

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI R.C. SHARMA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

ITA No. 6717/MUM/2018 (A.Y. 2015-16)

Shri Harsh A Jain 82, Maker Chambers III Nariman Point, Mumbai PAN: AFBPJ0984J	v.	DCIT, Central Circle – 6(4) 19 th Floor, Air India Building Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Assessee by	:	Shri Lata Parulekar
Department by	:	Shri K.C. Selvamani
Date of Hearing	:	17.12.2019
Date of Pronouncement	:	26.02.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.08.2018 for the A.Y. 2015-16.

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

"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 Chunabhatti, Mumbai at Rs. 18,34,332/- instead of Rs. 11,18,053 /- offered by the appellant based on the municipal ratable value of the said premises.

2. *The learned CIT(A) failed to appreciate that the rateable value was correctly determined and enhanced by the Appellant*

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.*

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

3. At the outset Ld. Counsel for the assessee submitted that the issue in appeal has been decided in assessee's own case for the A.Y. 2010-11 to A.Y. 2012-13 in ITA.No. 441 & 551/Mum/2018 dated 28.06.2019, ITA.No. 3891 & 3892/Mum/2017 dated 31.10.2018 and ITA.No. 4242/Mum/2014 dated 06.07.2018 by the Tribunal. Copies of the orders were placed on record.

4. It is further submitted that the Hon'ble Bombay High Court in Income Tax Appeal No. 1438 of 2016 dated 05.02.2019 dismissed the appeal of the revenue and not entertained the question whether the Tribunal was right in holding that rateable value of the properties as determined by the Municipal Authorities is the yardstick ignoring that section 23(1)(a) mandates annual value to be deemed as the sum for which the property might reasonably be expected to let from year to year.

5. Ld. DR fairly submitted the issue has been decided in assessee favour.

6. We have heard rival submissions and perused the orders of the authorities below. We find that identical issue has been decided by the Tribunal in assessee's own case for the immediately preceding assessment years. i.e. A.Y. 2013-14 & 2014-15 by order dated 28.06.2019 in ITA.Nos. 441 & 551/Mum/2018 wherein the Tribunal observed as under: -

"5. We have heard the rival submissions and also perused the material on record in the light contentions of the parties, including the cases referred and relied upon by the assessee. The only grievance of the assessee is that the Ld. CIT (A) has wrongly sustained the ALV amounting to Rs. 16,63,793/- instead of Rs. 12,00,429/- offered by the assessee. As pointed out by the Ld. counsel, the coordinate Bench has decided the identical issue in favour of the assessee in assessee's own appeal ITA No. 2710/Mum/2013 for the AY 2009-10 (supra). The findings of the coordinate Bench read as under:-

"3. Ground Nos.2 & 3 are relating to the estimation of Annual Letting Value (ALV) of the vacant flats at Central Garden Complex. The assessee has claimed that the value of the same be taken as Rs.Nil. Whereas the Ld. CIT(A) has confirmed the action of the AO in assessing the ALV of the said flats at Rs. Rs.1,71,94,824/- and thereafter assessment of the income under the head "Income from house property" at Rs. 1,20,36,377/-. The assessee being the owner of 20 vacant flats as detailed in the assessment order had offered annual letting value of flats as per Municipal Rateable Value at Rs. 96667/-. The AO, however, determined the same as per his estimation of the market value at Rs.1,71,94,824/-. The Ld. CIT(A) confirmed the finding of the AO.

3. At the outset the Ld. AR of the assessee has stated that the facts of this case on the issue under consideration are identical to the facts of the case of father of the assessee Sh. Anand jain in ITA No.2709/M/2013 for A.Y. 2009- ITA No.2710/M/2013 Harsh Jain 3 10 decided vide common order dated 17.04.2015. We have gone through the order (supra). The issue in the said case was relating to another 20 vacant flats in the same complex namely Central Garden Complex building. The Tribunal while considering the identical issue has made the following observations:

“12. The Ld. A.R. of the assessee has contended that it was not a case where the flats were actually let out and therefore there was not any suspicion, doubt or dispute as to the rate of rent which might have been actually received by the assessee. He has contended that in this case, the flats were admittedly vacant and therefore the deemed ALV was rightly offered as per the municipal rateable value. He has relied upon the decision of the co-ordinate bench of the Tribunal in the case of Shri Anil Kashiprasad Murarka vs. ACIT” ITA No.5514/M/2012 decided on 17.12.2014. We have gone through the said decision. The relevant finding of the Tribunal has been given in para 5 of the said order, which for the sake of convenience is reproduced as under: “We have considered rival contentions and found that the issue is covered by the decision of the Hon'ble Bombay High Court in the case of Smt. Smitaben N. Ambani Vs. CWT, reported in (2010) 323 ITR 104 (Born), wherein it was held that the basis on which a self-occupied property is valued under rule 1BB of the Wealth-tax Rules and municipal rateable value is arrived at under the municipal law is the same i.e. "a reasonable amount of rent that can be expected by the owner from a hypothetical tenant". That while arriving at such reasonable amount of rent that can be expected by the owner from a hypothetical tenant, the amount of statutory deduction, if any, permissible under the local municipal law must be added to the rateable value. Thus, the Hon'ble High Court held that while applying the provisions of rule 1BB for valuing the self-occupied property, municipal rateable value with addition of statutory deductions, if any, may be adopted instead of standard rent, for arriving at the gross maintainable rent. Respectfully following the order of jurisdictional High Court, matter is restored back to the file of AO with a direction to re-compute the ALV in terms of above decision of Hon'ble Bombay High Court.”

13. The case of the assessee is squarely covered by the above decision of the Tribunal and respectfully following the same, it is accordingly directed that the ALV ITA No.2710/M/2013 Harsh Jain 4 be computed as per the municipal rateable value as deemed income from house property. Ground Nos.2, 3 & 4 are decided accordingly.”

5. The facts of the case in hand are squarely covered by the above decision of the Tribunal. We accordingly direct that the ALV be computed as per the municipal rateable value as deemed income from house property.”

6. We further notice that the department challenged the findings of the Tribunal by preferring appeal ITA No. 1438 of 2016 before the Hon'ble High Court, contending that the Tribunal has wrongly held that the rateable value of the property as determined by the municipal authorities is the yardstick, ignoring that section 23(1)(a) mandates annual value to be deemed as the sum for which the property will might reasonably be expected to let from year to year. The Hon'ble High Court did not entertain the said issue holding as under: -

"8. Question (b) related to the additions made by the Assessing Officer by reversing the rateable value of the property owned by the assessee which was vacant. While complying the taxability of deemed rental income in terms of Sections 22 and 23 of the Act, the Assessing Officer discarded the rateable value fixed by the Municipal Corporation for assessing the tax on such properties and substituted the same with market rate as prevailing in the area, as estimated by him after collecting data with respect of the same. The Tribunal, however, deleted addition on the ground that in case of vacant property, the tax on rental income in terms of Section 23 of the Act can be calculated only on the basis of rateable value assessed by the Municipal Corporation.

9 We find that this view of the Tribunal is supported by decision of this Court by order dated 16th April, 2018 passed in Income Tax Appeal No. 1285 of 2015. The Court while dismissing the Revenue's appeal, relied on the decision of this Court in case of Smt. Smitaben N. Ambani v/s Commissioner of Wealth Tax reported in 323 ITR 104. In such decision, this Court was considering a similar question in context of valuing the self-occupied property, for the purpose of wealth tax of the assessee. The provisions for assessing the value of the property were similar to those applicable in case of assessee's annual rateable value in terms of Section 23 of the Act. This question is, therefore, not entertained."

7. Since, the issue in question has been decided in favour of the assessee and the Hon'ble High Court has not interfered with the findings of the Tribunal rendered in the assessee's own case for the AY 2009-10 discussed above and since the order of the Ld. CIT (A) is not in accordance with the decision of the coordinate Bench, we hold that the impugned order passed by the Ld. CIT (A) is bad in law, therefore, liable to be set aside. Hence, respectfully following the decision of the coordinate Bench affirmed by the Hon'ble High Court, we allow the appeal of the assessee and set aside the impugned order passed by the Ld. CIT (A)."

7. Facts being identical, respectfully following said decision we allow the appeal of the assessee.

8. In the result appeal of the assessee is allowed.

Order pronounced in the open court on the 26th February, 2020

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER
Mumbai / Dated 26/02/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum