

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 476/Bang/2018
Assessment year : 2014-15

Shri Lokanath, No.39, II Cross, KHB Colony, Tavarakere Main Road, DRC Post, Bengaluru – 560 029. PAN : AADPL 0306 R	Vs.	Income Tax Officer, Ward - 7(2)(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. V. Ravishankar, Advocate
Revenue by	:	Shri. Manjeet Singh, Addl. CIT (DR)(ITAT), Bengaluru

Date of hearing	:	02.01.2020
Date of Pronouncement	:	07.02.2020

ORDER

Per A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-7, Bengaluru, dated 26.10.2017, for Assessment Year 2014-15. The assessee has raised as many as 6 grounds of appeal but the only grievance of the assessee is regarding disallowance of assessee’s claim for 100% vacancy allowance under section 23(1)(c) of the Income Tax Act, 1961.

2. In the course of hearing, learned AR of the assessee placed reliance on the Tribunal order rendered in the case of Shri Koramangala Munireddy Chandra Vs. DCIT in ITA No.1274/Bang/2017 dated 28.09.2017. He

submitted a copy of this Tribunal order and drawn our attention to para Nos.4 and 5 of this Tribunal order and pointed out that in that case, it is noted by the Tribunal that as per the finding of learned CIT(A) in that case, the property in that case remained vacant since 2011 after previous tenant had vacated the premises and the assessment year involved in that case was Assessment Year 2012-13. It was submitted that in the present case, the submissions of the assessee are reproduced by learned CIT(A) in para 5 of his order as per which, this property was originally let out for several years and entire income was declared as income from house property for many years but in the present previous relevant to Assessment Year 2014-15, the property was vacant through out the year. He submitted that hence, the facts in the present case are identical and therefore, this Tribunal order is applicable and the assessee should be allowed vacancy allowance as prescribed under section 23(1)(c) of the Income Tax Act, 1961.

3. As against this, learned DR of the Revenue supported the orders of authorities below.

4. We have considered the rival submissions. First of all, we reproduce para No.5 from the order of CIT(A) to take note of the facts in the present case. This para reads as under:-

5. The appellant has submitted that:

1. The learned Assessing Officer has made an addition of Rs.16,27,920/- towards notional rent in respect of a Property situated at No. 139/1, Hosur Main Road, Koramangala, Bangalore. This Property was originally let out for several years and rental income was declared from this property for many years. During the previous year, relevant to Assessment Year 2014-2015, the Property was vacant throughout the year. The Appellant had claimed vacancy allowance for the whole year as per section 23 (1)(c) of the Act. Accordingly, NIL Income was declared from this property. During the course of assessment proceedings the Assessing Officer (AO) had asked as to why notional rental income should not be taxed on this property. The appellant submitted written explanation dated 22/12/2016 before the

AO explaining the provisions of the law as well as the relevant case laws as to why notional rental income could not be determined when a house property was vacant for the whole year. Please see copy of the letter dated 22/12/2016 enclosed for your kind perusal Annexure 2. In the Assessment Order, the AO stated that the provisions of Section 23(1) (a) squarely applied to the case of the assessee and proceeded to add 'Notional Rent' of Rs.16,27,920/- in respect of the property that was vacant for the whole year.

2. During the previous year, relevant to Assessment year 2014-15, the property was vacant throughout the year. The Appellant had claimed vacancy allowance for the whole year as per section 23(1)(c) of the Act. Accordingly, NIL Income was declared from this property.

3. It has held in the case of *M/s. Premsudha Exports Private Limited vs. Assistant Commissioner of Income Tax, Central Circle* in ITA No. 6277/MUM/2006, and others that 'vacancy Allowance' is allowable as per Section 23(1)(c) when a property that was let out was vacant during the year either for the whole year or part of the year. These decisions have not been considered by the Assessing Officer. The Assessing Officer has not even discussed provisions of Section 23(1)(c) that was raised by the appellant during the course of the assessment proceedings.

4. The Andhra Pradesh High Court in the case of *Vivek Jain Vs. Assistant Commissioner of Income Tax*, in 337 ITR 74 (AP) has clearly stated, the condition for allowing vacancy allowance u/s. 23(1)(c) of the Act in paragraph 11, 12, 13 & 14 of the decision.

5. It is explained in this decision that where a Property is let out for a few years and then falls vacant for the whole year, the vacancy allowance is allowable for that Property for the whole year as per section 23(1)(c) of the Act & Income from such Property for that year would be "NIL".

6. The addition made by the AO towards 'notional income' is against the provisions of the law.

7. The Income Tax Act, prescribes that 'notional income' should be assessed under section 23(4) only when the condition prescribed in section 23(2) regarding 'self occupied property' is violated. i.e. where the owner has more than one property held for self occupation, then only one such property will be treated as 'Nil' income and for the other, notional rent will be taxed.

8. Sections 23(2), 23(3) and 23(4) are applicable only to one or more 'self occupied properties' and these sub sections never apply to a let out property, which is governed by Section 23(1) only.

9. As per Section 23, in the case of a let out property, the Annual Letting Value (ALV) is one of the following three alternatives:

a) Where the property is let and the rental value is not known, then the income from the property is the 'the sum for which the property might reasonably be expected to let from year to year'; i.e. ALV.

b) Where the property is let and the actual rent receivable or received is more than the ALV, then the amount received or receivable is the taxable ALV.

c) Where the property is let and was vacant during the Whole or any part of the year and owing to such vacancy, the actual rent received or receivable by the owner in respect thereof is Less than the ALV, then the taxable income is the amount so received.

11. In the Appellant's case, the rent received during the year is NIL which is less than the Annual Letting value and hence only 'NIL' income can be taxed in respect of that property that was let and vacant for the whole year as per section 23(1)(c) of the Act.

12. The above legal position is clearly explained in Board's Circular No. 14 of 2001, which substituted a new section 23 for the old section wef 1/4/2002. The circular explains the circumstances and the procedure for recognizing 'vacancy allowance' and how it is inbuilt into the determination of 'Annual Letting Value' (ALV) of a property that was vacant for the whole or part of the year. The deduction for vacancy allowance under the new section does not require a separate deduction for the same but determines the ALV by taking into account the vacancy period for which rent was not received. In other words, if the rent received during the year is less than the ALV due to the vacancy, then the actual rent received is treated as the ALV for the year. By this vacancy allowance for the year is automatically recognized.

13. In view of the clear position under the Law explained above, it is submitted that the AO has no authority to estimate a 'notional rent' in respect of a 'let out property'.

5. Now we reproduce para Nos.4 and 5 from the Tribunal order cited by learned AR of the assessee. These paras read as under:-

“4. It was submitted by ld. AR of assessee that in both these appeals, one issue is common i.e. an addition made by the AO of Rs. 36.30 lakhs in each case as notional rent which is raised as per ground no. 4 in ITA No. 1274/Bang/2017 and as per ground no. 3 in ITA No. 1275/Bang/2017. Regarding this issue, he submitted that he drawn our attention to Para no. 7.3 of order of CIT(A) where it is noted by CIT(A) that the property has remained vacant since 2011 after the previous tenant has vacated the premises. He submitted that from these facts, it is clear that the property in question in both the cases is a let-out property. He drawn our attention to the provisions of section 23(1)(c) of the I.T. Act, 1961 and submitted that as per this section, if the property is let out and was vacant during the whole or any part of the previous year and owing to such vacancy, actual rent received or receivable is less than the same referred to clause a of section 23(1) of the I.T. Act, 1961 then the amount so received / receivable is taxable. He submitted under these facts, the addition made by the AO and upheld by the CIT(A) should be deleted. Learned DR of the revenue supported the orders of lower authorities.

5. We have considered the rival submissions. In view of the facts of the present case as per which it is admitted position that the property in question is a let out property and in view of the provisions of section 23(1)(c) of the I.T. Act, 1961, we hold that since the rent received is nil because of vacancy, the addition made by the A. O. is not justified and hence deleted.”

6. From the submission of the assessee before CIT(A) as reproduced by him in para 5 of his order which is reproduced by us above, it is seen that this is the case of the assessee that the property in question is a let out house property because the same was let out for several years prior to the present year and there is no such finding of CIT(A) that this assertion of the assessee is not correct. In the case of Shri Koramangala Munireddy Chandra Vs. DCIT (supra), the Tribunal has noted in the relevant paras of the Tribunal order reproduced above that property in question in that case was a let out property prior to the relevant Assessment Year and under these facts, it was held by the

Tribunal in that case that since the property is let out property, the assessee is eligible for deduction under section 23(1)(c) of the Income Tax Act, 1961 and the same was allowed. In the present case, the facts are similar and hence, respectfully following this Tribunal order, we decide this issue in favour of the assessee.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated: 07th February, 2020.
/NS/*

Copy to:

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.