IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI

BEFORE SHRI M. BALAGANESH (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No.1573/MUM/2019
(Assessment Year: 2009-10)

Smt. Rina Jain 82, Maker Chambers III Nariman Point, Mumbai – 400 021	Vs.	The DCIT, CC-6(4) Air India Building, 19th Floor, Nariman Point, Mumbai – 400 021

PAN No. AABPJ1883F

(Assessee) **(Revenue)**

ITA No.836/MUM/2019
(Assessment Year: 2009-10)

ACIT-17(3), Room No. 137, 1st Floor, Aayakar Bhavan, M.K. Marg, Mumbai – 400 020	Vs.	Smt. Rina Virendra Jain 82, Maker Chambers-III Nariman Point, Mumbai – 400 021

PAN No. AABPJ1883F

(Revenue) **(Assessee)**

Assessee by : Shri Anuj Kisnadwala, A.R
Revenue by : Shri Bharat Andhale, D.R

Date of Hearing : 24/02/2021
Date of pronouncement : 03/03/2021

ORDER

PER RAVISH SOOD, J.M:

The present cross-appeals are directed against the order passed by the CIT(A)-54, Mumbai, dated 30.11.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 254 of the Income Tax Act, 1961 (for short 'Act'), dated 29.07.2016 for A.Y.

2009-10. We shall first take up the appeal of the assessee wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. In the facts and circumstances of the case and in law, the learned CIT(A). erred in directing the Assessing officer to re-compute Annual Letting Value (ALV) of the premises owned by the appellant at Central Garden Complex Chunabhatti, Mumbai by increasing the municipal rateable value by 5 % every year instead of Rs.1,55,318/- offered by the appellant based on the municipal rateable 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 iii 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."

2. Briefly stated, the assessee had filed her return of income for A.Y. 2009-10 on 22.09.2009, declaring a total income of Rs.45,15,180/-. Subsequently, the assessment under Sec. 143(3) of the Act was framed on 29.10.2010, determining her income at Rs.2,30,54,700/-. In the course of the assessment proceedings it was observed by the A.O that the assessee had offered 'Annual Lettable Value' (for short 'ALV') of the flats owned by her at Central Garden Complex, S.M. Road, Chunabhatti (East), Mumbai as per the municipal rateable value at Rs.1,39,785/-. On being queried, the assessee justified the ALV of the aforesaid property and submitted that where the annual value was fixed by the municipality or corporation, the same should be accepted except for in those cases where the actual rent received was found to be higher. However, the A.O did not find favour with the aforesaid claim of the assessee. Accordingly, the A.O deputed the inspector of his charge to conduct a market enquiry. As per the report furnished by the inspector, the A.O determined the ALV of the flats at Rs.2,51,97,600/- (i.e by adopting a rental rate of Rs.42/- per sq. ft.). After allowing deduction under Sec. 24 i.e @ 30% of the ALV, the A.O made an addition of Rs.1,76,38,320/- under the head "Income from house property" in the hands of the assessee. Aggrieved, the assessee assailed the aforesaid assessment order dated 29.10.2010 before the CIT(A). Observing, that the rateable value as determined by the municipal authorities was rightly adopted by the assessee as a yardstick, the CIT(A) vide his order dated 29.12.2010 allowed his appeal. Aggrieved, the revenue carried the matter in appeal before the Tribunal. The Tribunal after necessary deliberations 'set aside' the order of the CIT(A) and remitted the case back to the file

of the A.O, with a direction to examine the issue afresh and conduct complete and proper verification/investigation for arriving at the annual lettable value of the property in question. During the course of the 'set aside' proceedings, the A.O observed that in the course of the original assessment proceedings the inspector attached to the circle had conducted field inquiry and had filed a report dated 23.12.2010 on the basis of which the rental rate of Rs.42/- per sq. ft. (Rs. 446/- per sp. mtr.) was determined by his predecessor for arriving at the ALV of the property in question. Also, it was observed by the A.O that in the course of the assessment proceedings for A.Y. 2012-13 the inspector attached to the circle had conducted field inquiries and had filed a report on the basis of which the rental rate of Rs.45/- per sq. ft. was determined by the A.O while framing the assessment for the said year. It was further observed by the A.O that as per the information w.r.t the prevailing property rental rates as was available in the website of www.magicbricks.com, the average rate for the different properties in the specified area for financial year 2012-13 was Rs.50/- per sq. ft. It was observed by the A.O that the aforesaid information was further supported from the details gathered from the website www.99acres.com, as per which the rental accommodation in the area in question was available at Rs.52/- per sq. ft. during the financial year 2013-14. In the backdrop of the aforesaid facts, the A.O held a conviction that the ALV taken @ Rs.42/- per sq. ft. by his predecessor while framing the original assessment under Sec. 143(3), dated 29.12.2010 was in order. Accordingly, the A.O endorsing the view adopted by his predecessor determined the ALV of the property under Sec. 23(1)(a) for the year in question i.e A.Y. 2009-10 at Rs.2,51,97,600/-. After allowing deduction under Sec. 24 i.e 30% of ALV, the A.O made an addition of Rs.1,75,29,598/- to the returned income of the assessee. As such, backed by his aforesaid observations, the A.O vide his order passed under Sec. 143(3) r.w.s 254, dated 29.07.2016 assessed the income of the assessee at Rs.2,20,54,700/-.

3. Aggrieved, the assessee assailed the aforesaid assessment order before the CIT(A). Observing, that the issue as regards determination of the ALV was recurring one in the assessee's own case and had been looked into by him in A.Y. 2013-14 and A.Y 2014-15, the CIT(A) going by the view that was taken by him while disposing off the assessee's appeal for A.Y. 2013-14 directed the A.O to compute the ALV in the backdrop of the working that was therein adopted by him. Accordingly, the CIT(A) directed the A.O to compute the ALV after considering the municipal rateable value as was determined by his predecessor in the

assessee's own case for A.Y. 2010-11 at Rs.17,03,369/-, which was thereafter increased by 5% year after year and also further increased by 1/9th of the said value. Accordingly, the A.O was directed by the CIT(A) to adopt the aforesaid methodology and do a backward working to arrive at the ALV of the property in question for A.Y. 2009-10.

4. Aggrieved, both the assessee and the revenue have carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the issue involved in the present appeal was squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2010-11, ITA No. 6751/Mum/2018, dated 05.02.2020. It was submitted by the ld. A.R that the Tribunal in the first round of appeal had vide its orders for A.Y. 2009-10 and A.Y. 2010-11 had restored the assessee's appeals for both years to the file of the A.O for fresh adjudication. It was submitted by the ld. A.R that in the second round of appeal in the assessee's case for A.Y. 2010-11, the Tribunal not finding favour with the view taken by the CIT(A) who had directed the A.O to recompute the ALV by taking municipal rateable value as the basis and increase it by 5% every year had vacated the same and directed that the ALV of the vacant flats be determined on the basis of the municipal rateable value. In order to buttress his aforesaid claim the ld. A.R took us through the order passed by the Tribunal in the assessee's own case for A.Y. 2010-11, ITA No.6751/Mum/2018 (copy placed on record). Further, the ld. A.R also took us through the order passed by the Tribunal in the case of the assessee for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14, ITA No. 3893 & 3844/Mum/2017 and ITA Nos. 445/Mum/2018, dated 22.03.2019, (copies placed on record). It was, thus, submitted by the ld. A.R that now when the issue involved in the present appeal was squarely covered by the aforesaid order of the Tribunal therefore, the claim of the assessee for determining the ALV of the property in question as per the municipal rateable value did merit acceptance.

5. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. However, it was fairly admitted by the ld. D.R that the issue involved in the captioned appeal was squarely covered by the aforesaid orders of the Tribunal in the assessee's own case.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial

pronouncements that have been pressed into service by them to drive home their respective contentions. As observed by us hereinabove it is the second round of appeal before us. The solitary issue involved in the captioned appeal hinges around the issue as regards the determination of the ALV of the property owned by the assessee viz. Flats at Central Garden Complex, S.M. Road, Chunabhatti (East), Mumbai, which were lying vacant during the year in question. As observed by us hereinabove, the A.O in the course of the 'set aside' proceedings had endorsed the view that was taken by this predecessor in the course of the original assessment proceedings and determined the ALV of the property in question by adopting the rental rate of Rs.42/- per sq. ft. that was backed by the field report dated 23.12.2010 of the inspector attached with his predecessor. As noticed by us hereinabove, the Tribunal had in the first round of appeal restored the matter to the file of the A.O, for the reason, that the A.O had merely acted upon the inspectors report without carrying out any further inquiry, and thus had remanded the matter to his file for the purpose of making a proper inquiry. On a perusal of the order of the CIT(A), we find that the appellate authority observing that as the A.O in the course of the 'set aside' proceedings had despite specific directions by the Tribunal not carried out any inquiries thus, did not find favour with the mere endorsement by the A.O of the ALV that was earlier determined by his predecessor in the course of the original assessment that was framed under Sec. 143(3), dated 29.09.2010. But then, the CIT(A) relying on the view that was taken by him while disposing off the appeal in the assessee's own case for A.Y. 2013-14 and A.Y. 2014-15 directed the A.O to adopt the municipal rateable value for A.Y. 2010-11 i.e Rs.17,03,369/- as a basis, and therein determine the ALV after making an addition of 5% year after year and also a further increase of 1/9th to the said value to arrive at the ALV for the year in question. As brought to our notice by the ld. A.R, the Tribunal while disposing off the appeal in the assessee's own case for A.Y. 2010-11 which also was restored by the Tribunal for fresh adjudication had not found favour with the same view that was therein taken by the CIT(A), who had on similar lines directed the A.O to recompute the ALV by taking the municipal rateable value as the base and increase it by 5% every year, and had vacated the same. At the same time, the Tribunal while disposing off the aforesaid appeal for A.Y. 2010-11, ITA No. 6751/Mum/2018, dated 05.02.2020, relying on its earlier order for A.Y. 2011-12, A.Y. 2012-13, A.Y. 2013-14 and A.Y. 2014-15, had therein directed the A.O to determine the ALV of the vacant flats as per the municipal rateable value. In fact, it was observed by the Tribunal that in

case if the ALV determined by the assessee was as per the municipal rateable value then, the same should be accepted. For the sake of clarity, we herein cull out the observations of the Tribunal in its order for A.Y. 2010-11, ITA No. 6751/Mum/2018, dated 05.02.2020, which reads as under:

> "8. We have considered rival submissions and perused the material on record. Undisputed facts are, the assessee is the owner of certain premises in a housing complex which remained vacant during the year under consideration. However, in the return of income filed for the impugned assessment year, the assessee offered income from such house property by determining the ALV under section 23 of the Act as per MRV. Whereas, the Assessing Officer has determined the ALV on the basis of rent received by the assessee in the assessment year 2015–16. However, learned Commissioner (Appeals) has directed the Assessing Officer to re–compute the ALV by taking the MRV as the base and increase it by 5% every year. It is evident, learned Commissioner (Appeals) while giving such direction has followed the order passed by him in case of Smt. Laxmi Satyapal Jain, one of the family members. However, while deciding the issue in case of the aforesaid family member, the Tribunal in the order referred to above has disagreed with the aforesaid decision of learned Commissioner (Appeals) and directed the Assessing Officer to determine the ALV as per MRV. In fact, in assessee's own case in assessment years 2011– 12, 2012–13 and 2013–14, the Tribunal while deciding identical issue in ITA no.3893/Mum./2017 & Ors., dated 22nd March 2019, has held that determination of ALV on ad–hoc basis by making 5% increase over the MRV is not acceptable. Further, the Tribunal has directed that the ALV of the vacant flat has to be determined on the basis of MRV. The same view was expressed by the Tribunal while deciding assessee's own case for the assessment year 2014–15, vide ITA no. 547/Mum./2018, dated 31st July 2019. Facts being identical, respectfully following the aforesaid decisions of the Tribunal in assessee' own case as well as in case of other family members, we direct the Assessing Officer to determine the ALV of the vacant flat as per MRV. In case, it is found that ALV determined by the assessee is as per MRV, the same should be accepted. Grounds are allowed."

As the facts and the issue involved in the assessee's present appeal for A.Y. 2009-10 remains the same as were there before the Tribunal in A.Y. 2010-11, we, thus, respectfully follow the same. Accordingly, we herein direct the A.O to determine the ALV of the property in question as per municipal rateable value. As per the same terms, in case if the ALV of the property in question determined by the assessee is as per the municipal rateable value, the same shall be accepted.

7. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

ITA No.836/MUM/2019
(Assessment Year: 2009-10)

8. We shall now advert to the appeal filed by the revenue. The revenue has assailed the impugned order on the following grounds of appeal before us:

"1. Whether on the facts and circumstances of the case and in law, the C.I.T. (A) was justified in holding that the rateable value as determined by the municipal authorities shall be yard stick and the same can be ignored if it does not reflect the true annual letting value.?

2. Whether on the facts and circumstances of the case and in law, the CIT(A), was justified in holding that the determination of the annual letting value of house property of Rs.2,51,97,6007- is not correct ?

3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

9. As observed by us hereinabove, the grievance of the revenue is w.r.t the observation of the CIT(A) as regards the determination of the ALV of the property in question. As we have directed the A.O to adopt the municipal rateable value of the property in question for computing its ALV for the year in question therefore, the aforesaid grievance of the revenue is rendered as merely academic in nature. Accordingly, in terms of our observations recorded while disposing off the issue in question in the assessee's appeal i.e ITA No. 1573/Mum/2019, the appeal filed by the revenue is dismissed.

10. The appeal of the assessee in ITA No.1573/Mum/2019 is allowed and the appeal of the revenue in ITA No. 836/Mum/2019 is dismissed.

Order pronounced in the open court on 03.03.2021

Sd/-	Sd/-
M. Balaganesh	Ravish Sood
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date: 03.03.2021
PS: Rohit

Copy of the Order forwarded to :
1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "D" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai