



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.5571/Mum./2018
(Assessment Year : 2012-13)

Shri Anit J. Asthana
Building no.4, A-Wing
Kalpataru Estate
161, 16th Floor, Poonam Nagar
Andheri (W), Mumbai 400 093
PAN – ABQPA7807G

..... Appellant

v/s

Income Tax Officer
Ward-24(1)(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Ms. R. Kavitha

Date of Hearing – 19.02.2020

Date of Order – 13.03.2020

ORDER

This appeal by the assessee is against order dated 16th April 2018, passed by the learned Commissioner of Income Tax (Appeals)-36, Mumbai, pertaining to the assessment year 2012-13.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. There is no application seeking adjournment either. Even, on the last date of hearing on 14th November 2019, no one appeared on behalf of the assessee as, a result of which the appeal got adjourned. Thus, from the aforesaid facts it is clear that the assessee

is neither diligent nor interested in pursuing the present appeal. Accordingly, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Ground no.1, is general in nature, hence, does not require adjudication.

4. In ground no.2, the assessee has challenged the addition of ₹ 6,00,000, under the head Income From House Property.

5. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 28th September 2012, declaring total income of ₹ 2,28,860. During the assessment proceedings, the Assessing Officer while verifying the computation of income filed by the assessee noticed that the assessee has rented out a flat from which it has shown a monthly rent of ₹ 10,000. Further, he noticed that the assessee has taken security deposit of ₹ 15,00,000, from the tenant. Observing that it is a general practice to take one year's rent as advance towards security deposit, he called upon the assessee to explain as to why the rent of the property should not be fixed at ₹ 60,000, and differential amount of ₹ 50,000, should not be added to the house property income. Though, the assessee objected to such notional addition, however, the

Assessing Officer rejecting the submissions of the assessee estimated the monthly rent at ₹ 60,000, and accordingly added back an amount of ₹ 6,00,000, to the income of the assessee. Of-course, on the income so computed, the Assessing Officer allowed statutory deduction under section 24 of the Act, which resulted in net house property income of ₹ 66,451. The assessee challenged the addition before the first appellate authority. However, learned Commissioner (Appeals) also sustained the addition made by the Assessing Officer.

6. I have heard learned Departmental Representative and perused the material on record. As could be seen from the facts discussed in the assessment order, the assessee has rented out a flat for a monthly rent of ₹ 10,000. However, noticing that the assessee has received a security deposit of ₹ 15,00,000, the Assessing Officer formed an opinion that the standard rent of the property is more than the amount declared by the assessee. It is further noticed from the assessment order, while estimating the monthly rent of ₹ 60,000, the Assessing Officer has referred to certain discrete enquiry made by him which revealed that the prevailing market rent varies from ₹ 45,000 to ₹ 60,000. Further, he has also referred to enquiry made with some website. However, what is the nature of discrete enquiry and whether the material obtained on the basis of such enquiry was confronted to the assessee is not forthcoming from the assessment. It is now fairly

well settled that the Assessing Officer cannot estimate the rent, but has to determine the annual value as per Municipal rateable value. As it appears, the Assessing Officer without bringing material on record to demonstrate that the monthly rent estimated by him at ₹ 60,000, is as per Municipal rate has made the addition. Therefore, such addition made purely on estimate basis cannot be sustained. Further, before enhancing the rental income, the Assessing Officer must not only bring material on record to show that the market rent is more than the rental income shown by the assessee, but he also has to confront such adverse material to the assessee for eliciting an effective response. In the facts of the present case, it appears that the Assessing Officer has not made proper enquiry or even if such enquiry was made to ascertain the market rent, it was not confronted to the assessee. In view of the aforesaid, I am inclined to restore the issue to the file of the Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee. Ground no.2, raised by the assessee is allowed for statistical purposes.

7. In grounds no.3 and 4, the assessee has challenged the addition of ₹ 48,352, sustained by learned Commissioner (Appeals) on account of mismatch in interest income offered by the assessee and as appearing in the Annual Information Report (AIR).

8. Brief facts are, during the assessment proceedings the Assessing Officer noticed that while the assessee has shown interest income of ₹ 63,333, as per AIR information the assessee has received interest income of ₹ 1,11,685. When called upon to reconcile the difference, the assessee submitted that during the year, the assessee has received an amount of ₹ 24,46,237, on account of fixed deposit with Oriental Bank of Commerce. The assessee also furnished year-wise details of interest accruing on such fixed deposit and offered for taxation. It was submitted that while the assessee has shown the interest income on accrual basis, as per the AIR information it appears to be on receipt basis. Not being convinced with the explanation of the assessee, the Assessing Officer added back the differential amount of ₹ 63,333, to the income of the assessee. While considering the issue in appeal, learned Commissioner (Appeals) found that the Assessing Officer has wrongly made addition of ₹ 63,333, as against differential amount of ₹ 48,352. Accordingly, he directed the Assessing Officer to reduce the addition to ₹ 48,352.

9. I have heard the learned Departmental Representative and perused the material on record. Keeping in view the nature of dispute and the relevant facts, I am of the opinion that the assessee deserves an opportunity to reconcile the difference with supporting evidences. Accordingly, I restore the issue to the Assessing Officer for fresh

adjudication after providing reasonable opportunity of hearing to the assessee. Grounds no.3 and 4, raised by the assessee are allowed for statistical purposes.

10. In the result, appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 13.03.2020

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 13.03.2020

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