

IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
ITA No. 1855/Mum/2017 (Assessment Year 2012-13)

VirenVini Ahuja Bunglow No.1 Neelkanth Teerth, Road No.6,Chembur, Mumbai-400 071.  <b>PAN: AACPA4809M</b>	Vs.	Assistant Commissioner of Income Tax, Central, Circle- 8(4), Mumbai-400021.
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Appellant

Respondent

Appellant by : Shri J.P.Bairagra (AR)

Respondent by : Shri Rajeev Gubgotra (DR)

Date of Hearing : 04.04.2019

Date of Pronouncement : 04.04.2019

**PER PAWAN SINGH, JUDICIAL MEMBER;**

This appeal by assessee is directed against the order of Id. Commissioner of Income-tax (Appeals)-50, Mumbai [hereinafter referred as Id. CIT(A)] dated 27.04.2015 which in term arising from assessment order passed u/s 143(3) dated 18/03/2015.

The assessee has raised the following grounds of appeal:

1. *The Ld. Commissioner of Income Tax (Appeals) erred in passing ex-parte order and thereby dismissing the appeal of the Appellant.*
2. *The Ld. Commissioner of Income Tax (Appeals) erred in not giving the Appellant sufficient opportunity of being heard and presenting the case.*
3. *The Ld. Commissioner of Income tax (Appeals) further erred in confirming the addition made by the Assessing Officer of Rs. 59,63,487/- to the total income of the Appellant as Income from house property in respect of vacant properties at God Blessing Pune and Marvel Realtor Pune.*
4. *The Ld. Commissioner of Income tax (Appeals) further erred in estimation the deemed rent from vacant property @8.5% of total investment value as the rent from vacant property.*

5. *The appellant craves to add to, alter or amend the foregoing grounds, which are without prejudice to one another, at the time of hearing.*

2. Brief facts of the case are that during the relevant assessment year the assessee earned income from house property and capital gain. The assessee filed return of income on 08.10.2012 declaring total income at Rs. 1,25,55,580/-. The return of income was selected for scrutiny. The assessment was completed on 18/03/2015 u/s 143(3). During the assessment the AO noted that the assessee has a number of house properties and flats. The assessee has also shown income from house property and its computation of total income. However, the assessee has not shown any rental value and not shown any deemed rental income in respect of flats in God blessing, Pune and Marval Realtors, Pune. The AO issued show cause notice as to why deemed annual rental income of these properties/flats may not be estimated under the head 'income from house property'. The assessee filed his reply and working of deemed rental income from these house properties/flats. The working of assessee was not accepted by AO by taking his view that the same is not based on sound footing not supported with documentary evidences. The AO by referring the decision of Hon'ble Supreme Court in the case of Dr. Balbir Singh reported 152 ITR 388 wherein it was held that in estimating annual letting value (ALV) return on investment is to be taken, on the basis of 7.5% to 8.5% of the cost of investment. The AO adopted 8.5% of total value of investment as reasonable expected market rent within the meaning of section 23(1). On appeal before the Ld. CIT(A) action of AO was confirmed. Therefore, further appeal by the order of CIT(A), the assessee filed present appeal before us.

3. We have heard the submission of Ld. Authorised Representative (AR) of the assessee and Ld. Departmental Representative (DR) for the

revenue and perused the material available on record. We have also deliberated on various case laws referred and relied by lower authorities. Ground No. 1 and 2 relates to passing exparte order by CIT(A) and without giving sufficient opportunity to the assessee. The Ld. AR of the assessee has not seriously pressed these grounds of appeal except making submissions that the order was passed ex-parte, though, the merits of various grounds was discussed. Therefore, ground no. 1 and 2 is treated as not pressed and dismissed.

4. Ground NO. 3 and 4 relates to addition of deemed rental value of vacant properties @ 8.5% of total investment value. The Ld. AR of the assessee submits that the assessee got the possession of 5 flats in Marble Realtors, Pune on 07/03/2011 at total cost of Rs. 29,64 crores. These flats were lying vacant in the AY 2012-13 and 2013-14. Though, the assessee has tried his best efforts to let out these flats and ultimately when no suitable tenant was found, the assessee sold these flats in the AY 2014-15. Similarly, the assessee also got the possession of flat at God Blessing, Pune on 24/04/2011 and paid a total cost of Rs. 7.86 cores also made efforts to let out the same but not succeeded. The flats were lying vacant. The assessee has now furnished the details of date of purchase, date of possession, cost of acquisition and deemed annual rental value as per Municipal retable value vide page no. 16 of the paper book. The Ld. AR further submits that these flats purchased in the relevant year. The assessee made efforts to let out but could not succeeded and therefore the deemed let out value should be taken as per the retable value fixed by the Pune Municipal Corporation (PMC). The Ld. AR further submits that he has furnished retable value of one flat at Rs. 26,250/- and the same is in respect of remaining 4 flats (total 5) situated at Marble Realtors, Pune, which are having similar area and accordingly total ALV comes to Rs. 1,31,250 as against the ALV determined by the AO at Rs. 25,19,838/-. The Ld. AR further submits

that the retable value as per PMC in respect of flat at God blessing, Pune comes to Rs. 71,900/- as against the value adopted by AO at Rs. 59,85,145/-. In support of his submission the Ld. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in the case of *Tip Top Typography 368 ITR 330, M.V. Sonavala Vs. CIT 177 ITR 246(Bombay), CIT vs. Angel Infin (P) Ltd. 225 Taxman 78 (Bombay) and Hon'ble Calcutta High Court in the case of CIT vs. Smt. Prabhabati Bansali 141 ITR 419*. The Ld. AR finally submits that the case law relied by the AO in ITO v/s. Chem. Mech (P) Ltd. 83 ITD 427 is not applicable on the facts of the case of assessee. In that case the assessee let out the flats and received interest free security deposit of Rs. 20 Lacs thereby the tribunal held that the interest @12% of the interest free security is to be included while determining the ALV. Further, the facts of case law in Dr. Balbir Singh (Supra) are also not applicable.

5. On other hand the Ld. DR for the revenue supported the order of lower authorities. The Ld. DR for the revenue further submits that the facts of Balbir Singh case (supra) has relied by the AO are similar to the facts of the case of assessee. In alternative submissions the Ld. DR submits that matter may be restore to AO to verify the facts and pass the order afresh qua the grounds of appeal. During assessment the assessee has not provided sufficient documentary evidences.

6. The Ld. AR of the assessee in rejoinder submissions submits that the AO may be directed to examine the documentary evidences furnished by the assessee and to pass the order afresh on the issue involved in present appeal.

7. We have considered the rival submissions of the parties and have gone through the order of the authorities below. We have also deliberated on various case laws relied by Ld. AR of the assessee. We have noted that the AO while determining the ALV of the

flats/properties in dispute concluded that the working of assessee regarding ALV is not acceptable in absence of documentary evidences. The Ld. CIT(A) confirm the action of AO without giving any other reason holding that he has no reason to interfere with the finding of the AO. Before us the Ld. AR of the assessee has furnished the retable value of flats No. 202 situated at Marvel Realtors, Pune wherein retable value of one flat is assessed by Municipal Corporation, Pune at Rs. 26,250/-. The assessee owned 5 flats of similar size in the same building consisting flat No. E-301, D-201, D-202, D-401 and D-402. For flat situated at God Blessing, the assessee contended that retable value assessee by Pune Municipal Corporation is Rs. 71,900/-.

8. The Hon'ble Jurisdiction High Court *CIT vs. Tip Top Typography* (supra) while considering the similar question of law held that in order to determining the annual value of the property, the municipal retable value may not be binding on AO but only in cases where the interest free security deposit and monthly compensation do not reflect prevailing rent in such cases Hon'ble High Court held that when premises covered by the Rent Control Act, the AO must undertake exercise to fix the rent himself in term of the said Act.

9. Further, the Hon'ble jurisdiction High Court in *M.V. Sonavala* (supra) held that income from house property had to be computed on the basis of sum for which the property might reasonably let out from year to year and annual municipal value and not at the amount received by actual compensation.

10. The Hon'ble Calcutta High Court in *CIT vs. Smt. Prabhabati Bansali* (supra) held that income from house property had to be computed on the basis of sum for which the property might reasonably let out from year to year and the annual municipal value. Further The Hon'ble Bombay High Court in the case of *CIT vs. Angel Infin* held that

in order to determine the annual value of property let out by assessee to its sister concerns, Tribunal in earlier directed AO to adopt valuation given by Municipal Corporation, in absence of any change in the circumstances, basis so adopted was to be accepted during the relevant year as well.

11. Considering the above factual and legal discussions, we deem it appropriate to restore these issues to the file of the AO to considering the documentary evidence furnished by the Assessee in respect of impugned property and the retable values determined by Pune Municipal Corporation and pass the order afresh in accordance with law. The AO is also direct to consider the case laws in Tip Top Typography, M.V. Sonavala, Angel Infin (P) Ltd,( supra) and in Smt. Prabhabati Bansali (supra). Needles to order before passing the order the AO shall grant fair and reasonable opportunity to the assessee.

12. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04 /04/2019.

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**  
Mumbai, Date: 04.04.2019  
Thirumalesh

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "F" Bench, ITAT, Mumbai
6. Guard File