

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1937/Del/2018
Assessment Year: 2013-14

Sunita Sanjay Kedia,
B-404, Central Park,
Sector-42,
Gurgaon.

Vs. ITO,
Ward-4(3),
Gurgaon.

PAN: ABIPK6266D

(Appellant)

(Respondent)

Assessee by : Shri Rajesh Jain, Advocate
Revenue by : Shri P.S. Thuingaleng, Sr.DR

Date of Hearing : 12.12.2018
Date of Pronouncement : 26.12.2018

ORDER

This appeal by the assessee is directed against the order dated 26th December, 2017 of the CIT(A)-I, Gurgaon, relating to Assessment Year 2013-14.

2. The grounds of appeal 1,5 and 6 being general in nature are dismissed. Grounds of appeal nos. 2 and 3 read as under:-

“2. That the Id.CIT(Appeal) has erred on facts and in law in upholding the addition made by the Assessing Officer at Rs.1,99,609/- as deemed rental income from a vacant property.

3. That the Id.CIT(Appeal) has erred on facts and in law in not appreciating the fact that the assessee has not received any rent in the entire year and therefore as per Section 23(1) (c) of the Act, the annual value should be considered as NIL.”

3. The facts of the case, in brief, are that the assessee is an individual and derives income from business of garments and export of garments. He filed his return of income on 29.11.2014 declaring total income of Rs.33,28,630/-. The Assessing Officer, during the course of assessment proceedings observed that the assessee owns two house properties. During the year under consideration, the assessee was using one property for self occupation and has claimed loss of Rs.5,56,391/- from the second house property at K-505, 5th Floor, Block-K, Gesco, Central Park, Sector-42, Gurgaon, on account of interest paid on home loan taken. Since the assessee has not declared any rental income from this property, the Assessing Officer asked him to explain the same. The assessee submitted that the property was vacant throughout the year and, therefore, he did not have any rental income from the same. However, the Assessing Officer was not satisfied with the explanation given by the assessee. He observed that the assessee has declared NAV of Rs.10,80,000/- of this property during F.Y. 2011-12 relating to assessment year 2012-13. Considering the last year's rental value, i.e., annual lettable value as declared by the assessee, the Assessing Officer considered the NAV of the property for the current year at Rs.10,80,000/-. After allowing statutory deduction u/s 24 and interest on home loan of Rs.5,56,391/-, the Assessing Officer made addition of Rs.1,99,609/- to the total income.

3.1 Before CIT(A), the assessee strongly challenged the order of the Assessing Officer in making the addition. It was submitted that the vacancy allowance was not allowed by the Assessing Officer which ought to have been allowed since the property was not let out throughout the year. However, the Id. CIT(A), upheld the action of the

Assessing Officer on the ground that although the property remained vacant during the year for the whole of the year, however, the Assessing Officer was fully justified in adding the net annual value based on the last year's rental value of Rs.10,80,000/-. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

4. The Id. counsel for the assessee strongly challenged the order of the CIT(A) upholding the addition made by the Assessing Officer. He submitted that the Id.CIT(A) did not consider the provision of section 23(1)(c) which reads as under:-

“**23.** (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(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 :”

5. He submitted that it is an admitted fact that the property in question was not let out during the year due to non-availability of suitable tenant. No other benefit was derived by the assessee from this property during the year under consideration. Relying on the decision of the Delhi Bench of the Tribunal in the case of *ACIT vs. Dr. Prabha Sanghi (2013) 139 ITD 504* and various other decisions, he submitted that the addition made by the Assessing Officer and sustained by the CIT(A) deserves to be deleted. He also relied on the following decisions:-

- (i) Saif Ali Khan Pataudi vs. ACIT (2018) 53 CCH 486 (Mum. Trib.); and
- (ii) Sachin R. Tendulkar vs. DCIT, ITA No.3755/Mum/2016, Order dated 10.08.2018.

6. The Id. DR, on the other hand, heavily relied on the order of the Assessing Officer and CIT(A).

7. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the assessee in the instant case has declared loss of Rs.5,56,391/- in respect of the second property being interest paid on the home loan taken. Although this property was let out during the preceding year at Rs.10,80,000/- and Rs.5,10,000/- in the succeeding year, however, no rental income has been shown from this property on the ground that no suitable tenant was available for the current year and the property remained vacant throughout the year. I find the Assessing Officer, adopting the net annual value of the preceding year at Rs.10,80,000/- made addition of Rs.1,99,609/-, after allowing statutory deduction u/s 24 towards repairs and maintenance and the interest paid on home loan. It is the submission of the Id. counsel for the assessee that the provisions of section 23(1)(c) of the IT Act are clearly applicable to the instant case, I find the order of the CIT(A) is very cryptic one where he has sustained the addition made by the Assessing Officer by observing as under:-

“4.5 I have carefully considered the appellant’s submissions. It is an undisputed facts on record that the property under question remained vacant during the year for whole of the year. In these circumstances the Assessing

Officer was fully justified in adding the net annual value based on the last years rental value of Rs.10,80,000/- to the total income of the appellant.”

8. From the above, it is clear that the Id.CIT(A) has not at all considered the provisions of section 23(1)(c) when the property remained vacant throughout the year. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore this issue to the file of the CIT(A) with a direction to pass a speaking order in the light of the provisions of section 23(1)(c) and in the light of the various decisions cited before him. Needless to say, the Id.CIT(A) shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes.

9. Ground of appeal No.4 reads as under:-

“4. That the Id.CIT(Appeal) has erred on facts and in law in not allowing the entire expenses and restricting the disallowance to Rs.3,00,000/- on ad hoc basis.”

10. After hearing both the sides, I find the Assessing Officer, during the course of assessment proceedings, observed that certain expenses debited in the Profit & Loss Account appears to be personal in nature. After discussion, the assessee agreed for lumpsum disallowance of Rs.4 lakhs. The Assessing Officer accordingly, made addition of Rs.4 lakhs to the total income of the assessee on account of unverifiable inadmissible excessive claim of the assessee incurred for non-business purposes. The details of such expenses are as under:-

Diwali Expenses	Rs.78,107/-
Interest on Car Loan	Rs.1,05,901/-
Machinery repair	Rs.2,65,756/-
Office repair & maintenance	Rs.38,330/-
Sale Promotion	Rs.76,896/-
Telephone Expenses	Rs.1,02,568/-
Vehicle running expenses	Rs.3,62,464/-
Depreciation on car	Rs.1,18,895/-
Total	Rs.11,48,917/-

11. Before CIT(A), the assessee challenged the same on the ground that the addition made by the Assessing Officer is without any basis. Further, in the subsequent year, the Assessing Officer has restricted such disallowance to 20%. However, the Id.CIT(A) gave part relief to the assessee by observing as under:-

“5.3 I have carefully considered the appellant’s submissions. Out of the expenses disallowed, it is seen from the details tabulated para 5.1 above that the expenses on account of machinery repair and office repair are only for the purpose of business and have no personal element. Out of the remaining expenses of vehicle running, depreciation of Car to the personal usage cannot be ruled out. In the given facts and circumstances of the case, I deem it fair and reasonable to restrict the disallowance to Rs. 3,00,000/-. This ground of appeal is partly allowed.”

12. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

13. I find, after considering the machinery repair and office repair expenses as not being personal in nature, the Id.CIT(A) restricted the disallowance to Rs.3 lakh. It is the submission of the Id. counsel for the assessee that in the subsequent year, the

Assessing Officer has restricted the disallowance to 20% of such expenses. Considering the totality of the case, I am of the considered opinion that disallowance of Rs.3 lakhs appears to be on higher side. I, therefore, restrict the disallowance to Rs.2.5 lakh. The ground raised by the assessee is partly allowed.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

The decision was pronounced in the open court on 26.12.2018.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 26th December, 2018

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi