



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.7453/Mum./2018  
(Assessment Year :2011-12)

Sanjay Brahmdev Kapoor  
52, Ajanta Apartments  
75, Colaba Main Road  
Colaba, Mumbai 400 005  
PAN – AABPK9082D

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-17(3), Mumbai

..... Respondent

Assessee by : Ms. Renu Kapoor  
Revenue by : Shri R. Bhoopathi

Date of Hearing – 06.01.2020

Date of Order – 15.01.2020

**ORDER**

**PER SAKTIJIT DEY, J.M.**

This is an appeal by the assessee against order dated 22<sup>nd</sup> November 2018, passed by the learned Commissioner of Income Tax (Appeals)-28, Mumbai, for the assessment year 2011-12.

2. The grounds raised by the assessee are on the issue of addition made on account of enhancement of annual letting value (ALV) of the house property.

3. Brief facts are, the assessee is a resident individual. For the assessment year under consideration, the assessee filed his return of income on 27<sup>th</sup> September 2011, declaring total income of ₹ 75,73,399. In the course of assessment proceedings, the Assessing Officer noticed that the assessee has offered an amount of ₹ 18,455, under the head "*Income From House Property*" and has shown rent received of ₹ 30,000. He, therefore, called upon the assessee to furnish the details of the property let out and rent received. In response, the assessee vide letter dated 12<sup>th</sup> December 2013, furnished the details and submitted that he along with his father and brother is a co-owner of a flat at New Friends Colony, New Delhi. It was submitted that a part of the flat was given on rent to a partnership firm, wherein, his father is a partner. It was submitted, from the rental income received from letting out the flat the assessee has received an amount of ₹ 30,000, per annum, whereas, his brother has also received an amount of ₹ 30,000, per annum. It was further submitted, the annual value of the said property has been fixed by the Municipal Authority at ₹ 79,380. He, therefore, submitted that the ALV determined by the Municipal Authority could be adopted for determining the income. The Assessing Officer, however, did not find merit in the submissions of the assessee referring to the rent received from some other properties in the locality, he determined the ALV of

the property at ₹ 1,35,540, per month and after reducing municipal tax and statutory deduction under section 24 of the Act, he determined the income from house property at ₹ 11,35,991, and added back to the income of the assessee. The assessee challenged the aforesaid addition before the first appellate authority.

4. On the basis of submissions made by the assessee, learned Commissioner (Appeals) sought response of the Assessing Officer. After considering the report of the Assessing Officer and materials on record, learned Commissioner (Appeals) rejected assessee's claim that the annual value determined by the Municipal Authorities should be adopted as the ALV. At the same time, he also observed that the ALV determined by the Assessing Officer at ₹ 1,35,540 per month is on the higher side. Therefore, he estimated the fair rent at ₹ 1,00,000, per month. Accepting assessee's claim that only 1/3<sup>rd</sup> share should be considered for addition, learned Commissioner (Appeals) directed the Assessing Officer to add 1/3<sup>rd</sup> of assessee's share by determining the ALV on the fair rent value of ₹ 1,00,000 per month.

5. The learned Authorised Representative submitted, various submissions made by the assessee were not considered either by the Assessing Officer or learned Commissioner (Appeals). She submitted, the flat owned by the assessee and other co-owners is used for

residence by assessee's father. She submitted, only a small part of the flat was used by the partnership firm, wherein, assessee's father is a partner and for that the assessee and his brother have offered rental income of ₹ 30,000 each. She submitted, the comparable cases referred to by the Assessing Officer are commercial properties rented out to the banks, hence, their ALV cannot be compared to the ALV of assessee's property. She submitted, the aforesaid aspect has not at all being considered by the first appellate authority. Referring to the ALV determined by the Municipal Authorities, a copy of which is at Page-3 of the paper book, the learned Authorised Representative submitted, there is no ambiguity or discrepancy in the value determined by the Municipal Authorities. Therefore, discarding the value determined by the Municipal Authorities, learned Commissioner (Appeals) should not have determined the ALV purely on estimate basis. Thus, she submitted, assessee's claim should be accepted.

6. The learned Departmental Representative, strongly relying upon the observations of the learned Commissioner (Appeals) submitted, the Assessing Officer has determined the ALV by bringing on record comparable cases from the same locality where properties were let out at a much higher rent. Therefore, learned CIT(A) is more than reasonable in reducing the ALV determined by the Assessing Officer.

7. We have considered rival submissions and perused the material on record. The fact that the assessee is a co-owner of a residential flat, a part of which is given out on rent, has not been disputed. It is evident, the assessee had shown the annual value of the property at ₹ 30,000 per annum and has supported it through a valuation made by the Municipal Authority who determined the ALV at ₹ 79,380 per annum. Undisputedly, the valuation by the Municipal Authorities was furnished before the Assessing Officer as well as learned Commissioner (Appeals). It is apparent on record, neither the Assessing Officer nor learned Commissioner (Appeals) has accepted the valuation made by the Municipal Authorities. On the contrary, the Assessing Officer has referred to the ALV of some other properties rented out in the nearby locality. Objecting to this, the contention of the assessee is, the comparable cases of property rented out as considered by the Assessing Officer are commercial properties rented out to Banks. Whereas, in assessee's case it is a residential house and a part of which is rented out. On a perusal of the material on record, we find that neither the Assessing Officer nor learned Commissioner (Appeals) has made any enquiry with the Municipal Authorities or any other Government agencies to find out the market rent of assessee's property. Without making any such enquiry, the valuation of Municipal Authorities furnished by the assessee could not have been rejected,

that too, without considering assessee's claim that the comparable cases referred to by the Assessing Officer are not at all comparable since they are commercial properties. Moreover, the determination of ALV @ ₹ 1,00,000, per month by learned Commissioner (Appeals) is without any basis and is on a pure estimation. Therefore, when the assessee had furnished a valuation from the Municipal Authorities determining the ALV at ₹ 79,380, the same could not have been rejected without valid and cogent reasoning. In view of the aforesaid, we are inclined to accept assessee's claim that ALV of the property has to be determined at ₹ 79,380, as per the valuation of Municipal Authorities and thereafter assessee's share shall be determined for addition under the head income from house property. Accordingly, we set aside the impugned order of the learned Commissioner (Appeals) and direct the Assessing Officer to determine the income from house property keeping in view our observations herein above.

8. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 15.01.2020

**Sd/-**  
**RAJESH KUMAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 15.01.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai