

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI**

BEFORE SHRI RAMIT KOCHAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 441/MUM/2018
Assessment Year: 2013-2014**

Harsh A Jain, 82, Maker Chambers III, Nariman Point, Mumbai - 400021 PAN: AFBPJ0984J	Vs.	The Deputy Commissioner of Income Tax, Central Circle 6(4), Air India Building, 19 th Floor, Mumbai - 400021
(Appellant)		(Respondent)

**ITA No. 6837/MUM/2017
Assessment Year: 2013-2014**

The DCIT, Cent. Cir.-6(4), R. No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Harsh Anand Kumar Jain, 82, Maker Chamber III, Nariman Point, Mumbai - 400021 PAN: AFBPJ0984J
(Appellant)		(Respondent)

**ITA No. 551/MUM/2018
Assessment Year: 2014-2015**

Harsh A Jain, 82, Maker Chambers III, Nariman Point, Mumbai - 400021 PAN: AFBPJ0984J	Vs.	The Deputy Commissioner of Income Tax, Central Circle 6(4), Air India Building, 19 th Floor, Mumbai - 400021
(Appellant)		(Respondent)

**ITA No. 434/MUM/2018
Assessment Year: 2014-2015**

The Jt. CIT (OSD), Cent. Cir.- 6(4), R. No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Harsh Anandkumar Jain, 82, Maker Chamber III, Nariman Point, Mumbai - 400021 PAN: AFBPJ0984J
(Appellant)		(Respondent)

Assessee by : Shri Lata Pasulekar (AR)

Revenue by : Shri Manoj Kumar Singh (DR)

Date of Hearing: 16/05/2019
Date of Pronouncement: 28/06/2019

ORDER

PER BENCH

These are the cross appeals filed by the assessee and the revenue against the orders dated 14.09.2017 and 23.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai (for short 'the CIT (A)'), pertaining to the assessment years 2013-14 and 2014-15 respectively, whereby the Ld. CIT (A) has partly allowed the appeals filed by the assessee against the assessment orders passed u/s 143(3) of the Income Tax Act, 1961 (for short the 'Act'). Since these appeals pertain to the same assessee, the same were clubbed, heard together and are being disposed of by this consolidated order.

ITA No. 441/MUM/2018 (Assessment Year: 2013-14)

Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring income of Rs. 26,14,820/-. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. In response to the said notices, the authorized representative of the assessee appeared before the AO and filed the details called for. It was noticed that the assessee, apart from the other sources of income, had offered annual value (ALV) of a vacant flat at Rs. 12,00,429/- as per the municipal ratable value. Accordingly, the AO asked the assessee to explain as to why the ALV in respect of the said flat should not be taken u/s 23 of the Act. The assessee contended that where the annual value is fixed by the municipality it should be acceptable except in cases where the actual rent received is higher.

The AO rejecting the contention of the assessee accessed the annual value of the property as per the provisions of 23(1)(a) of the Act determined the annual value of the property at Rs. 1,43,81,700/- after making addition of Rs. 1,33,26,514/-. The assessee challenged the impugned order before the Ld. CIT (A) inter alia on the ground that the AO has wrongly applied section 23(1)(a) for determining the annual ALV of the vacant flat. The Ld. CIT (A) after hearing the assessee partly allowed this ground of appeal by following the orders of the then CIT (A) passed in assessee's own case for the earlier years and determined the value at Rs. 14,97,414/- and enhancement by 1/9th of the said value in terms of the said orders. Still aggrieved, the assessee is in appeal before the Tribunal.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective ground:-

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 at Rs. 16,63,793/- instead of Rs. 12,00,429/- offered by the appellant based on the municipal rateable 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 rateable 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 ad facts and is passed without application of mind and in violation of the principles of the natural justice.*

3. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly confirmed the ALV of premises owned by the assessee at Central Garden Complex, Chunabhatti, Mumbai at Rs. 16,63,793/- instead of Rs. 12,00,429 offered by the appellant based on the municipal ratable value

ignoring the fact that the premises remained vacant throughout the previous year and the assessee had rightly adopted the municipal ratable value for the purpose of determining the income under the head 'income from house property'. The Ld. counsel further pointed out that the ITAT has decided the identical issue in favour of the assessee in assessee own case ITA No. 2710/Mum/2013 for the AY 2009-10 and the said decision was upheld by the Hon'ble High Court in revenue's appeal ITA No. 1438 of 2016 vide order dated 05.02.2019. The Ld. counsel further pointed out that since the identical issue has been decided in favour of the assessee by the Hon'ble High Court, the impugned order passed by the Ld. CIT (A) is liable to be set aside.

4. On the other hand, the Ld. Departmental Representative (DR) fairly admitted the fact that the identical issue raised by the assessee has been decided in favour of the assessee by the ITAT and the decision of the ITAT has further been affirmed by the Hon'ble High Court. However, the Ld. DR supported the findings of the AO and further pointed out that the department has challenged the impugned order passed by the Ld. CIT (A).

5. We have heard the rival submissions and also perused the material on record in the light contentions of the parties, including the cases referred and relied upon by the assessee. The only grievance of the assessee is that the Ld. CIT (A) has wrongly sustained the ALV amounting to Rs. 16,63,793/- instead of Rs. 12,00,429/- offered by the assessee. As pointed out by the Ld. counsel, the coordinate Bench has decided the identical issue in favour of the assessee in assessee's own appeal ITA No. 2710/Mum/2013 for the AY 2009-10 (supra). The findings of the coordinate Bench read as under:-

"3. Ground Nos.2 & 3 are relating to the estimation of Annual Letting Value (ALV) of the vacant flats at Central Garden Complex. The assessee has claimed that the value of the same be taken as Rs.Nil. Whereas the Ld. CIT(A) has confirmed the action of the AO in assessing the ALV of the said flats at Rs. Rs.1,71,94,824/- and thereafter assessment of the income under the head "Income from house property" at Rs. 1,20,36,377/-. The assessee being the

owner of 20 vacant flats as detailed in the assessment order had offered annual letting value of flats as per Municipal Rateable Value at Rs. 96667/-. The AO, however, determined the same as per his estimation of the market value at Rs.1,71,94,824/-. The Ld. CIT(A) confirmed the finding of the AO.

3. At the outset the Ld. AR of the assessee has stated that the facts of this case on the issue under consideration are identical to the facts of the case of father of the assessee Sh. Anand Jain in ITA No.2709/M/2013 for A.Y. 2009- ITA No.2710/M/2013 Harsh Jain 3 10 decided vide common order dated 17.04.2015. We have gone through the order (supra). The issue in the said case was relating to another 20 vacant flats in the same complex namely Central Garden Complex building. The Tribunal while considering the identical issue has made the following observations:

“12. The Ld. A.R. of the assessee has contended that it was not a case where the flats were actually let out and therefore there was not any suspicion, doubt or dispute as to the rate of rent which might have been actually received by the assessee. He has contended that in this case, the flats were admittedly vacant and therefore the deemed ALV was rightly offered as per the municipal rateable value. He has relied upon the decision of the co-ordinate bench of the Tribunal in the case of Shri Anil Kashiprasad Murarka vs. ACIT” ITA No.5514/M/2012 decided on 17.12.2014. We have gone through the said decision. The relevant finding of the Tribunal has been given in para 5 of the said order, which for the sake of convenience is reproduced as under: “We have considered rival contentions and found that the issue is covered by the decision of the Hon'ble Bombay High Court in the case of Smt. Smitaben N. Ambani Vs. CWT, reported in (2010) 323 ITR 104 (Born), wherein it was held that the basis on which a self-occupied property is valued under rule 1BB of the Wealth-tax Rules and municipal rateable value is arrived at under the municipal law is the same i.e. "a reasonable amount of rent that can be expected by the owner from a hypothetical tenant". That while arriving at such reasonable amount of rent that can be expected by the owner from a hypothetical tenant, the amount of statutory deduction, if any, permissible under the local municipal law must be added to the rateable value. Thus, the Hon'ble High Court held that while applying the provisions of

rule 1BB for valuing the self-occupied property, municipal rateable value with addition of statutory deductions, if any, may be adopted instead of standard rent, for arriving at the gross maintainable rent. Respectfully following the order of jurisdictional High Court, matter is restored back to the file of AO with a direction to re-compute the ALV in terms of above decision of Hon'ble Bombay High Court.”

13. The case of the assessee is squarely covered by the above decision of the Tribunal and respectfully following the same, it is accordingly directed that the ALV ITA No.2710/M/2013 Harsh Jain 4 be computed as per the municipal rateable value as deemed income from house property. Ground Nos.2, 3 & 4 are decided accordingly.”

5. The facts of the case in hand are squarely covered by the above decision of the Tribunal. We accordingly direct that the ALV be computed as per the municipal rateable value as deemed income from house property.”

6. We further notice that the department challenged the findings of the Tribunal by preferring appeal ITA No. 1438 of 2016 before the Hon'ble High Court, contending that the Tribunal has wrongly held that the ratable value of the property as determined by the municipal authorities is the yardstick, ignoring that section 23(1)(a) mandates annual value to be deemed as the sum for which the property will might reasonably be expected to let from year to year. The Hon'ble High Court did not entertain the said issue holding as under:-

“8. Question (b) related to the additions made by the Assessing Officer by reversing the rateable value of the property owned by the assessee which was vacant. While complying the taxability of deemed rental income in terms of Sections 22 and 23 of the Act, the Assessing Officer discarded the rateable value fixed by the Municipal Corporation for assessing the tax on such properties and substituted the same with market rate as prevailing in the area, as estimated by him after collecting data with respect of the same. The Tribunal, however, deleted addition on the ground that in case of vacant property, the tax on rental income in terms of Section

23 of the Act can be calculated only on the basis of rateable value assessed by the Municipal Corporation.

9 *We find that this view of the Tribunal is supported by decision of this Court by order dated 16th April, 2018 passed in Income Tax Appeal No. 1285 of 2015. The Court while dismissing the Revenue's appeal, relied on the decision of this Court in case of Smt. Smitaben N. Ambani v/s Commissioner of Wealth Tax reported in 323 ITR 104. In such decision, this Court was considering a similar question in context of valuing the self occupied property, for the purpose of wealth tax of the assessee. The provisions for assessing the value of the property were similar to those applicable in case of assessee's annual ratable value in terms of Section 23 of the Act. This question is, therefore, not entertained."*

7. Since, the issue in question has been decided in favour of the assessee and the Hon'ble High Court has not interfered with the findings of the Tribunal rendered in the assessee's own case for the AY 2009-10 discussed above and since the order of the Ld. CIT (A) is not in accordance with the decision of the coordinate Bench, we hold that the impugned order passed by the Ld. CIT (A) is bad in law, therefore, liable to be set aside. Hence, respectfully following the decision of the coordinate Bench affirmed by the Hon'ble High Court, we allow the appeal of the assessee and set aside the impugned order passed by the Ld. CIT (A).

ITA No. 6837/MUM/2017 (Assessment Year: 2013-14)

The Revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective grounds:-

1. *"In the facts and circumstances of the case and in law, the learned 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(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?

2. *In the facts and circumstances of the case and in law, the learned 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 IT Act, 1961?*
3. *In the facts and circumstances of the case and in law, the learned 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 IT Act, 1961?*

Since, we have decided the sole issue raised by the assessee pertaining to the Annual Letting Value of the property in question in favour of the assessee by following the decision of the coordinate Bench rendered in the assessee's own case and further affirmed by the Hon'ble High Court, the appeal filed by the revenue has become infructuous. Hence, we dismiss the appeal filed by the revenue.

ITA No. 551/MUM/2018 (Assessment Year: 2014-15)

Since, the facts and the issues involved in the present case are identical to the facts and the issues involved in the assessee's appeal pertaining to the assessment year 2013-14 aforesaid, except the amount of annual letting value confirmed by the Ld. CIT (A), we do not consider it necessary to reproduce the facts of the case in this case. In present case, the AO determined the ALV of the vacant flat of the assessee as per the provisions of section 23(1)(a) of the Act. In the first appeal, the Ld. CIT (A) confirmed the ALV to Rs. 17,46,983/- instead of Rs. 12,00,429/- offered by the appellant based on the municipal ratable value of the said premises.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective ground:-

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 at Rs. 17,46,983/- instead of Rs. 12,00,429/- offered by the appellant based on the municipal rateable 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 rateable 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 ad facts and is passed without application of mind and in violation of the principles of the natural justice.*

3. Since, we have allowed the appeal of the assessee and decided the identical issue in favour of the assessee in the assessee’s own case for the assessment year 2012-13 by following the decision of the coordinate Bench rendered in the assessee’s own case for the AY 2009-10 confirmed by the Hon’ble High Court, consistent with our findings, we allow the present appeal of the assessee for the AY 2014-15 for the same reasons.

ITA No. 434/MUM/2018 (Assessment Year: 2014-15)

4. The Revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the identical grounds which read as under:-

1. *“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. 2,02,38,307/- and adopting the one offered by the Assessee at Rs. 12,00,429/- 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 properties might be expected to be let from year to year?

2. *Whether on the facts and 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(1)(a) of the I T Act, 1961?*
3. *Whether on the facts and circumstances of the case and in law, the learned 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 I T Act, 1961?"*

5. The facts and the issue raised by the revenue in the present case are identical except the amount of ALV sustained by the Ld. CIT(A). Since, we have dismissed the revenue's appeal for the assessment year 2013-14, consistent with our findings, we dismiss the appeal of the revenue for the assessment year under consideration for the same reasons.

In the result, appeals filed by the assessee for assessment years 2013-14 and 2014-15 are allowed and the cross appeals filed by the revenue are dismissed.

Order pronounced in the open court on 28th June, 2019.

Sd/-
(RAMIT KOCHR)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/06/2019

Alindra PS

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**