

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1309/Mum/2018
(Assessment Year: 2011-12)**

| | | |
|--|-----|---|
| Redwood IT Services P.Ltd. D-211, Ghatkopar Industrial Estate, Behind R. City Mall, Off.L.B.S.Marg, Ghatkopar(W) Mumbai-400 086 | Vs. | ITO-10(2)(2) Room No.455, 4 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020 |
| PAN/GIR No.AADCR7296K | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|-----------------------------|
| Revenue by | Ms. Jyoti Lakshmi Nayak, DR |
| Assessee by | Shri Rakesh Mohan, AR |
| Date of Hearing | 05/12/2019 |
| Date of Pronouncement | 28/02/2020 |

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-22, Mumbai, dated 08/11/2017 and it pertains to Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal:-

Ground No. 1:

On the facts and in the circumstances of the case and in law, the amount of Rs 33,75,000/- received by the appellant in terms of the option agreement is a capital receipt and is hence not chargeable to tax.

The above legal ground was not taken before the Ld. CIT(A), and in view of all the facts available on record, the same is being raised before this Hon'ble Tribunal.

Ground No.2:

2.1 Without prejudice to the above. On the facts and in the circumstances of the case and in law, the learned CIT(A) have erred in holding that the amount of Rs. 33,75,000/- received as per the option agreement is chargeable to tax under the head 'Income from house property' vis-a-vis under the head 'Income from Other sources' as claimed by the appellant.

2.2 On the facts and in the circumstances of the case and in law, the learned CIT(A) has failed to understand the option agreement was neither a rental agreement nor a lease agreement, but an agreement to lease out premises at a future point of time, constraining the appellant to lease out to any third party and consequently, the consideration received is chargeable to tax under the head "Income from other sources" till the date, the property is actually leased out consequent to the agreement.

2.3 On the facts and in the circumstances of the case and in law, it is prayed that the consideration on account of the option agreement be directed to be taxed under head "Income from other sources" and expenses incurred by the appellant in earning such allowed,

Ground NO.3:

Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Annual Lettable Value (ALV) should be restricted to Municipal Valuation or in the alternative, The amount received by the appellant, particularly in the facts of the appellants case where neither the physical possession of the property was granted nor there were any takers of the property on lease despite the efforts made by the appellant,

3. The brief facts of the case are that the assessee company had purchased an immovable property from G-Corp Property Pvt.Ltd. at Level No.4 in G-Corp Tech Park, Thane. The assessee has divided said property into 4 units. The Unit No.3 & 4 has been let out to M/s First Data (India) Pvt. Ltd., as per rent agreement dated 15/04/2010. The Unit No.1 & 2 are vacant, but the assessee has entered into an option agreement with M/s First Data (India) Pvt.Ltd. for a period of 9 months with a covenant that the property shall not be let out to a third party, without the consent of the tenant for a period of 9 months, for which a compensation of Rs.33,75,000/- has been fixed and said compensation has been offered to tax under the head

income from other sources. During the course of assessment proceedings, the Ld. AO noticed that the assessee has declared loss of Rs.10,06,170/- under the head income from other sources. The Ld. AO, further noted that the assessee has shown compensation income of Rs.33,75,000/- and as against, which it has claimed expenses of Rs.43,81,170/- to shown net loss of Rs.10,06,170/-. Therefore, he called upon the assessee to produce the details of income from other sources and also, details of expenses along with copy of agreements/documents, if any etc., In response, the assessee vide letter dated 26/12/2013 stated that it has received compensation of Rs.33,75,000/- from M/s First data (India) Pvt.Ltd., in pursuance of an option agreement, as per which the assessee has given an option to M/s First Data (India) Pvt.Ltd. for lease out unit No.1 & 2 and such option has been given for a period of 9 months, for which a compensation of Rs.33,75,000/- has been paid. The assessee further submitted that since, the compensation received from M/s. First Data (India) Pvt.Ltd. is neither for let out of property nor in the nature of rent and hence, the same has been considered as income assessable under the head income from other sources. The Ld. AO was not convinced with the arguments of the assessee and after taking note of necessary facts, including option agreement, came to the conclusion that unit no.1 & 2 were not let out and accordingly, applied the provisions of section 23(1)(b) of the I.T.Act, 1961 and considered as deemed let out and accordingly, by applying the provisions of section 22 of the Act, determined ALV of the properties by taking note of prevailing market rent and accordingly, determined income assessable under the head income from house property at Rs.76,64,328/-, after allowing standard deduction @30% on total ALV of the property.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions on the issue along with various evidences. The assessee has also furnished a copy of option agreement entered into with M/s First Data (India) Pvt.Ltd. to give an option to the party to let out unit No.1 and 2. The additional evidences filed by the assessee in form of option agreement has been forwarded to the Ld. AO for his comments, and the Ld. AO vide his remand report, dated 14/07/2017 has rejected additional evidences filed by the assessee, on the ground that so called option agreement entered into by the parties was neither registered, nor placed before the Ld. AO at the time of assessment proceedings and accordingly, the same cannot be considered as an evidence. He further noted that in absence of any formal agreement regarding unit No.1 and 2, the income from house property has been rightly computed under the provisions of section 22 & 23 of the I.T.Act, 1961. The Ld.CIT (A) after considering relevant submissions of the assessee and also taken note of various facts, including the provisions of section 3(1)(b) of the Maharashtra Rent Control Act, 1999, observed that there is no merit in the contention of the assessee that compensation received from M/s. First Data (India) Pvt.Ltd. was not assessable under the head income from house property, because it is neither in the nature of rent agreement, nor the property has been let out. The Ld.CIT (A), further observed that the second contention of the assessee that if at all, income is assessable under the head income from house property, then the Annual letout Value of the property shall be determined in accordance with Municipal Rateable value, because in order to

determine ALV of the property by applying Municipal Rateable Value, the property should be outside the purview of rent control Act. Since, the property in question comes within the ambit of the Maharashtra Rent control Act, 1999, the Annual letout Value of the property shall be determined in accordance with provisions of section 22 of the I.T.Act, 1961, as per which the annual let out value of the property shall be the value, which, the property might fetch in the market. Since, the Id. AO has taken market value of the property on the basis of unit No.3 & 4 let out by the assessee to M/s. First Data (India) Pvt.Ltd., there is no reason to deviate from the Annual Value determined by the Ld. AO and accordingly, affirmed the findings of the Id. AO and reject ground taken by the assessee.

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in holding that compensation received as per the option agreement is chargeable under the head income from house property vis-a-vis under the head income from other sources as claimed by the assessee, without appreciating the fact that the option agreement was neither a rental agreement, nor a lease agreement, but an agreement to lease out premises at a future point of time, restraining the appellant to lease out the property to any third party and consequently, the consideration received is chargeable to tax under the head income from other sources, till the date, the property is actually leased out. The Ld. AR further submitted that in order to compute ALV of the property, on the basis of provisions of section 22 of the Act, firstly, the property should be let out or it should be deemed to be let out. In case, the property is not let out or not vacant, then the provisions of section 22 cannot be applied to compute ALV of the property. In this case, there is a

covenant on the property by way an option agreement, for a period of 9 months, as per which the assessee has agreed not to let out, the property to any third party without giving an option to the party, for which a compensation of Rs.33,75,000/- has been paid. The said compensation was neither in the nature of rent, nor was it received for let out of the property. Therefore, the same cannot be assessed under the head income from house property. The Ld. AO, as well as the Ld.CIT (A) without considering these facts has simply assessed income under the head income from house property.

6. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT (A) submitted that there is no merit in the arguments of the Ld. AR for the assessee that amount is taxable under the head income from other sources, because the amount received from the party is in pursuance on agreement to let out the property and accordingly, the ALV of the property needs to be computed in accordance with provisions of section 22 & 23 of the I.T.Act, 1961. The Ld. AO, as well as the Ld. CIT (A) has brought out clear facts to the effect that ALV of the property shall be computed in accordance with provisions of section 22 of the Act and hence, there is no reason to interfere with findings of the Ld.CIT (A).

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The provision of section 22 & 23 of the Act, 1961 deals with computation of income from house property. Section 22 of the Act, deals with taxability of rental income from immovable properties. The computation of annual value of the property has been enshrined in section 23 of the Act. Section 22 of the Act, provides for the

mechanism to compute the income chargeable under the head income from house property. As per provisions of section 23, the annual value of any property shall be deemed to be the sum for which, the property might reasonably be expected to let from year to year or where, the property or any part of property is let and the actually rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a) or where, the property is let and was vacant during the year or any part of the previous year and owing to such vacancy, the actual rent received or receivable by the owner in respect thereof is less than sum referred to clause (a), then the amount so received or receivable is chargeable to tax. If a property is let out, then the actual rent received or receivable from the property is deemed to be the annual value of the property. If the property is not let out or vacant throughout the year, then the sum for which the property might reasonably be expect to let from year to year should be considered. What is reasonable rent has not been defined. Therefore, in order to determine the amount of reasonable rent, then the prevailing market rent or the municipal rateable value has to be considered.

8. In this legal background, if you examine facts of present case, one has to see whether the AO was right in determining ALV of the property in accordance with provisions of section 23, when the property in question was let out and was under a covenant during the year under consideration. As per the claim of the assessee, the property was not let out, but was under covenant by an option agreement between the parties, as per which the assessee has given an option to the existing tenant of unit No.3 & 4 to take on rent unit No.1 and 2 within a period of 9 months on mutually agreed rate

of rent. Further, as per the said agreement, option was valid for a period of 9 months, for which the assessee has received a compensation of Rs.33, 75,000/-. In these facts, we need to examine, whether a particular receipt is taxable as rental income assessable under the head income from house property or compensation assessable under the head income from other sources. As we noted in earlier part of this paragraph, if any income is assessable under the head income from house property, it should be out of property let out or deemed to be let out for the relevant period. In this case, the property is neither let out nor vacant. Therefore, the receipt by way of an option agreement cannot be assessed under the head income from house property. Further, once said receipt is not assessable under the head income from house property, and then obviously, it has to be considered under any other head of income, including income from other sources. In this case, the assessee has offered compensation received in pursuance of option agreement under the head from other sources. As we noted in earlier paragraph, the amount received by the assessee is in the nature of a compensation for not letting out property to any third party for a specified period. The meaning thereby is that by entering into an option agreement, the assessee had renounced its right to market unit No.1 and 2 for a period of 9 months from the date of the option agreement and, because of covenant by way of an option agreement with the party and hence, any amount received in pursuance of said agreement is in the nature of compensation which is assessable under the head income from other sources as rightly considered by the assessee. Therefore, we are of the considered view that the Ld. AO, as well as the Id.CIT (A) was incorrect in coming to the conclusion that the property is deemed to be let out

and income from said property needs to be computed u/s 22 of the I.T.Act, 1961. Hence, we direct the Ld. AO to delete additions made towards income from house property as against, the income offered by the assessee under the head income from other sources.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 28/02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 28/02/2020
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