commissioner of Income Tax (Appeals)-4, Mumbai, for assessment year 2013-14.

2. Grounds raised by the assessee are as under:–

"1. Rejecting the appellant's claim in respect of vacancy allowance as made u/s.23(1)(c) of the Income Tax Act, in respect of the property situated at Unit Nos.407, 408, 409, 410 & 411 Standford Plaza, Plot No.B-65, Survey No.717 of

Link Road, Andheri (West), Mumbai 400 069 (Maharashtra). The appellant be granted the benefit of vacancy allowance in respect of the above property.

2. Upholding the ALV at Rs.17,96,225/- as determined by the Assessing Officer (AO) in respect of the property situated at Unit Nos.407, 408, 409, 410 & 411 Stanford Plaza, Plot No.13-65, Survey No.7 17 of Link Road, Andheri (West), Mumbai 400 069 (Maharashtra). In doing so the CIT(A) further erred in not accepting the assessee's plea that the Municipal Ratable Value as determined by the local authorities, at Rs. 1,23,250/-, if at all be considered the ALV u/s.23(1)(a) of the Income Tax Act."

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed her return of income on 30th September 2013, declaring total income of ₹ 10,03,14,580. During the assessment proceedings, the Assessing Officer while verifying the return of income along with computation of income filed by the assessee noticed that, though, in the Balance Sheet the assessee has shown five properties, however, she has offered income under the head house property in respect of four properties only. He noticed that the assessee has not shown any income in respect of commercial property at Stanford Plaza. When the Assessing Officer called upon the assessee to explain why Annual Lettable Value (ALV) should not be computed by treating the property as deemed to have been let out, it was submitted by the assessee that the property remained vacant during the financial year ending March 2013, March 2014 and March 2015. It was submitted, the property was subsequently let out in

financial year 2015–16. Thus, it was submitted, no house property income should be computed in respect of the said property. However, the Assessing Officer did not find merit in the submissions of the assessee. Referring to the decision of the Hon'ble Allahabad High Court in Radha Devi Dalmia v/s CIT, 125 ITR 134 (All.), the Assessing Officer observed that ALV can be determined as a percentage of investment in the property. Accordingly, he estimated the ALV of the property at 8% of the book value shown at ₹ 2,24,52,808, and accordingly, determined the gross annual value of the property at ₹ 17,96,225. After allowing deduction under section 24(a) of the Income Tax Act, 1961 (for short "*the Act*"), he added back an amount of ₹ 12,57,357 under the head income from house property. Being aggrieved of the aforesaid addition, though, the assessee filed an appeal before the learned Commissioner (Appeals), however, he also sustained the addition made by the Assessing Officer.

4. Before the learned Commissioner (Appeals) the assessee also pleaded for vacancy allowance in respect of the said property. However, the learned Commissioner (Appeals) also rejected assessee's plea in that regard.

5. The learned Authorised Representative submitted, determination of ALV @ 8% of the cost of the property is purely on ad-hoc basis

having no sanctity as it is not as per the market rate. He submitted, in case of CIT v/s Tip Top Typography, [2015] 368 ITR 330 (Bom.), the Hon'ble Jurisdictional High Court has held that the Assessing Officer cannot determine the ALV on ad-hoc basis which cannot be treated as fair rent as per municipal ratable value. He further submitted, the assessee's claim of vacancy allowance under section 23(1)(c) of the Act also requires to be considered property. Therefore, he submitted, issues may be restored to the Assessing Officer for de novo adjudication.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, in respect of commercial property at Stanford Plaza, the assessee did not offer any rental income under the head income from house property, since, the said property was not let out during the relevant previous year. However, the Assessing Officer computed notional rent under section 23(1)(a) of the Act. While doing so, the assessee determined the ALV @ 8% of the book value of the property. The aforesaid methodology applied by the Assessing Officer is purely on estimate or ad-hoc basis without having any connection to the fair rent, therefore, cannot be

sustained. The Hon'ble Jurisdictional High Court in Tip Top Typography (supra) has disapproved addition of notional rent on such estimate / ad-hoc basis. The same view has again been reiterated by the Hon'ble Jurisdictional High Court in PCIT v/s Karia Can Co. Ltd., [2018] 96 taxmann.com 193 (Bom.). Therefore, the addition made by the Assessing Officer to the income from house property and sustained by the learned Commissioner (Appeals) cannot be upheld. Therefore, we restore the issue to the Assessing Officer for de novo adjudication keeping in view the decisions of the Hon'ble Jurisdictional High Court referred to above. While doing so, the Assessing Officer is also directed to examine assessee's claim of vacancy allowance under section 23(1)(c) of the Act and in accordance with law. Needless to say, Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issues. With the aforesaid observations, grounds are allowed for statistical purposes.

8. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 12.10.2018

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 12.10.2018

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

(Sr. Private Secretary)
ITAT, Mumbai