

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'G', NEW DELHI**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER  
AND  
SHRI SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 6698/Del/2015**

**AY: 2012-13**

Ms. Priyananki Singh Sood 2 <sup>nd</sup> Floor, EROS Cinema Building, Jangpura Extension, New Delhi. <b>PAN No. AODPS0629C</b>	<b>vs.</b>	ACIT Circle 52(1) New Delhi
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**(Appellant)**

**(Respondent)**

**Assessee by :** Shri U.N. Marwah, CA

**Department by :** Shri Shailesh Kumar, Sr. DR

**Date of Hearing :** 11/12/2018

**Date of Pronouncement:** 13/12/2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 26/10/15 passed by Ld.CIT (A)-18, New Delhi for assessment year 2012-13, on following grounds of appeal:

- 1. "The Ld.CIT(Appeals) has erred in law and on facts in confirming the addition of Rs. 31,306/- made by estimating the annul value of the commercial flat at Laxmi Bhawan, Madras while ignoring the facts and submissions of the case. Thus, the addition so made should be deleted.*
- 2. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing."*
- 2. Brief facts of case are as under:**

Assessee filed her return of income on 29/09/12 declaring total income of Rs. 1, 86, 79, 370/-. The case was selected for scrutiny and notice under section 143(2) was issued along with

questionnaire and notice under section 142(1). In response to the statutory notices, representative of assessee appeared before Ld.AO and furnished required details as called for.

2.1 Ld.AO observed that assessee had earned income from salary, house property business, capital gain and other sources during the year under consideration. It was further observed that assessee in a statement of affairs had mentioned owning of property at Laxmi Bhawan, 609, Mount Road, madras. It was further observed that no income from this house property was offered for year under consideration. Ld.AO, accordingly, called upon assessee to file requisite details in respect of the said property. After considering the submissions advanced by assessee, dissatisfied with the same, Ld.AO made an addition under section 23(1)(A) considering the annual value of property to be the sum for which the property might reasonably be expected to let out year to year. Ld.AO took Rs.71,213/- as income from house property receivable from property at madras and after allowing 30% of standard deduction as per provisions of section 24(a) of the Act made an addition of Rs.49,849/- as assessee's income from house property.

3. Aggrieved by the additions made, assessee preferred appeal before the Ld.CIT (A) who upheld the addition.

4. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now.

5. Ld. Counsel submitted that the property under question is a commercial flat at Madras owned by assessee along with her 2 sisters. He submitted that the said property was purchased back in 1980 and was let out. He submitted that the said

property was continuously let out till assessment year 2001-02 and thereafter from assessment year 2002-03 a suitable tenant could not be found and remained vacant. It was thus, submitted by Ld. Counsel that under such circumstances the property has to be considered as per provisions of section 23(1)(c) of the Act. He plays reliance upon following decisions of coordinate benches of this Tribunal:

- *Preamsudha Exports (P) Ltd., vs. ACIT reported in (2008) 110 ITD 158;*
- *Shakuntala Devi versus DDIT reported in (2000 del) 31 CCH 32 (Bang);*
- *ACIT versus Dr Prabha Sanghi reported in (2012) 139 ITD 504 (Delhi);*
- *Reynaud Shamlal vs. ACIT in ITA No. 1100/del/2014 wide order dated 21/09/16;*

6. Ld. Counsel further submitted that Ld.CIT (A) confirmed addition by relying upon decisions of *Hon'ble Andhra Pradesh High Court* in case of *Vivek Jain vs ACIT* reported in (2011) 14 *Taxmann.com* 146 and *Hon'ble Delhi High Court* in case of *Ram Pershad and Sons vs CIT* reported in (1995) 81 *Taxmann* 332.

6.1 He submitted that decision of *Hon'ble Delhi High Court* in case of *Ram Pershad and Sons vs CIT(supra)* is distinguishable on facts, as it was a case where, assessee claimed vacancy allowance on occupied property, which was never been let out in any of preceding assessment years, or even partly during year under consideration. Insofar as decision of *Vivek Jain vs ACIT (supra)* is concerned, Ld. Counsel submitted that Ld. CIT(A) misconceived the judgment of *Hon'ble Andhra Pradesh High Court* by placing reliance upon the concluding paragraphs 14 and 15 of the said decision wherein, *Hon'ble Court* though has concluded that the benefit of computing the ale be under section 23(1)(c) could not

be extended to a case where the property was not let out at all, however the same would duly income passed to take within its sweet cases where the property had remained let out for 2 or more years but thereafter had remained vacant for whole of the previous year. He submitted that in fact the decision of *Hon'ble Andhra Pradesh High Court* is in favour of assessee as in the present facts of the case admittedly the property has remained vacant since assessment year 2002-03 which has been a part of observations recorded by Ld.AO in the assessment order.

7. On contrary, Ld. DR placed reliance upon orders of authorities below.

8. We have perused the submissions advanced by both sides and the light of the records placed before us.

9. In order to attract section 23(l)(c), the following requirements must be fulfilled

- (i) the property, or any part thereof, must be let; and
- (ii) it should have been vacant during the whole or any part of the previous year ; and
- (iii) owing to such vacancy the actual rent received or receivable by the owner in respect thereof should be less than the sum referred to in clause

9.1 It is only if these three conditions are satisfied together, would clause (c) of section 23(1) apply, in which event amount received or receivable, in terms of clause (c) of section 23(1), shall be deemed to be the annual value of the property.

10. Further, Clause (c) does not apply to situations where property has either not been let out at all during any of the previous years or, even if let out, was not vacant during whole or

any part of previous year. Further Under *Explanation* to section 23(1), for the purposes of clause (b) or (c), amount actually received or receivable by the owner shall not include the amount of rent which the owner cannot realize.

11. In present facts of case, admittedly property at Chennai in dispute has remained vacant post assessment year 2002-03 till date. It is not the case of revenue that the property after being vacant, remained under self occupation of assessee. It is also not been disputed by the revenue that prior to assessment year 2002-03 the property was not let out.

12. On a question being posed by the bench to Ld. Counsel regarding view of revenue during interregnum assessment years, Ld. Counsel submitted that there has been no addition made by the authorities during assessment years 2003-04 to 2011-12. Further the submissions of Ld. counsel that assessee has made all efforts to let out the property in dispute.

13. We are agreed with submissions of Ld. Counsel regarding decision of *Hon'ble Andhra Pradesh High Court* in case of *Vivek Jain vs ACIT (supra)* being misconceived by the authorities below. We have perused the said decision and find that *Hon'ble High Court* held as under:

**“14.** *The contention that, as clause (c) provides for an eventuality where a property can be vacant during the whole of the relevant previous year, both situations, i.e., "property is let" and "property is vacant for the whole of the relevant previous year" cannot co-exist does not merit acceptance. Clause (c) encompasses cases where a property is; let out for more than a year in which*

*event alone would the question of if being vacant during the whole of the previous year arise.”*

13.1 From the above provision of law, it can be construed that in case the property or part thereof was vacant during the period, the proportion deduction should be allowed from the sum on which the property might reasonably be let out from year to year. We find that it is the plea of the assessee that due to inherent defects, the flat could not be let out. Hence, the flat remained vacant. Hence, the assessee has claimed benefit of section 23(1)(c) which duly permits deduction in this regard. We find that the coordinate bench of this Tribunal in case of *Premasudha Exports (P) Ltd. (supra)*, had occasion to deliberate on identical issue. This Tribunal has observed on a plain reading of section 23(3) that, Legislature in their wisdom used words, '*house is actually let*', which shows that words, '*property is let*' cannot mean actual letting out of property, because had it to be so, there was no need to use words, '*actually*' in section 23(3). It was observed by this Tribunal that, it is not at all relevant as to whether property was let out in past or not. These words do not talk of actual let out, but talk about intention of assessee to let out. If property is held by owner for letting out and efforts are made to let it out, such property will be covered by section 23(1)(c), and this requirement has to be satisfied in each year that property was being held to let out, but remained vacant for whole or part of the year. Thus, if a property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out

property and the same would fall within the purview of clause (c) of section 23(1).

14. In our considered opinion the fact the present case assessee always had the intention of letting out the property at Chennai, post assessment year 2002-03, however, it has been submitted that due to fall in property prices, the same could not be let out year after year because of which disputed property remained vacant. One more relevant factor which we observe is that, assessing officer in any of preceding assessment year, post assessment year 2002-03, has never disputed that the property was not vacant. In fact in assessment order passed for year under consideration, Ld.AO is admitting to the fact that property in question was let out only till assessment year 2002-03 and thereafter it was vacant, even during year under consideration. Under such circumstances, in our considered opinion assessee's case stands squarely covered by view taken by coordinate bench of this Tribunal in case of *Premisudha Exports (P) Ltd. (supra)*, and benefit under section 23 (1) ( c) has to be granted.

**Accordingly the grounds raised by assessee stands allowed.**

**In the result appeal filed by assessee stands allowed.**

Order pronounced in the open court on 13/12/2018

Sd/-  
**(N.S. SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 13/12/2018

\*Kavita Arora

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

		Date
1.	Draft dictated on	11/12/2018 13/12
2.	Draft placed before author	11/12 13/12
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	13/12
6.	Kept for pronouncement on	13/12
7.	File sent to the Bench Clerk And uploaded	13/12
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	