

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH  
MUMBAI**

**BEFORE: SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.1914/Mum/2020  
(Assessment Year :2011-12)**

Shri Vikram Vilas Khatre 7 <sup>th</sup> Floor Anurag Business Center, 410/411, Waman Tukaram Patil Marg Chembur, Mumbai- 400 071	Vs.	Deputy Commissioner of Income Tax, Range 17(2), Mumbai
<b>PAN/GIR No.AADPK5681N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Sandesh Desai
Revenue by	Shri Ashok Koli
<b>Date of Hearing</b>	<b>07/10/2021</b>
<b>Date of Pronouncement</b>	<b>24/11 /2021</b>

**आदेश / O R D E R**

**PER C.N. PRASAD (JM):**

This appeal in ITA No.1914/Mum/2020 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-32, Mumbai in appeal No.CIT(A)-32, Mumbai/10497/2014-15 dated 19/08/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 07/03/2014 by the Id. Dy. Commissioner of Income Tax-17(2)(hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds:-

“1. On the facts and circumstances of the case and in Law the Learned Commissioner of Income Tax (Appeals) erred in disallowing the benefit under section 23(2) of the Act to the residential house purchased and used as one residential unit for self use and thereby erred in disallowing the loss of Rs.150000 from income from self occupied house.

2. On the facts and circumstances of the case and in Law the Learned Commissioner of Income Tax (Appeals) erred in holding that the Appellant did not attend the appeal fixed for hearing on 18.3.2020 and 05.8.2020 without appreciating the fact that there was lockdown and the Appellant did not receive the notice for the hearing and was residing at his parents' house in Pune.

3. On the facts and circumstances of the case and in Law the Learned Commissioner of Income Tax (Appeals) erred in confirming the erroneous action of the assessing officer in arriving at the notional rent of Rs. 1,92,000 per annum.

4. On the facts and circumstances of the case and in Law the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer without appreciating the fact that

**i. Both the flats consist of one residential house**

ii. There is no wall dividing the flats.

iii. The entire house is being used by the Appellant and his family

iv. There is only one kitchen for the entire house.

v. The use of the house as one unit is more important the legal existence of two flats.

vi. The combined flats were booked together during construction with the builder.

5. On the facts and circumstances of the case and in Law the Learned Commissioner of Income Tax (Appeals) erred in not following the decision of jurisdictional High Court in the case of Bombay High Court in CIT- 21 Vs Devdas Naik in ITA No 2483 of 2011 and ITAT Special Bench in the case of Special Bench of Income Tax Appellate Tribunal, Mumbai - Income Tax Officer vs Ms. Sushila M. Jhaveri 292 ITR 1 Mum, (2007) 109 TTJ Mum 299.

6. On the facts and circumstances of the case and in Law the Learned Commissioner of Income Tax (Appeals) erred in passing order without giving final notice for hearing to the Appellant and giving real and sufficient opportunity to defend.”

3. We have heard rival submissions and perused the material available on record. We find that assessee is an individual and had filed his return of income for the A.Y.2011-12 on 21/01/2012 declaring total income of Rs.20,79,861/-. The Id. AO observed that the assessee has shown loss of Rs.1,50,000/- under the head 'income from house property'. He observed

that since assessee had two properties and interest component against loan taken was claimed as loss of Rs.1,50,000/- and that the interest certificate for housing loan showed that the loan was taken for two house properties. Since, the assessee could claim deduction towards interest of housing loan only in respect of one house property, being self-occupied, the annual value of other property need to be taxed on deemed to be let out basis and accordingly, the Id. AO determined the notional rent at Rs.1,92,000/- per annum and completed the assessment. This action of the Id. AO was upheld by the Id. CIT(A).

3.1. We find that assessee is the owner of a house consisting of two combined flats i.e. Flat Nos.1502 and 1503 in building known as Regency Gardens at Kharghar, Navi Mumbai. The combined flats were purchased together by the assessee and possession was also taken together from the builder. The intention of the assessee right from the beginning was always to buy one house. The said house consists of one entrance, one drawing room, one kitchen and other bed rooms. The assessee has disclosed the entire house as self-occupied and claimed the annual value at Rs Nil as per the provisions of Section 23(2) of the Act. Interest on housing loan to the extent of Rs.1,50,000/- was claimed as deduction u/s.24 of the Act and the same was sought to be set off against income from salaries by the assessee.

3.2. The single dispute involved in this appeal is as to whether two flats purchased by the assessee could be construed as one house in the event of it having one kitchen, among others. The Id. AR vehemently pleaded that both the flats consists of one residential house; there is no wall dividing the flats; entire house is being used by the assessee and there is only one entrance for the entire house; there is only one kitchen for the

entire house. The combined flats were booked together during construction with the builder. Accordingly, he pleaded that the combined two flats should be construed as one residential house.

3.3. We find that the Id. AR placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Devdas Naik in Income Tax Appeal No.2483 of 2011 dated 10/06/2014 wherein the similar issue has been addressed in favour of the assessee. We find that though this decision of the Hon'ble Bombay High Court was rendered in the context of claim of deduction u/s.54 of the Act, the analogy could be drawn from the same and applied to the facts and circumstances of the instant case for the principle involved therein. For the sake of convenience, the entire order of the Hon'ble Bombay High Court is reproduced hereunder:-

*“1. The Appeal questions the order passed by the Income Tax Appellate Tribunal confirming that of the Commissioner of Income Tax (Appeals).*

*2. The concurrent finding of fact in relation to Assessment Year 2007-08 is questioned on the ground that the claim of deduction under section 54 of the Income Tax Act 1961 was not tenable.*

*3. It is urged that the factual position has been completely misread and misconstrued so as to allow the claim. Mr.Ahuja, learned counsel appearing in support of this appeal submits that the law laid down by the Mumbai Bench of the Tribunal in the case of Income Tax Officer, Ward 19(3)-4, Mumbai v/s Ms Sushila M. Jhaveri, reported in (2007) 107 ITD 327 (MUM)(SB) and confirmed by this Court in the case of Commissioner of Income Tax v/s Raman Kumar Suri in Income Tax Appeal No.6962 of 2010, decided on 27th November 2012, is applicable only when the house purchased is a single unit. According to Mr Ahuja, in the present case, two flats, one acquired in the Respondent -Assessee's name and another jointly in the names of Respondent - Assessee and his wife but under two distinct agreements and from different sellers have been taken into consideration for the purpose of this deduction or the claim. That is contrary to the Legislative intent and also the plain*

*language of section 54 of the Act. Therefore, according to Mr Ahuja, a substantial question of law arises for determination.*

*4. We are unable to agree. We found that the evidence based on which the claim was granted by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal has been noted by the Tribunal in paragraph 4 of its order. Prior thereto, the factual position has also been noticed that the Assessee alongwith his wife jointly owned bungalow. The bungalow was sold at Rs.3/- crores. With this sum, they bought three flats, one in the Assessee's name, another in the name of Assessee and his wife and third in the name of the wife. The Assessee claimed deduction under section 54 on purchase of two flats in which he is either a sole owner or a joint owner. Though these flats were acquired under two distinct agreements and from different sellers, what has been noted by the Tribunal as also the Commissioner of Income Tax (Appeals) is that the map of the general layout plan as well as internal layout plan in regard to flat Nos.103 and 104 indicate that there is only one common kitchen for both the flats. The flats were constructed in such a way that adjacent units or flats can be combined into one. However, admitted fact is that the flats were converted into one unit and for the purpose of residence of the Assessee. It is in these circumstances, the Commissioner held that the acquisition of the flats may have been done independently but eventually they are a single unit and house for the purpose of residence. This factual finding could have been made the basis for recording a conclusion in favour of the Assessee. We do not find that such a conclusion can be termed as perverse. Reliance placed by the Tribunal on the order passed by it in the case of Ms Sushila M. Jhaveri and which reasoning found favour with this Court is not erroneous or misplaced. The language of the section has been noted in both the decisions and it has been held that so long as there is a residential unit or house, then the benefit or deduction cannot be denied. In the present case, the unit was a single one. The flats were constructed in such a way that they could be combined into one unit. Once there is a single kitchen then, the plans can be relied upon. We do not think that the conclusion is in any way impossible or improbable so as to entertain this Appeal. In this peculiar factual backdrop, this Appeal does not raise any substantial question of law. The Appeal is devoid of any merit and is dismissed. No order as to costs."*

3.4. Undisputedly in the instant case before us, both the Flat Nos.1502 and 1503 have got only one kitchen and there is only one entrance in the entire house. In view of these undisputed facts and respectfully following

the aforesaid decision of the Hon'ble Jurisdictional High Court, we hold that both flats should be construed as one residential house and annual value of the same should be determined at nil being self-occupied house property. Accordingly, the addition made by the Id. AO is hereby directed to be deleted. The grounds raised by the assessee are allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 24/ 11 /2021 by way of proper mentioning in the notice board.

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

Mumbai; Dated 24/ 11 /2021  
KARUNA, *sr.ps*

**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, Mumbai

		Date	Initial	
1.	Draft dictated on	23/11/2021		Sr.PS
2.	Draft placed before author	23/11/2021		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		