

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA Nos.3893 & 3844/M/2017
Assessment Years: 2011-12 & 2012-13**

**ITA No.445/M/2018
Assessment Year: 2013-14**

Shri Rina Virendra Jain, 82, Maker Chambers III, Nariman Point, Mumbai – 400 021 PAN: AABPJ 1883F	Vs.	The ACIT, Central Circle 6(4), Air India Building, 19 th Floor, Mumbai - 400021
(Appellant)		(Respondent)

**ITA Nos.3663 & 3664/M/2017
Assessment Years: 2011-12 & 2012-13**

**ITA No.685/M/2018
Assessment Year: 2013-14**

DCIT, Central Circle 6(4), R.No.1925, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Shri Rina Virendra Jain, Smt. Laxmi Satyapal Jain, 82, Maker Chambers III, Nariman Point, Mumbai – 400 021 PAN: AABPJ 1883F
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anuj Kisnadwala, A.R.
Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 20.02.2019
Date of Pronouncement : 22.03.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled cross appeals have been preferred against the orders even dated 27.02.2017 relevant to assessment years 2011-12 & 2012-13 and order dated 15.09.2017 for assessment

year 2013-14 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)].

ITA No.3664/M/2017 (Revenue's appeal A.Y. 2012-13)

2. The grounds raised by the Revenue are as under:

"(i) On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) erred in holding that the ratable value of the properties as determined by the Municipal Authorities is the yardstick while failing to consider that Section 23(l)(a) mandates that the annual value is deemed to be the sum for which the property might be expected to be let from year to year.?"

(ii) On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) erred in ignoring the fact that the Assessing Officer had made local enquiries to determine the sum for which the properties could be expected to be let for the year as per Section 23(l)(a) of the IT Act, 1961?"

(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) erred in ignoring the facts as brought on record by the Assessing Officer regarding the estimated rent for the properties for the purposes of computing income u/s 23(l)(a) of the IT Act, 1961?"

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

3. The only common issue raised in all the three grounds of appeal is against the order of Ld. CIT(A) holding that ALV of the property as determined by municipal authority is the yardstick for determining annual value for the purpose of determining the income from house property as against the ALV computed by the AO at a sum at which the property is expected to let out from year to year.

4. The facts in brief are that the assessee is deriving income from house property, salary, capital gain and other sources. During the year, the assessee filed the return of income on 29.02.2012 declaring income of Rs.4,32,93,320/-. The case of the assessee was selected for scrutiny and statutory notices

were duly issued and served upon the assessee. During the course of assessment proceedings the AO noticed that the assessee has calculated the ALV on the basis of municipal rateable value. In para 3.6 of the assessment order, the AO observed that in A.Y. 2009-10 the inspector conducted a field enquiry and filed detailed report dated 23.12.2010 on the basis of which the rental of Rs.42 per sq. ft. was taken by the AO and the ALV was worked out for the flat at Rs.1,61,57,124/- in A.Y. 2009-10. The AO proposed the same basis to be taken in the A.Y. 2010-11 subject to normal increase of 10% in the rental value. The Ld. A.R. of the assessee objected to the increase @ 10% in the rental value on the ground that this is just an estimation of rent and increase may not be possible in every year. However, without prejudice admitted that the amount adopted in A.Y. 2009-10, 2010-11 and 2011-12 may be adopted in A.Y. 2012-13. The AO also referred to the rental rates as per various websites in the nearby areas for the month of March 2015 and calculated the average rate @ Rs.51 during the financial year 2014-15. Besides, the inspector of Income Tax also conducted a field enquiry and filed a report dated 13.03.2015 which is reproduced at page No.6 of the assessment order. The AO on the basis of average rate by various websites and inspector's report calculated the ALV for A.Y. 2014-15 at Rs.56 per sq. ft. by treating the same as most reliable and then did backward calculation to determine the rental rates for the year ended 31.03.2012 at Rs.46 per sq. ft. thereby determining the prevailing market rent at Rs.2,77,17,360/- as ALV in respect of central garden complex flat at tower No.4 & 5 for A.Y. 2012-13 under section 23(1)(a) by taking ALV of

Rs.2,51,97,600/- in A.Y. 2011-12 which is the ALV in A.Y. 2009-10 and 2010-11 as increased by 10% from A.Y. 2009-10 and by framing assessment under section 143(3) dated 20.03.2015.

5. In the appellate proceedings, Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to take ALV at Rs.20,81,895/- as against Rs.2,77,17,360/-. While arriving at this amount of Rs.18,73,706/- the Ld. CIT(A) observed that the ratable value fixed for A.Y. 2006-07 by municipal authorities is taken as base and had further held 5% annual increase in the subsequent years as reasonable and thus computed the reasonable ratable value for the financial year under consideration. The Ld. CIT(A) further observed that my predecessor held that ratable value so arrived at should be enhanced by 1/9th of the said value and the resultant value will be the ALV of these properties in the relevant assessment years. Thus the earlier Ld. CIT(A) determined the ALV of the flat at central garden complex for A.Y. 2010-11 at Rs.17,03,369/- as increased by 10% (5% annually) and thus calculated the present ALV at Rs.18,73,706/-.

6. Now the Revenue is in appeal before us against the order of Ld. CIT(A) reducing the ALV from Rs.2,77,17,360/- by AO and the assessee is in appeal before us challenging the ALV at Rs.20,81,895/- computed by the Ld. CIT(A). Para 7.4.12 of the Ld. CIT(A)'s order is reproduced herein under:

"7.4.12 The records reveal that my Ld. Predecessor, vide his order dated 28.02.2014 in Appeal No. CIT(A)-41 7DCCC-39/1T-409/2012-13 in appellant's own case for A.Y. 2010-11, after considering various decisions had directed the Ld. AO to adopt the municipal rateable value as AIV. The Ld. CIT(A) observed that the rateable value was fixed by the Municipal Authorities in the year 2006-07 and had further held

that 5% annual increase thereof in subsequent years as reasonable and had then computed the reasonable rateable value for the financial year under consideration. My Ld. Predecessor has further held that rateable value so arrived in the relevant financial year should be enhanced by 1/9th of said value, and the resultant value will be the ALV of these properties for the relevant assessment year. Respectfully following the same it is held that the ALV of the flats/properties under considerations need to be determined accordingly. Since my Ld. predecessor has determined the Annual rateable value of Flats at Central Garden Complex for A.Y. 2010-11 at Rs. 17,03,3697-, so for the relevant assessment year the same need to be increased by 10% (annual 5% increase) and thereby works out be Rs. 18,73,7067-. The said rateable value for the financial year 2011-12 need to be further increased by 179th of said value to arrive at the ALV of F.Y. 2011-12 which is relevant to assessment year under consideration. The Ld. AO is directed to substitute the ALV of said flats at Rs. 18,73,706/- (as enhanced by 179th of said value) as against Rs. 2,77,17,3607-considered by him in the impugned order. The Ld. AO is directed to re-compute the income form house property as per above directions. Hence, the Ground No. 2 raised in appeal is PARTLY ALLOWED, as indicated above."

7. The Ld. A.R., at the outset, submitted before the Bench that the issue involved in the present case is squarely covered in favour of the assessee and against the Revenue by the various decisions of the co-ordinate benches of the Tribunal and also the jurisdictional High Court. The Ld. A.R. submitted that where the property is not occupied or rented out, in that case the ALV has to be determined on the basis of ratable value by the municipal authorities and not at the market rent. The Ld. A.R. relied on a series of decisions as under:

1. DCIT v. Laxmi Jain in ITA No. 2118/Mum/2012 for A.Y. 2009-10.
2. PCIT v. Laxmi Jain in Income Tax Appeal No. 1285 of 2015 for A.Y. 2009-10.
3. Harsh Jain v. DCIT in ITA No. 2710/Mum/2013 for A.Y. 2009-10
4. PCIT v. Harsh Jain in Income Tax Appeal No. 1438 of 2016 for A.Y. 2009-10

The Ld. A.R. therefore prayed before the Bench that the appeal of the assessee may be allowed and that of the Revenue may be dismissed in view of the ratio laid down by the co-ordinate benches of the Tribunal and jurisdictional High Court in the aforesaid decisions.

8. The Ld. D.R., on the other hand, relied on the order of AO by submitting that the ALV of the vacant flat which was not let out during the year has to be calculated on the basis of market rent as determined by the AO on the basis of the comparable rent in the market and enquiry made during the course of assessment. The Ld. D.R. therefore relied heavily on the order of AO.

9. After hearing both the parties and perusing the material on record, we find that assessee is having flat in central garden complex which was vacant during the year and offered the ALV of the flat as per municipal ratable value at Rs.15,06,201/- . The said ALV was substituted by the AO by Rs.2,77,17,360/- on the basis of enquires made in the field by the inspector of Income Tax resulting into an addition of Rs.1,83,47,811/-.

10. In the appellate proceedings, the Ld. CIT(A) held that the ALV of the flat which was vacant during the year has to be determined on the basis of municipal ratable value by municipal authorities in A.Y. 2006-07 as increased by 5% every year. Thereafter, the Ld. CIT(A) following the order of his predecessor in A.Y. 2010-11 took the ALV at Rs.17,03,369/- and finally the determined the current ALV at Rs.20,81,895/- after making necessary adjustments for the annual increase. Thus the dispute before us is only with regard to the ascertainment of ALV where the flat was vacant during the year. In the case of DCIT vs. Laxmi Jain in ITA No.2118/M/2012 A.Y. 2009-10 the co-ordinate bench of the Tribunal by following the decision of Hon'ble Jurisdictional High Court in the case of Smitaben N. Ambani vs. CWT, 323 ITR 104 High Court held that the ALV of

the vacant flat has to be made on the basis of municipal ratable value and thus dismissed the appeal of the Revenue. The said decision of the Tribunal was affirmed by the Hon'ble Bombay High Court in the case of Pr. CIT vs. Laxmi Jain vide order dated 16.04.2018 on the ground that there is no substantial question of law arising from the Revenue's appeal. In the case of Harsh Jain vs. DCIT in ITA No.2710/M/2013 A.Y. 2009-10, the co-ordinate bench of the Tribunal has held that the ALV of the property has to be computed as per municipal ratable value as deemed income from the house property. The said decision of the co-ordinate bench of the Tribunal was affirmed by the Hon'ble Bombay High Court in the case of Pr. CIT vs. Harsh Jain vide order dated 05.02.2019 where the appeal of the Revenue was dismissed.

11. After taking into account, the facts of the case and the ratio laid down by the decisions as discussed hereinabove, we are of the view that the ALV of the vacant flat has to be determined on the basis of municipal ratable value for the purpose of assessing the income under the head "house property". Accordingly, we are inclined to allow the appeal filed by the assessee and dismiss the appeal of the Revenue.

ITA No.3844/M/2017 (Assessee's appeal A.Y. 2012-13)

12. The issue involved in this appeal is already decided by us in Revenue's appeal in ITA No.3664/M/2017 for A.Y. 2012-13 in favour of the assessee and against the Revenue, following the same ratio, this appeal of the assessee is allowed.

ITA No.3893/2107 & 3663/M/2017 AY 2011-12 (Cross appeals of Assessee and Revenue)

13. Since we have already decided the issue in ITA No.3664/M/2017 and 3844/M/2017 (supra) wherein we have held that the ALV of the vacant flat has to be computed on the basis of municipal ratable value thereby dismissing the appeal of the Revenue and allowing the appeal of the assessee. Following our decision in ITA No.3664 & 3844/M/2017, we dismiss the appeal of the Revenue and allow the appeal of the assessee.

ITA No.445/M/2018 and ITA No.6885/2017 AY 2013-14

14. Since we have already decided the issue in ITA No.3664/M/2017 and 3844/M/2017 (supra) wherein we have held that the ALV of the vacant flat has to be computed on the basis of municipal ratable value thereby dismissing the appeal of the Revenue and allowing the appeal of the assessee. Following our decision in ITA No.3664 & 3844/M/2017, we dismiss the appeal of the Revenue and allow the appeal of the assessee.

15. In the result, appeals of the Revenue are dismissed and that of the assessee are allowed.

Order pronounced in the open court on 22.03.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 22.03.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.