

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 3305/मुं/2019 (नि.व. 2009-10)
ITA NO.3305/MUM/2019 (A.Y.2009-10)

Bhiryani Dadlani Sales Agencies PVT. Ltd,
Shop Nos.10-11, Kenwood Apartment CHS Ltd.,
Dr.Ambedkar Road, Bandra (West),
Mumbai 400 050
PAN: AABCB- 7448-M

..... अपीलार्थी /Appellant

बनाम Vs.

ITO- Ward 12(1)(3)
Room No.145A, 1st Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vimal Punmiya

प्रतिवादी द्वारा/Respondent by : Ms. Smita Verma

सुनवाई की तिथि/ Date of hearing : 06/05/2021

घोषणा की तिथि/ Date of pronouncement : 16/07/2021

आदेश/ ORDER

This appeal by the assessee are directed against the orders of Commissioner of Income Tax (Appeals) -20, Mumbai [in short 'the CIT(A)'] for the assessment year 2009-10.

2. Shri Vimal Punmiya appearing on behalf of the assessee submitted at the outset that the facts in the present appeal are identical to the facts raised by the assessee in ITA No.3303/Mum/2019 and ITA No.3304/Mum/2019 for assessment years 2007-08 and 2008-09, respectively. The aforesaid appeals have been recently

decided by the Tribunal vide order dated 25/03/2021. The Id. Authorized Representative for the assessee further submitted that the assessee in the grounds of appeal has assailed the findings of CIT(A) in confirming the addition made by Assessing Officer in respect of rental income from two shops . The Assessing Officer determined the Annual Letting Value of shops without considering Municipal Valuation or the prevalent rent in the area. The facts in the impugned assessment year are identical to assessment year 2007-08 and 2008-09, therefore, the present appeal may also be decided in accordance with the order of Tribunal in assessee's own case in immediate preceding assessment years.

3. Ms.Smita Verma representing the Department vehemently defended the impugned order and prayed for upholding the same.

4. Both sides heard, orders of authorities below examined. I find that the facts germane to the present appeal are identical to the facts in appeal by the assessee for assessment year 2007-08 and 2008-09(supra). While adjudicating identical issue raised in assessment year 2007-08 and 2008-09 the Tribunal held as under:-

"11. The assessee has two shops i.e. shop No.10 and shop No.11 at Kenwood Co-operative Housing Society Ltd., Dr. Ambedkar Road, Bandra (W), Mumbai. The said shops were given to the daughter of the Director of the assessee company for her boutique. No rent was purportedly charged by the assessee for use of these shops. The contention of the assessee is that for the purpose of determining annual letting value under section 23(1)(a), Municipal value should be adopted. The assessee has filed a report from the office of Asst. Collector, Municipal Corporation giving the area of the shops as well as the rental value (at page 17 of the paper book). The relevant extract of the same is reproduced herein below:

<i>Description</i>	<i>Rent(Rs.)</i>
<i>Ground floor at Rs.80/-per 10 M2</i>	
<i>Shop No.10, Area 25.60 M2</i>	<i>204.80</i>
<i>Loft Area 10.10 M2 at Rs.40/- per 10 M2</i>	<i>40.40</i>
<i>Shop No.11, Area 22.70 M2</i>	<i>181.60</i>
<i>Mezzanine Floor area 20.06 M2 at Rs.80/- per 10 M2 used as office</i>	<i>160.40</i>

Total Rent Rs.11517.58; Total RV Rs. 110165 NPA

Residential RV Rs.79065 – NPA; Non Residential RV Rs.31100 - NPA

A perusal of the assessment order reveals that the Assessing Officer had deputed Inspector for conducting the enquiry. On the basis of report furnished by the Inspector, the Assessing Officer determined net annual value of the shops as Rs.6,72,000/- with an yearly increase of 5% to 10%. The area of each shop as per assessment order is 800 sq. ft. The area of shops mentioned in the assessment order and in the report of Municipal Corporation is at variance. During the course of hearing the Id. Departmental Representative was asked to produce said report. The Id. Departmental Representative expressed his inability to place the same on record.

In so far as the rental value of the property is concerned, I find that in the case of Park Paper Industries Pvt. Ltd. vs. ITO reported as 25 SOT 406, the Tribunal held that where the property has not been let out, Municipal value would be proper yardstick for determining annual value. The Tribunal after considering the decisions rendered in the case of M.V. Sonawala vs. CIT (supra), Shiela Kaushish vs. CIT (supra) and the decision of Hon'ble Calcutta High Court in the case of Prabhavati Bansali 141 ITR 419 concluded as under:-

*“12. Learned counsel for the assessee relied on several other judicial pronouncements in support of his contention that the Municipal value should be the basis of determining the annual value. We are not making reference to those decisions, since, in our opinion the aforesaid pronouncement of Hon'ble Bombay High Court considers the decisions of Hon'ble Calcutta High Court which in turn has considered the law laid down by the Hon'ble Apex Court on the issue. It is clear from the aforesaid exposition of law that charge under section 22 is not on the market rent; but is on the annual value and in the case of property which is not let out, municipal value would be a proper yardstick for determining the annual value. Decision in the case of Mrs. Sheila Kaushish (supra) mentions standard rent under the Rent Control Act as one of the yardsticks. This does not mean that standard rent alone is to be considered. In the present case, we also notice that the Assessing Officer has not chosen to adopt the standard rent as per the Rent Control Act as yardstick for determining the annual value. We also find from the decision of Hon'ble Calcutta High Court in the case of Smt. Prabhavati Bansali (supra) that standard rent, if it does not exceed the Municipal Valuation alone can be adopted in place of Municipal Valuation. **For all the above reasons, we hold that the Municipal Valuation should be the basis of determining annual value in the present case. Action of the revenue authorities in adopting annual value on the basis of inquiries conducted regarding market rent in the vicinity of the property is not in accordance with law. The Assessing Officer is directed to accept the income from house property on the basis of Municipal Valuation.**”*

[Emphasised now]

12. Taking into consideration entire facts, I deem it appropriate to restore this issue back to the file of Assessing Officer with a direction to determine the exact area of the shops and thereafter, compute annual rental value in line with the decision of Tribunal rendered in the case of Park Paper P. Ltd. (supra). It is further made clear that any municipal taxes actually paid by the assessee qua the shops under question for the

impugned assessment years are to be allowed as deduction. The ground No.1 to 8 of the appeal is allowed for statistical purpose, in the terms aforesaid.”

Since, the facts and the grounds of appeal No.1 to 8 in the impugned assessment year are identical to assessment year 2007-08 and 2008-09, the issue raised in ground No. 1 to 8 of appeal is restored to Assessing Officer with similar directions. The ground No.1 to 8 are allowed for statistical purpose.

5. In ground no.9 of appeal, the assessee has assailed levy of interest under section 234A, 234B & 234C of the Act. Charging of interest under aforesaid sections is mandatory and consequential hence, ground No.9 of the appeal is dismissed.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on Friday, the 16th day of July, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 16/07/2021
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai