

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

&

SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.4631/Mum/2017

(Assessment Year :2013-14)

ACIT-16(1) Room NO.439 Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	Anees Ahmed Bazmee 1502, Deep Tower CHS New Link Road, Oshiwara Andheri (West) Mumbai-400 053
		PAN/GIR No.AAKPB2402P
Appellant)	..	Respondent)

Assessee by	Mani Jain
Revenue by	N.Padmanaban
Date of Hearing	23/07/2019
Date of Pronouncement	09/08/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai, dated 15/03/2017 and it pertains to the Assessment Year 2013-14. The revenue has raised the following grounds of appeal:-

1. *On the facts and circumstances of the case and in law, whether the Ld, CIT(A)-was justified in holding that the assessee had used the Lonavala House Property for professional activity of script-writing and therefore, the said property was out of the purview of section 23 of the Income-tax Act, 1961, without appreciating that the assessee had never claimed the said property as business asset and had not claimed any depreciation in his books of accounts.*

2. *On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in restricting the addition of deemed rental income in respect of house properties at SVP Nagar and at Millat Nagar to 4% of*

book value from 8% of book value as adopted by the AO without appreciating the judicial precedence to that effect such as the decision of Hon'ble Gujarat High Court in the case of BipinbhaviVadilal family Trust vs CIT(1994) 208 ITR 1005.

3. *Whether on the facts, in the circumstances of the case and as per law, the Ld. , CIT(A) has erred in admitting additional evidence in the form of Valuation Report from the Government Approved Valuer during the course of the appellate proceedings in contravention of the provisions of Rule 45A of the I.T, Rules.*

4. *Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in directing the AO to compute the Long Term Capital gain by accepting the sale consideration received by the assessee and thereby rejecting the value of the property as per Stamp Duty Valuation, thus overlooking the provisions of Section 50C of the Act.*

5. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing officer be restored.*

6. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. The brief facts of the case are that the assessee is an individual and film director/writer by profession, filed his return of income for AY 2013-14 on 31/10/2013, declaring total income of Rs.66,67,140/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 15/03/2016, determining the total income at Rs. 2,62,45,300/-, *inter-alia* making additions towards deemed Annual Let out Value (ALV) of house property at Lonawala, Row House in MHADA, S.V.P.Nagar and residential flat at Millat Nagar @ 8% of value of the property, disallowance of 15% of various expenses debited into the profit and loss account, disallowances of expenditure incurred in relation to

exempt income and additions towards re-computation of capital gain from sale of office premises. The assessee carried the matter in appeal before the CIT(A). The Ld. CIT(A), for the detailed reasons recorded in his appellate order dated 15/03/2017 deleted additions made by the AO towards disallowances of expenditure incurred in relation to exempt income u/s 14A r.w.Rule 8D(2)(ii) of the Rules, 1962, and also deleted additions made by the AO towards re-computation of capital gain from sale of property. However, allowed partial relief, in respect of deemed ALV of house property, by taking 4% of value of the property and also scaled down disallowances of expenditure to 15% of such expenditure. Aggrieved by the order of the CIT(A), the revenue is in appeal before us.

3. The first issue that came up for our consideration from ground no.1 and 2 of revenue appeal is additions towards deemed ALV of three house properties. The AO has computed ALV of house property at Lonawala, residential flat at MHADA, S.V.P. Nagar and residential flat at Millat Nagar, on the ground that the assessee ought to have computed deemed ALV, when he is using more than one house property for his own purpose and accordingly, determined ALV of three house properties, on the basis of value of the property shown in books of accounts and accordingly, estimated ALV at 8%,

the books value of the property. While doing so, the AO has also rejected explanation of the assessee that these properties were used for profession purpose of script writing, story writing and dialogue writing. It is the claim of the assessee that the residential bungalow at Lonawala is being used for own purpose, as it has been used to write motion picture scripts and other activities, therefore, the same cannot be considered as used for residential purpose to determine deemed ALV. As regards flat at MHADA, S.V.P.Nagar, the assessee contended that these properties are situated in a place, where surrounded by slum area and also the properties are not having necessary facilities to let out at higher rates. Therefore, it is incorrect on the part of AO to estimate ALV @8% of the book value of the property.

4. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We noted that the Ld. CIT(A) had recorded categorical findings in its appellate order at Para no. 5.2 to the effect that the assessee is using residential bungalow at Lonawala for the purpose of his professional work as a film director including scripting writer, editor and story writer. We further noted that the Ld. CIT(A) has also recorded categorical findings that the AO has estimated deemed

ALV on suspicious and ceremonious manner without there being any contrary evidences with him to prove that the claim of the assessee that said building was used for his own profession. No doubt, when a property used for his own business or profession necessary depreciation on said property has to be claimed under the Act, but merely for the reason that no depreciation has been claimed on the property, the claim of the assessee cannot be disregarded, when the assessee has demonstrated with evidences that said property has been used in his profession. Therefore, we are of the considered view that there is no error in the findings recorded by the CIT(A), in so far as residential bungalow at Lonawala and accordingly, we are inclined to uphold the findings of Ld.CIT(A) and reject ground taken by the revenue.

5. In so far as, residential flat at MHADA, S.V.P.Nagar and residential Flat at Millat Nagar, the Ld. CIT(A) recorded categorical findings, while estimating 4% on book value of assets to determine deemed ALV, that those two properties are situated in slum area and also not in a posh area to estimate higher rental value. We further noted that the flat at MHADA, S.V.P.Nagar was not having necessary occupation certificate, because of this it cannot be let out for normal rental value. Likewise, the flat at Millat Nagar is

surrounded by slum area and which was purchased at a cost of very nominal amount of Rs. 1,50,000/-. Therefore, he came to the conclusion that adopting 8% on book value of the property is higher rate and accordingly, reduced to 4% of books value. Facts remains unchanged, the revenue fails to bring on record any contrary evidences to counter the findings of facts recorded by the CIT(A). Hence, we are inclined to uphold findings of Ld.CIT(A) and reject ground taken by the revenue.

6. The next issue that came up for our consideration from ground No. 3 and 4 is computation of capital gain from sale of office premises. The facts borne out from records indicates that the assessee has sold office premises for a consideration of Rs. 1,60,00,000/-, whereas the market value of the property for the purpose of stamp duty was fixed at Rs. 2,57,46,500/-. Therefore, the AO called upon the assessee to furnish necessary details including documents to prove date of purchase and sale. In response, the assessee has filed necessary details, including agreement for purchase of property along with cost of acquisition. The Ld. AO after considering relevant submissions, came to the conclusion that the assessee has purchased property by an agreement dated 04/12/2012 for a consideration of Rs. 99,91,547/-,

whereas the same property has been sold by an agreement dated 05/03/2013 for a consideration of Rs. 1,60,00,000/- and paid stamp duty on value of Rs. 2,57,46,500/- . Based on above facts , he came to the conclusion that period of holding of the property is less than 36 months and accordingly, surplus generated from sale of property has been assessed under the head short term capital gain. Similarly, in respect of full value of consideration, the AO has adopted value adopted by the stamp authorities for the purpose of payment of stamp duty and accordingly, taken full value of consideration u/s 50C at Rs. 2,57,46,500/- and after allowing cost of acquisition of Rs. 99,91,547/- determined short term capital gain of Rs. 1,57,54,593/-.

7. The Ld. DR submitted that the Ld. CIT(A) has erred in admitting additional evidences in form of valuation report from the Government approved valuer, during the course of appellate proceedings in contravention of the provision of Rule 46A of the I.T.Rules, 1962. The Ld. DR further submitted that the CIT(A) has erred in directing the AO to compute long term capital gain by accepting sale consideration received by the assessee and thereby rejecting value of the property, as per stamp duty valuation and thus, overlooked the provision of section 50C of the Act,

8. The Ld. AR for the assessee, strongly supporting order of the CIT(A), submitted that the Ld. CIT(A) has rightly appraised facts in light of evidences filed by the assessee, including letter of allotment of the flat to come to the conclusion that the assets sold was a long term capital assets, consequently surplus generated from sale of asset is assessable under the head long term capital gains. The Ld. AR, further submitted that in so far as full value of consideration, the assessee has filed a valuation report from the registered valuer, where the value of the property has been determined at Rs. 1,76,48,000/- The Ld. CIT(A) after considering relevant facts including conditions of the property, came to the conclusion that ready reckoner value fixed for payment of stamp duty cannot be adopted in place of actual sale consideration received for the purpose of full value of consideration.

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. In respect of period of holding of an asset, the Ld.CIT(A) had recorded categorical findings in light of letter of allotment filed by the assessee, as per which, the developer has allotted the property by way of a letter of allotment dated 30/05/2006, and the assessee has made payment of Rs. 20,04,000/- for the financial year 2005-06, we

further noted that when the property has been allotted and also, the assessee has made initial payment, the subsequent payment and registration of property is a follow up action and for the purpose of determination of period of holding, the date of allotment of the property by the developer should be considered. If date of allotment has been considered for the purpose of period of holding, then the property is held for more than 36 months and accordingly, the surplus from sale of property is assessable under the head long term capital gain. This legal proposition is supported by the decision of Hon'ble Bombay High Court in the case of CIT vs Hilla J.B.Wadia (1995) 216 ITR 376 and also the circular issued by the CBDT 672 of 16/12/1993, where it was clarified that for the purpose of date of acquisition of property, the date of allotment of property needs to be considered. The Ld. CIT(A) after considering relevant facts has rightly held that property in question was a long term capital asset and surplus from sale of such property is assessable under the head long term capital gain.

10. As regards, adoption of full value of consideration as per ready reckoner value, we find that the Ld. CIT(A) has recorded categorical finding in light of valuation report filed by the assessee and also contention of the assessee that the property in question was not

having proper electrical installation and water supply and also the municipal authorities have not issued valuation certificate and accordingly, ready reckoner value cannot be considered as full value of consideration. We further noted that the Ld.CIT(A) has held that the AO has adopted ready reckoner value without appreciating various facts about the property and therefore, by following the decision of Hon'ble High Court of Karnataka in the case of Jyoti Prakash vs Addl.CIT (2016) 240 taxmann.com 741 (Karnataka), came to the conclusion that there is no reason to adopt ready reckoner value, as against sale consideration received by the assessee, for the purpose of computation long term capital gain. We further noted that the Ld.CIT(A) had further held that AO has mechanically applied ready reckoner value without any corroborative material in his position to suggest that the value determined by the stamp duty authority is in fact correct market value of the property in the given facts and circumstances. On the other hand, the assessee has filed necessary evidences to prove that the correct market value of the property is at Rs. 1,60,00,000/-, which was further supported by valuation report issued by the registered valuer . Although, there is a difference in sale consideration received by the assessee and value determined by the registered valuer, but search difference is less than 5% of the

property and hence, the Ld. CIT(A) held that no reason to replace ready reckoner value in place of sale consideration actually received for sale of property. Fact remains unchanged. The revenue fails to bring on record any evidences to counter findings of facts recorded by the Ld. CIT(A). Hence, we are inclined to uphold the findings of Ld. CIT(A) and reject ground taken by the revenue.

11. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 09/08/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 09 /08/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai