

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4684/M/2019
Assessment Year: 2016-17**

M/s. Purushotamdas Goenka, 13, 2 nd Floor, Indu Chamber, 349/358, Samuel Street, Vadgadi, Mumbai- 400003 PAN: ATWPG3750C	Vs.	ACIT, Circle-17(2), Room No.123A, Aayakar Bhavan, Maharashi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shekhar Gupta, A.R.
Revenue by : Ms. Shreekala Pardeshi, D.R.

Date of Hearing : 13.09.2021
Date of Pronouncement : 13.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 31.05.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2016-17.

2. The issue raised in ground No.1 is against the order of Ld. CIT(A) upholding the order of AO thereby confirming the addition of Rs.1,09,924/- in respect of three properties in Amritsar by ignoring the fact that these properties were vacant during the year and annual income should have been computed at nil under section 23(1)(c) of the Act.

3. The facts in brief are that the AO during the course of assessment proceedings noted that assessee had offered rental income in respect of one property situated at Madanmohan Malviya Road, Amritsar, Punjab, however, not offered any income in respect of other three properties namely property at Moonlight Building, at Katra Ahluwalia and Ramkin Joint property at MM Malviya Road, Amritsar. According to the AO the income from the said vacant property should have been offered on the basis of deemed rental value which the property might reasonably be expected to be let out from year to year for the purpose of assessment of income under section 22 of the Act. The assessee submitted before the AO that since these properties were not let out during the year at all and therefore the assessee has claimed vacancy allowance under section 23(1)(c) in respect of these three properties. However, reply of the assessee did not find favour with the AO and he estimated the annual value (ALV) of the three properties and after allowing deduction of municipal taxes and other deduction under section 24 computed the deemed rent at Rs.1,09,924/- as per detailed chart appended on page No.4 of the assessment order and added the same to the income of the assessee.

4. The Ld. CIT(A) also affirmed the order of AO on the ground that assessee has failed to give any independent and corroborative evidences to demonstrate that assessee was entitled to vacancy allowance in terms of section 23(1)(c) of the Act.

5. After hearing both the parties and perusing the material on record, we find that in this case ,three properties owned by the assessee in Amritsar namely Madanmohan Malviya Road, Amritsar, Punjab, property at Moonlight Building, Katra Ahluwalia and Ramkin Joint property at MM Malviya Road, Amritsar remained vacant throughout the year though the same were let out in A.Y. 2015-16. We find that assessee has let out these properties in the subsequent year and accordingly offered the rental income to tax. Now the issue before us is whether the deemed rent of the assessee has to be taken as annual value (ALV) under section 23(1)(a) for the purpose of assessment of income under section 22 of the Act or whether the assessee is entitled to vacancy allowance as provided under section 23(1)(c) of the Act.

6. After carefully perusing the provisions of section 22, section 23(1)(a) and section 23(1)(c) of the Act, we are of the considered view that the ALV of the property, which could not be let out during the year, would be nil in accordance with the provisions of section 23(1)(c) of the Act. The assessee is entitled for the vacancy of allowance in respect of the said properties and armed length price has to be assessed as rent received or receivable and not the amount for which the property is expected to be let out from year to year is to be considered for the purpose of assessing the ALV. In the present case since the properties have not been let out at all during the year, therefore the ALV has to be taken as nil. The case of the assessee is squarely covered by the decision of the co-ordinate Bench of the Tribunal in the case of M/s. Metaoxide Pvt. Ltd. vs. ITO in ITA

No.5773/M/2016 A.Y. 2010-11, the operative part whereof is reproduced as under:

“8. We have heard rival submissions and perused material on record. Undisputedly, the flats in respect of which the Assessing Officer has determined the ALV under section 23(1)(a) remained vacant during the relevant previous year. It is evident, the Assessing Officer on the basis of information obtained under section 133(6) with regard to the rental income received in respect of some other flats in the same area has determined the ALV in terms of section 23(1)(a) of the Act, which provides that the annual value of any property shall be deemed to be the same for which the property might reasonably be expected to let from year to year in other words, the market value of the rent received/receivable. However, the issue which is to be decided is, when the properties were admittedly remained vacant during the relevant previous year, whether the assessee can avail deduction under section 23(1)(c) of the Act of ALV determined under section 23(1)(a) of the Act. For the better clarity, sub-clause (c) of section 23(1) of the Act is reproduced below:-

Annual value how determined.

23. (1) (c) where the property or any part of the property is let and was vacant during the whole 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 the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation.—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.

9. A reading of the said provision reveals that where any part of the property is let out and was vacant during the whole or any part of the previous year and due to such vacancy rent received / receivable by the owner is less than the ALV determined under section 23(1)(a) in that case the actual rent received or receivable is to be treated as the ALV. Therefore, the issue to be considered is, whether the provisions of section 23(1)(c) is applicable or not. In this regard, the submissions of the learned Departmental Representative is, since the properties in dispute were not let out earlier, the assessee will not be eligible to avail the benefit of section 23(1)(c) of the Act. However, we are M/s. Metaoxide Pvt. Ltd.

unable to accept the aforesaid contention of the learned Departmental Representative. The expression—the property or any part of the property is let as used in clause (c) of section 23(1) does not mean that for availing the benefit of the said sub-clause the property must have been let out earlier. The Tribunal, Mumbai

Bench, in *Premudha Exports Pvt. Ltd.* (supra) has also held that the expression—property is let under clause (c) of section 23(1) does not mean that the property should have been actually let in the relevant previous year or during any time prior to the relevant previous year. But it will mean the property is intended to be let out. Similar view was also expressed in case of *Dr. Prabha Singhi*. Therefore, applying the ratio laid down in the decisions referred to above, we hold that the learned Commissioner (Appeals) was justified in directing the Assessing Officer to allow the deduction under section 23(1)(c) to the assessee. Thus, grounds raised in all these appeals are dismissed.

10. In the result, all these appeals are dismissed.”

7. We, therefore, respectfully following the decision of the coordinate Bench of the Tribunal set aside the order of Ld. CIT(A) and direct the AO to delete the addition made of Rs.1,09,924/- in respect of three vacant properties at Amritsar. The ground no 1 is allowed.

8. The issue raised in ground No.2 is against the confirmation of addition of Rs.8,12,790/- as made by the AO in respect of agricultural income declared by the assessee.

9. The facts in brief are that during the course of assessment proceedings the AO noticed that assessee has claimed to have made agricultural sale of Rs.8,12,790/- during the year which was claimed as agricultural income in the return of income. Accordingly, the AO called upon the assessee to furnish the bills and vouchers to substantiate agricultural income with proofs of agricultural land and bills for transportation of sale of agricultural produce etc. However, the assessee could not furnish these evidences and accordingly the AO added the entire agricultural income of Rs.8,12,790/- to the income of the assessee.

10. The Ld. CIT(A) also dismissed the appeal of the assessee on this issue by holding that the 7/12 extracts of the agricultural land as well as proofs of subsidy from government are not the proofs of earning of agricultural income and accordingly justified the addition.

11. After hearing both the parties and perusing the material on record, we find that the assessee is undisputedly owner of agricultural land which was substantiated by producing 7/12 extract of agricultural land as well as documents in respect of subsidy received from government. We also note that the similar income has been declared by the assessee in the year A.Y. 2011-12 also. In the A.Y. 2011-12, the assessee has declared income of Rs.7,63,472/- and the AO has treated the 50% as agricultural income of the assessee and 50% was added to the income of the assessee and taxed accordingly. The Ld. A.R. submitted that in the current year also since the facts and circumstances are substantively same, therefore the 50% of the said agricultural income may be allowed to be treated as agricultural income whereas the rest of 50% may be added to the income of the assessee. We find merit in the contention of the Ld. A.R. after perusing the assessment order for A.Y. 2011-12 wherein the AO has treated the agricultural income on the same basis. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to treat 50% of Rs.8,12,790/- which comes to Rs.4,06,395/- as agricultural income and to treat the remaining 50% of Rs.4,06,395/- as regular taxable income. Accordingly, ground is partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.10.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.