

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
Before Shri Pawan Singh (JM) & Shri S Rifaur Raheman (A.M.)
ITA No. 6752/Mum/2018(Assessment year : 2015-16)

Shri Satyapal J Jain 82, Maker Chambers-III Nariman Point, Mumbai PAN : AABPJ1888Q	vs	The DCIT, Cent.Cir 6(4), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Anuj Kisnadwala AR
Respondent by	Shri V Vinodkumar, SR AR
Date of hearing	21-01-2020
Date of pronouncement	29-01-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal filed by assessee is directed against the order of CIT(A)-54, Mumbai dated 24-08-2018 for the assessment year 2015-16. The following grounds have been raised by the assessee:-

“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 Chunabhathi, Mumbai at Rs. 25,00,928/- instead of Rs. 1,17,937/- offered by the appellant based on the municipal ratable value of the said premises.

2. 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"

3. 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.”

2. Brief facts of the case are that in an assessment framed u/s 143(3) dated 27-12-2017, the assessing officer determined an income of Rs.3,24,77,840/- against declared income of Rs. 2,81,30,670/-. The assessee derives income from house property, capital gains and income from other sources. From the statement of computation of total income the assessing officer noticed that the assessee has shown his flat at Central Garden Complex (Tower No.4) as vacant and has offered annual letting value of the flat as per the municipal rateable value at Rs.18,152/-. When asked to justify and explain the annual letting value offered by the assessee with respect to section 23 of the Act, the assessee explained that the assessee offered the annual letting value as per section 23(1)(a) and the value offered was supported by certificate issued by the society. Further, the assessee explained, where the premises is occupied rent free or at a concessional rate, the annual value is the rent which it would fetch, if let from year to year and that where the annual value is fixed by the municipality or corporation, it should be accepted, except where the actual rent received is higher. The definition of annual rent is not different from what is contemplated under the municipal law. The assessee also submitted that in the case of Mrs. Sheila Kashish vs CIT [1981] 131 ITR 435 (SC) and in CIT vs Poddar Bros (P) Ltd [1999] 240 ITR 925 (Cal), the High Court upheld

the Tribunal's decision to limit the annual value to the rateable value fixed under the municipal law. The above explanation of the assessee was not acceptable to the AO. The AO observed as per the provisions of section 23(1)(a), the annual value of the property shall be deemed to be the "the sum for which property might reasonably be expected to let from year to year". The AO further observed that in light of provisions of the Act, the municipal valuation taken as the basis for determining annual value is not binding on the assessing officer to determine the reasonable rent. The AO held that insofar as the taxation of income is concerned, it is governed by the provisions of the Income-tax Act, 1961 and that income-tax Act it has prescribed the methodology of computation of annual value in respect of a property. Accordingly, notional market rent, when the property is not actually let out, has to be taken as the annual value within the meaning of provisions of section 23(1)(a) of the Act for the purpose of levy of tax considering the market forces as prevailing in that area during the relevant period. Accordingly, the assessing officer proceeded to compute the annual value of the property from the details provided by the assessee, such as lease / rent agreements. From that he found that the monthly rent per sq.mtr of the properties was at Rs.472.53/-. On this basis, the AO computed the annual value of the property as under:-

S No	Flat No.	Area	Deemed Monthly let out value	Annual Deemed Let out value
1	102	138.84	65,606	7,87,272
2	103	138.08	62,247	7,82,964
3	104	164.15	77,566	9,30,792
TOTAL				25,00,928/-

3. Further, the assessing officer noticed that the assessee has let out properties No.201 to 204, 301 to 304, 401 to 404 and 501 to 504 from 15-07-2014, where no rental income was shown. Accordingly, the AO computed rental income in respect of the 16 vacant flats from 01-04-2014 to 14-07-2014 at Rs.38,27,250/-. The assessing officer thus computed the income from house property as under:-

Deemed annual letting value	Rs. 63,28,178
Municipal Taxes paid	Rs. 92,005
Standard Deduction @30%	Rs. 18,70,852
Income from house property	Rs.43,65,321/-

4. Since the assessee has shown house property income of Rs.18,152/- and after deducting this amount from the income so computed by him, the assessing officer computed income from house property at Rs.43,47,169 (Rs.43,654,321 – 18,152).

5. Aggrieved by the additions in assessment order, the assessee carried the matter in appeal before CIT(A). The Ld.CIT(A) found that the assessing officer had cogent information in his possession as the assessee has let out 16 flats at the following rents:-

S.No.	Flat No.	Area in Sq.mtr	Monthly rent	Monthly rent per sq.mtr
1	301	125.80	49,500	393.4817

2	302	153.18	66,000	430.8656
3	303	152.40	66,000	433.0709
4	304	153.25	66,000	430.6688
5	501	125.80	49,500	393.4817
6	502	153.18	66,000	430.8656
7	503	152.40	66,000	433.0709
8	504	153.25	66,000	430.6688
9	401	125.80	49,500	393.4817
10	402	153.18	66,000	430.6698
11	403	152.40	66,000	433.0709
12	404	153.25	66,000	430.6688
13	201	125.80	75,000	596.1844
14	202	145.58	92,000	631.9549
15	203	144.81	92,000	635.3152
16	204	145.40	92,000	632.7373

6. The Ld.CIT(A) upheld the action of the assessing officer in adopting the annual letting value. With regard to the property income in respect of 16 flats for the period from 01-04-2014 to 14-07-2014, the Ld.CIT(A) found that the assessing officer has worked out notional rent for those flats and made addition of Rs.38,77,2590. According to the Ld.CIT(A), the assessee would be entitled for vacancy allowance for the period for which the property was vacant. In this case the property was given on rent from 15-07-2014 and the assessee has shown the actual rent received. Therefore, the determination of house property income for three and half months of the year during which the property was not let out, was not warranted. Thus, he directed the AO to delete addition of Rs.38,27,250/- made on this account. Further aggrieved, the assessee is in appeal before the Tribunal.
7. We have heard the submissions of the learned authorised representative (ld AR) for the assessee and the learned departmental representative

(DR) for the revenue and perused the record. The main grievance of the assessee in the grounds of appeal before us is that the learned CIT(A) erred in confirming the Annual Letting Value (ALV) of the premises owned by the assessee at Central Garden Complex Chunabhatti, Mumbai at Rs. 25,00,928/- instead of Rs. 1,17,937/- offered by the assessee based on the municipal ratable value of the said premises and that the aforesaid premises were vacant throughout the previous year and accordingly the assessee had rightly adopted the municipal ratable value for the purpose of determining income under the head "Income from House Property". The Ld.AR of the assessee submitted that the issue is squarely covered in favour of the assessee by the order of the Tribunal for assessment year 2014-15 in assessee's own case in ITA Nos.436/Mum/2018 & ITA No.549/Mum/2018, where the Tribunal, following the order of co-ordinate bench for AY 2013-14 in ITA No.6884/Mum/2017 and ITA No.444/Mum/2018 order dated 26-04-2019 in assessee's own case directed the assessing officer to compute the ALV by following the order of the Tribunal for AY 2013-14. The Ld.AR of the assessee, therefore, submitted that the matter may be restored to the file of the AO with similar directions as in the earlier assessment years.

8. The Ld. DR, on the other hand, relied upon the orders of the authorities below.
9. We have considered the rival submissions and perused the material available on record. We note that the co-ordinate bench of this Tribunal in assessee's own case for assessment year 2014-15 in ITA No.6884/Mum/2017 and ITA No.444/Mum/2018, vide order dated 26-04-2019 has considered identical issue and by following another order of the Tribunal for AY 2013-14, has remitted the issue back to the assessing officer to compute the annual letting value of the properties in question as per the directions of the Tribunal for assessment year 2013-14 by the following observations:-

“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. 6m/Mum£!01~ 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. Consistent with the earlier decision of the Tribunal, we direct the assessing officer to compute the annual letting value of the properties in question, as per the directions of the Tribunal for assessment year 2013-14. In the result, appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 29-01-2020.

Sd/-

Sd/-

(S.Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 29th January, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order
Asstt. Registrar, ITAT, Mumbai