

IN THE INCOME-TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 436/Mum/2018 (Assessment Year 2014-15)

Jt. CIT (OSD) CC -6(4) Room No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.	Vs.	Shri Satyapal Jaikumar Jain, 82, Maker Chamber-III, Nariman Point, Mumbai-400021 PAN: AABPJ1888Q
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Appellant

Respondent

ITA No. 549/Mum/2018 (Assessment Year 2014-15)

Shri Satyapal Jaikumar Jain, 82, Maker Chamber-III, Nariman Point, Mumbai-400021 PAN: AABPJ1888Q	Vs.	Jt. CIT (OSD) CC -6(4) Room No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.
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Appellant

Respondent

Appellant by : Shri Satish Rajore (Sr. DR)

Respondent by : Shri Anuj Kisnadwala (Advocate)

Date of Hearing : 13.06.2019

Date of Pronouncement : 13.06.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These cross appeal are directed against the order of Id. Commissioner of Income Tax (Appeals)-54, [the Id. CIT(A)], Mumbai dated 23.10.2017 for Assessment Year 2014-15. The revenue has raised the following grounds of appeal:

- i. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the estimation of Annual Letting Value (ALV)

determined by the AO at Rs. 1,83,01,836/- and adopting the one offered by the Assessee at Rs. 8,58,457/- based on the Municipal ratable value of the properties as the yardstick while failing to consider that Section 23(1)(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. "Whether on the facts and in the circumstances of the case and in law, 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(1)(a) of the I. T. Act, 1961 ?"

iii. "Whether on the facts and in the circumstances of the case and in law, 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(1)(a) of the Income Tax Act, 1961?"

2. The assessee in its cross appeal has raised the following grounds of appeal:

1. In the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the Annual Letting Value (ALV) of the premises owned by the appellant at Central Garden Complex Chunabhatti, Mumbai and Green Fields B Co-Op Housing Society Ltd. Andheri, Mumbai at Rs. 12,87,183 instead of Rs. 8,58,457/- and Rs. 26,027/- offered by the appellant based on the municipal ratable value of the said premises.

The learned CIT(A) failed to appreciate that the aforesaid premises were vacant throughout the previous year and accordingly the Appellant had rightly adopted the municipal ratable value for the purpose of determining income under the head "Income from House Property"

2. The order passed by the learned CIT(A) is illegal, bad in law, *ultra vires* and contrary to the provisions of law and facts and is passed without application of mind and in violation of the principles of the natural justice.

3. Brief facts of the case are that the assessee filed its return of income for relevant Assessment Year on 24.07.2014 declaring total income at Rs. 50,29,320/-. The return of income was selected for scrutiny and assessment was completed under section 143(3) on 26.10.2016. In the return of income,

the assessee has shown the income under the head “Income from House Property” of Rs. 51,15,465/- and income under the head “Income from Other Sources” of Rs. 51,358/-. During the assessment, the Assessing Officer noted that assessee has shown his four flats bearing Flat No. B-4/ 64 to 67 at Central Garden Complex as vacant and offered annual letting value (ALV) as per Municipal Ratable Value at Rs. 8,58,457/-. The assessee also owned four flats at Green Field complex and has offered ALV of flats as per Municipal Ratable Value at Rs. 5,856/- each ($4 \times 5856 = 23,424$). The assessee was asked to justify the Annual Letting Value (ALV) adopted by assessee in respect of the said flats. The assessee filed its reply, which has been recorded by Assessing Officer in paragraph-3 of his order. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer noted that during Assessment Year 2009-10, the Income Tax Inspector conducted a field enquiry and filed detailed report dated 23.12.2010 on the basis of which a rental of Rs. 42 per sq. ft. was determined by Assessing Officer. The Assessing Officer further noted that during assessment for AY 2013-14, further field enquiry was conducted by Inspector and furnished its report dated 13.03.2015 on the basis of which the ALV was determined at Rs. 45 per sq. ft. The Assessing Officer proposed to adopt the same basis in the year under consideration. The representative of assessee though objected for increase of 10% in every year on the ground that it was just an estimate of rent and increase in rent in every year is not possible. The Assessing Officer

on the basis of average rate by various Inspector reports calculated the ALV for Assessment Year 2013-14 adopted the same value for the year under consideration i.e. Assessment Year 2014-15 i.e. @ of Rs. 48/- per sq. ft. and worked out the ALV accordingly. The assessing officer adopted ALV of Rs. 183,01836/- for flat situated at Central garden Complex. And Rs. 741,682/- for flats situated at Green Field Complex and after grating deduction under section 24 of 30% and Municipal tax paid brought the remaining amount for taxed accordingly.

4. On appeal before the Id. CIT(A), the Id. CIT(A) by followed the order of his predecessor in AY 2013-14 and directed the assessing officer to recompute the ALV. Therefore, aggrieved by the order of Id. CIT(A), both the parties have filed their present appeal before this Tribunal.
5. At the outset of hearing, the Id. AR of the assessee submits that the grounds of appeal raised in both the appeals are covered in favour of assessee and against the revenue by various decisions of co-ordinate bench of Tribunal in assessee's own case for Assessment Year 2006-07 to 2013-14 and by the decision of jurisdictional High Court in assessee's family member case. It further submitted that where properties not occupied or rented out, in that case, the ALV has to be determined on the basis of ratable value adopted by Municipal Authorities and not at the market rate. The Id. AR for the assessee filed the copies of the order of order of the Tribunal in assessee's own case. The Id. AR of the assessee relied upon the decisions of Hon'ble Bombay

High Court in PCIT vs. Laxmi Jain in ITA No. 1285 of 2015 and in PCIT vs. Harsh Jain in ITA No. 1438 of 2016 and filed the copies of the decision.

6. On the other hand, the ld. Departmental Representative (DR) for the revenue relied upon the order of Assessing Officer. The ld. DR further submits that ALV of the vacant flats which were let out during the year has to be calculated on the basis of market rate as determined by the Assessing Officer after making proper investigation and making filed enquiries.
7. We have considered the rival submissions of the parties and have gone through the orders of authorities below. We have noted that while passing the assessment order, the Assessing Officer adopted the same ALV as adopted in Assessment Year 2013-14. The ld. CIT(A) granted the relief by following the decision of Tribunal in assessee's own case or by the order of Hon'ble Jurisdictional High Court in assessee's family members case in PCIT Vs Harish Jain and PCIT Vs Laxmi Jain (supra).
8. We have also noted that the co-ordinate bench of Tribunal in assessee's own case (cross appeals) for Assessment Year 2013-14 in ITA No. 6884/Mum/2017 and ITA No. 444/Mum/2018 dated 26.04.2019 after following the decision of jurisdictional High Court in PCIT vs. Laxmi Jain (supra) and in PCIT vs. Harsh Jain (supra) held that ALV of the vacant flats have to be determined on the basis of ratable value for the purpose of income under the head "Income from House Property".

9. We have seen that the facts of the year under consideration are similar as of AY 2013-14, therefore, respectfully following the decision of co-ordinate bench in ITA No. 6884/Mum/2017 and ITA No. 444/Mum/2018 dated 26.04.2019, the assessing officer is directed to compute the ALV by following the order of Tribunal for AY 2013-14.

10. In the result, appeal of assessee is allowed and the appeal of revenue is dismissed.

Order pronounced in the open court on 13 /06/2019.

Sd/-
M. BALAGANESH,
ACCOUNTANT MEMBER

Mumbai, Date: 13 .06.2019

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Copy of the Order forwarded to :

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

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai