

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC': NEW DELHI**

**(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA No.4371/DEL/2019  
[Assessment Year: 2015-16]**

Mrs. Amal Allana, E-30, Greater Kailash, New Delhi-110048	Income Tax Officer, Ward-30(1), New Delhi
<b>PAN-ACCPA8359A</b>	
Assessee	Revenue

Assessee by	Sh. Ashok Kumar Batra, CA
Revenue by	Sh. Om Prakash, Sr. DR

<b>Date of Hearing</b>	<b>15.11.2021</b>
<b>Date of Pronouncement</b>	<b>23.12.2021</b>

**ORDER**

This appeal filed by the assessee is directed against the order dated 08.03.2019 of the learned CIT(A)-10, New Delhi, relating to Assessment Year 2015-16.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 30.09.2015 declaring total income of Rs.16,29,440/- which was revised on 30.03.2016 declaring total income at Rs.18,02,748/-. This return was again revised on 31.03.2017 along with revised computation of income declaring total income of

Rs.18,64,162/-. The assessee filed computation of income disclosing the deemed income from second house property (SOP) i.e. E-30 Greater Kailash II, New Delhi at Rs.67,645/- (Net) on the reason that the assessee has two properties i.e. one at Shimla which was purchased on 30.09.2013 and the other one at E-30, Greater Kailash-II, New Delhi, which was acquired in Assessment Year 1982-83 and being used for self occupation and profession. The Assessing Officer relying on the decision of the Hon'ble Supreme Court in the case of M/s Goetze India ltd. vs CIT observed that fresh claim of the assessee cannot be admitted by the Assessing Officer without revising the ITR. The so called revised return is barred by limitation of time since the period of revising the return has lapsed. He, therefore, did not accept re-revised return.

3. During the course of assessment proceedings, the Assessing Officer deputed an inspector to enquire about the prevailing market rent and submit the report in respect of property situated at E-30, Greater Kailash II, New Delhi. The Inspector after spending three hours at surrounding locality and talking to residents, property dealers and guards came to a broad conclusion that Rs.40,000/- to Rs.60,000/- is the

prevailing rental value of commercial and residential floors. Further, lift facility, corner and location of the house are also factors in fluctuation of rent. In view of the above, the Assessing Officer considered Rs.50,000/- as the rent for each floor and accordingly determined the yearly rent at Rs.18,00,000/-. After allowing deduction u/s 24 of the Act, the Assessing Officer determined the Annual letting value of the property at Rs.12,60,000/- and added the same to the total income of the assessee.

4. Before the Ld. CIT(A), the assessee submitted that she was carrying out her professional activities since earlier years from basement at E-30, Greater Kailash-II, New Delhi and disclosed her income from business/profession. In support of the same, the assessee filed a copy of acknowledgment of the ITR for the Assessment Years 2013-14, 2014-15 and 2016-17 with Profit & Loss Account as evidence for the commercial use of basement. It was submitted that in Assessment Year 2015-16, there was a loss of Rs.5,04,910/-, which was ignored to nil and therefore the same was not claimed in the Profit & Loss Account. It was submitted that the assessee is paying house tax to MCD on the basis of

commercial use of the basement of the property. It was further brought to the notice of the Ld. CIT(A) that the building at E-30, Greater Kailash-II, New Delhi was not in existence on the day of visit of Inspector on 06.12.2017 since the reconstruction of the building was started in the month of February 2017 as per sanction plan of MCD and certificate dated 27.12.2018 of the contractor.

4.1. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the Assessing Officer by observing as under:-

*6.1.1 The appellant has taken three grounds of appeal. Out of these ground No. 1 and 3 were not pressed during the appellate proceedings. Because he informed that the AO has already considered her rectification application u/s 154 of the Act. Accordingly, the order has been rectified by the AO and the grievance against these grounds no longer survived. In view of these facts the ground number 1 and 3 are dismissed as not pressed.*

*6.1.2 In ground No.2, the appellant has impugned the addition made by the AO of Rs. 12,60,000/- as income from house property by determining the deemed annual lettable value of the self-occupied property situated at E-30, Greater Kailash-II, New Delhi at Rs. 18,00,000/-. She has also contested that the AO has failed to take into account the basement of the property being used for commercial purposes and thus no income from house property is assessable as per section 22 of the Act.*

*The fact is that the assessee is owning two properties one at Shimla and other one at Greater Kailash-II, New Delhi. Both these properties are self-occupied. In her original return of income, the assessee omitted to include deemed*

*self-occupied property income from Greater Kailash-II property. In her re-revised return, the assessee treated the Shimla property as self-occupied and annual value has been taken as NIL as per section 23(2) and considered the Greater Kailash-II property as deemed let out as per section 23(4). The GK-II property consist of Basement, Ground Floor and First Floor. The assessee declared the basement being used for self and family for commercial purpose and did not offer any income on deemed let out basis by applying the provisions of section 22. In the re-revised return, the assessee declared ALV of Ground and First Floor at Rs.1,08,800/- on notional basis on the basis of the ALV declared in the record of Municipal Corporation of Delhi (SDMC) for assessment of property tax. The AO did not accept the declaration of ALV of GK- II property as the Municipal Corporation value did not represent the true market value of the property as per the section 23(1 )(a). In Municipal record, the basement was marked with use factor as "4" indicating that it is used for commercial purpose. The assessee did not offer any income on this basis only. The AO did not accept the assessee's contention that the basement was used for commercial purpose and therefore does not attract any income from House property on notional basis. He rejected the contention of the assessee because assessee has not shown any business income or loss carried out by her, in her return of income and therefore did not accept that basement was used for any business or profession. With these observations, the AO deputed his Inspector to enquire about the prevailing market rent at the surrounding locality. The Inspector on the basis of enquiry in the surrounding locality, talking to residents, property dealers and guards there, for about 3 hours reported prevailing rental value of basement as well as residential floors at Rs.40,000/- to 60,000/- per month. The AO therefore in view of provisions of section 23(1 )(a) of the Act proceeded to estimate the market rental value of property being median- @Rs. 50,000/- per floor per month and arrived at the deemed annual lettable value at Rs. 18,00,000/-. After standard deduction of 30% u/s 24, the income from house property was determined at Rs. 12,60,000/- and added to the income of the assessee against Rs.67,465/- declared by the assessee in re-revised return. The total income assessed at Rs.30,62,750/- against the returned income as per re-revised return of Rs. 18,64,162/-.*

*First of all, the claim of the appellant that basement is used for commercial purpose is not tenable. The appellant has not been able to produce any evidence that the basement has been occupied by the appellant for the purposes of any business or profession carried on by her profit of which are chargeable to Income Tax. The only ground with the appellant is that the property tax has been paid with the use factor as "4" which is for the commercial use of the properties. The AO has rightly held that the assessee has not offered any business income or loss from the business or profession and has not accepted the contention that the basement was used for her profession. The provisions of section 22 is very clear and does not need any import/reliance from any other law or regulations. It cannot be accepted that the use factor "4" for basement as indicated in Municipal Law will be sufficient to satisfy the conditions laid down by section 22 of the Act, which lays the condition that the property to be exempt from charging under the provisions of Income from House Property must be occupied by the assessee and should be used for the purposes of any business or profession carried on by him/her profit of which are chargeable to Income Tax. In the present case, no such income from business or profession has been shown by the appellant. The only income (loss) shown from business or profession is the share from the partnership firm which is exempt u/s 10(2A) of the Act. The use factor "4" in Municipal record can be for any of the reasons according to that law but cannot be the basis for arriving at any conclusion that commercial activities or business or profession has been carried out by the appellant. Therefore, I am inclined to accept the decision of the AO that the basement should be assessed under the provisions of Income from House property at deemed annual lettable value.*

*With the above findings, the next step is to determine the deemed ALV of the entire GK-II property comprising of basement, ground floor and first floor. The AO proceeded to estimate the notional rent of the basement, ground floor and first floor on the basis of report of his Inspector, Accordingly, he estimated the annual rental values of property on the basis of the market rent found out by the inspector on the basis of his enquiry spending three hours at surrounding locality and talking to residents, Property dealers and Guards there. The Inspector broadly*

*concluded that Rs.40,000/- to 60,000/- is prevailing rental value of commercial (basement) as well as residential floors. The AO considered the median i.e. Rs.50,000/- per month per floor to be reasonable market rental value of one of the floor of the property. Thus, the total rental value per month has been determined at Rs. 1,50,000/- per month and Rs.18,00,000/- per annum and after allowing standard deduction u/s 24 @ 30% of Rs.5,40,000/- the income from house property comes at Rs. 12,60,000/-.*

*7.1.3. I have considered the factual matrix of the case, written submissions and oral arguments of the AR and the order of the AO. In the judgment of Delhi high Court (full bench) in the case of CIT vs Moni Kumar Subba 333 ITR 38, the Hon'ble High Court has held that the annual value fixed by the Municipal Authorities can be a rationale yardstick. It has also been held that if the Assessing Officer can show that rateable value under municipal laws does not represent the correct fair rent, then he may determine the same on the basis of material/evidence placed on record. The relevant paras of the decision of Hon'ble High Court is as below:*

*"16. Since the provisions of fixation of annual rent under the Delhi Municipal Corporation Act are pari materia of section 23 of the Act, we are inclined to accept the aforesaid view of the Calcutta High Court in Satya Co. Ltd.'s case (supra) that in such circumstances, the annual value fixed by the Municipal Authorities can be a rationale yardstick. However, it would be subject to the condition that the annual value fixed bears a close proximity with the assessment year in question in respect of which the assessment is to be made under the income-tax laws. If there is a change in circumstances because of passage of time, viz., the annual value was fixed by the Municipal Authorities much earlier in point of time on the basis of rent than received, this may not provide a safe yardstick if in the assessment year in question when assessment is to be made under Income tax Act. The property is let-out at a much higher rent. Thus, the Assessing Officer in a*

*given case can ignore the municipal valuation for determining annual letting value if he finds that the same is not based on relevant material for determining the 'fair rent' in the market and there is sufficient material on record for taking a different valuation. We may profitably reproduce the following observations of the Supreme Court in the case of Corpn. of Calcutta v. Smt. Padma Debi AIR 1962 SC 151 :*

*"A bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship and such other considerations may take it out of the bounds of reasonableness."*

*17. Thus the rateable value, if correctly determined, under the municipal laws can be taken as ALV under section 23(l)(a) of the Act. To that extent we agree with the contention of the learned Counsel of the assessee. However, we make it clear that rateable value is not binding on the Assessing Officer. If the Assessing Officer can show that rateable value under municipal laws does not represent the correct fair rent, then he may determine the same on the basis of material/evidence placed on record. This view is fortified by the decision of Patna High Court in the case of Kashi Prasad Kataruka v. CIT [1975] 101 ITR 810. "*

*7.1.4 The assessee had pointed out that the latest ALV for the instant year as per Municipal Authority of such property was only Rs.2,24,000/- for basement and Rs. 1,08,800/- for the ground floor and first floor. The AO in his order on the basis of market survey by the Inspector has been able to point out that the ALV of the Municipal Authority does not represent true market rental value of the property. He had been able to show that the rateable value under Municipal law does not represent the correct*

*fair rent. I am inclined to agree with the method adopted by the AO for arriving at the annual rental value of these floors. In order to arrive at the annual value of the property the Municipal Corporation law has standardized the method for working out the ALV of any of the property situated in Delhi based on Covered area, Unit area value, Age factor, use factor, Structure factor and Occupancy Factor. But ALV of Municipal Corporation cannot be the basis for determination of market value of the property which vary from area to area, location, direction, quality of construction, facilities available in surrounding as well as inside the house etc. Fair market rent is the rent which the property will fetch if it is rented out i.e. its inherent capacity to fetch the rent from the market and it has nothing to do with the "use factor" or any other factor used for determining ALV by Municipal Corporation. The appellant has contested that if the fair market rent of the property have to be determined then it should be based on the value determined by the Municipal Corporation. The Hon'ble High Court has held that annual value fixed by the Municipal Authorities can be a rationale yardstick. But rateable value is not binding on the Assessing Officer. If the Assessing Officer can show that rateable value under municipal laws does not represent the correct fair rent, then he may determine the same on the basis of material/evidence placed on record. In the present case, the AO had been able to demonstrate that the market value of the property is higher than the ALV determined in the property tax of these floors. Thus, he had sufficient reasons to ignore the ALV determined by the Municipal Corporation of the property as well. Therefore, I hold that the fair market value of the property as determined by the A.O at Rs. 18,00,000/- per annum as per the provisions of section 23(1 )(a) is the correct value and accordingly, dismiss the appeal of the assessee. Therefore, the ground no. 2 is dismissed."*

5. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:-

1. *The Ld. CIT (A) has erred in law and on the facts in holding the action of the A.O. in estimating the fair market value of property at E-30, Greater Kailash-II, New Delhi as determined by the A.O. at Rs. 18,00,000/- per annum as per the provisions of section 23(l)(a) is the correct value, ignoring the facts and submissions of the appellant, which is arbitrary and bad in law.*
2. *The ld. CIT (A) has erred in law and on the facts in holding the action of the A.O. in estimating the fair market value at Rs. 18,00,000/- per annum based on inspector's enquiry report dated 06.12.2017 which was not supported by any material evidence and also not confronted to the appellant, since the building was not in existence on that date of said report and was demolished for reconstruction. Therefore, the ld. CIT(A) is not justified in confirming the action of the A.O. which is arbitrary and bad in law.*
3. *The ld. CIT (A) has erred in law and on the facts in accepting the action of the A.O. that the basement of the said property be assessed income from house property as deemed annual lettable value without appreciating the facts that the appellant is carrying out the business activity from the basement as evident from the IT record as well as in the MCD record which showing commercial use of basement. Therefore, there is a violation of natural justice which is bad in law.*
4. *The ld. CIT (A) has erred in law and on the facts in confirming the action of the A.O. by relying upon the judgment of Delhi High Court (Full Bench) in the case of CIT vs. Moni Kumar Subha 333 ITR 38 without appreciating the facts of the case which are entirely different and distinguishable from the facts though in the case of appellant. The property in that case had let out property and also received security deposit which is covered u/s 23(1)(b). The appellant's property has not been let out & is covered u/s 23(4)(b) r.w.23(l)(a). Hence the ratio of this judgment is not applicable in the case of*

*appellant. Therefore, there is a violation of natural justice which is bad in law.”*

6. The Id. Counsel for the assessee strongly challenged the order of the Ld. CIT(A). He submitted that the Id. CIT(A) dismissed the appeal of the assessee on the ground that the assessee was not able to produce any evidence that the basement has been occupied by her for the purpose of business or profession carried on by her, the profit of which is chargeable to tax. He accordingly confirmed the action of the Assessing Officer holding that the basement should be assessed under the provisions of the income from house property as deemed Annual lettable value. Referring to page 27 to 33 and 39 to 65 of the original paper book, he submitted that the Ld. CIT(A) completely ignored the positive material evidence which is showing that the assessee was continuously carrying on the professional/business activity from the basement of the said property. He accordingly submitted that the Ld. CIT(A) is not justified in confirming the action of the Assessing Officer that the basement should be assessed under the provisions of the income from house property as deemed annual lettable value.

6.1. Referring to the decision of the Hon'ble Delhi High Court (Full Bench) in the case of CIT vs Moni Kumar Subha reported in 333 ITR 38 (Del.) which has been followed by the Assessing Officer and the Ld. CIT(A), he submitted that the relevant portion of the said decision as relied on by the Assessing Officer and the Ld. CIT(A) is distinguishable and not applicable to the facts of the present case. In that case, the issue involved was in respect of the addition of notional interest on interest free securities deposit. However, in the instant case, the property of the assessee has not been let out, since the assessee has neither received nor was entitled to receive any rent and is covered u/s 23(4)(b) r.w.r. 23(1)(a) of the Act. The ld. Counsel for the assessee submitted that no opportunity whatsoever was given by the Assessing Officer to the assessee. He submitted that during the Assessment Year 2016-17, the tax deducted u/s 194J as reflected in 26AS has been allowed by the Assessing Officer. Relying on various decisions including the decision of the Hon'ble Bombay High Court in the case of CIT vs Tip Top Typography (2014) 48 taxmann.com 191 (Bom.) and the decision of the Mumbai 'C' Bench of the Tribunal, in the case of Pankaj Wadhwa vs ITO reported in (2019) 101

taxmann.com 161 (Mum. Trib.), he submitted that since, the assessee has declared municipal rateable value as the deemed income of the other two floors of the house and the basement is used for business/profession, therefore, the same should be accepted and the grounds raised by the assessee should be allowed.

6.2. Ld. DR on the other hand heavily relied on the order of the Assessing Officer and the ld. CIT(A).

7. I have considered the rival arguments made by the both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee in the instant case is having two properties i.e. one at Shimla and another one at E-30, Greater Kailash-II, New Delhi. Both these properties are self occupied. In the original return of income, the assessee omitted to include deemed self occupied property income from Greater Kailash-II, property. In the re-revised return, the assessee treated the Shimla property as self occupied and annual value was taken as NIL as per section 23(2) and considered the Greater Kailash-II property as deemed let out as per section 23(4) of the Act. I

find the Greater kailash-II property consist of basement, ground floor and first floor. I find the assessee did not declare any notional rent in respect of the basement portion treating the same as used for commercial purposes. However, in the re-revised return, the assessee declared ALV of ground and first floor at Rs.1,08,800/- on notional basis on the basis of the ALV declared in the record of Municipal Corporation of Delhi for assessment of property tax. I find the Assessing Officer did not accept the declaration of ALV of Greater Kailash-II property as according to him the Municipal Corporation value did not represent the true market value of the property as per the section 23(1)(a) of the Act. According to the Assessing Officer in the municipal record, the basement was marked with use factor as “four” indicating that it is used for commercial purposes. The submission of the assessee that the basement was used for commercial purpose and therefore does not attract any income from house property on notional basis was rejected by the Assessing Officer. On the basis of the report of the Inspector, the Assessing Officer determined the annual value of two floors and one basement property situated at Greater Kailash-II, New Delhi at Rs.18,00,000/- and after allowing deduction u/s 24 of

the Act made addition of Rs.12,60,000/- to the total income of the assessee.

8. I find the Ld. CIT(A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld. Counsel for the assessee that she was running her business/profession from the basement and has declared the income of the two floors on the basis of municipal lettable value. The Inspector, in the instant case, based on some unauthentic information as per some local enquiry reported to the Assessing Officer, the possible rent of the property as per the market standard and the Assessing Officer on the basis of some unauthentic information as per the local enquiry determined the ALV instead of actual rent or municipal lettable value as per provisions of section 23(1)(a) of the Act. Further, the income declared by the assessee from the business or profession for Assessment Year 2014-15 and 2016-17 were completely ignored. So also the payment of house tax to MCD on the basis of commercial use of the property was also ignored by the lower authorities.

9. I find some force in the above arguments of the Id. Counsel for the assessee. The submission of the Id. Counsel for the assessee that she was declaring income from business/profession during the Assessment Year 2014-15 and 2016-17, copy of which are placed at page 39 to 65 of the original paper book, could not be controverted by the Ld. DR. It is also the submission of the Id. Counsel for the assessee that because of loss during the year, the same was ignored. Further, it is held in various decisions that municipal lettable value is recognized basis for determination of the ALV.

10. I find an identical issue had come up before the Mumbai Bench of the Tribunal in the case of Pankaj Wadhwa vs ITO (supra), wherein, the Tribunal held that where the assessee declared annual lettable value from house property having regard to municipal rateable value, in view of the fact that municipal rateable value is recognised for determination of ALV, there was no justification for action of Assessing Officer in disregarding the municipal rateable value for determination of ALV and substitution thereof by some expected rent to be received by the assessee. The relevant observation of the order of the Mumbai Bench of the Tribunal reads as under:-

*“13. We have carefully considered the rival submissions. It is the case of the assessee that the lower authorities have wrongly computed the ALV of its property (deemed let out property) under section 23(1)(a) of the Act based on some unauthentic information as per some local enquiry instead of adopting plausible method of determination of ALV with reference to municipal rentable value. It is further case of the assessee that in terms of Sec. 23(1)(a) of the Act, actual rent or municipal rentable value whichever is higher, should ordinarily be taken by the A.O for the purposes of computing the ALV. We straightaway find that the issue is no longer res integra and adjudicated in favour of the assessee in the similar circumstances by Co-ordinate Bench of this Tribunal in the case of Owais M. Hussain Vs. ITO in ITA No. 4320/Mum/2016 dated 11.05.2018; and in the case of M/s Europa Chemicals Pvt Ltd., Vs. ITO in ITA No. 387, 388 & 390/Mum/2018 dated 15.06.2018, wherein the Co-ordinate Bench of this Tribunal has accepted the plea of the assessee that municipal rateable value is a recognised basis for determination of ALV, having regard to the decision of the Hon'ble Bombay High Court in the case of Tip TOP Typography (supra). In view of the legal proposition emerging from the precedents cited above, we do not find any justification for the action of the lower authorities in disregarding the municipal rateable value for determination of estimated ALV and substitution thereof by some expected rent based on some unauthentic information. Consequently, the action of the deserves to be set aside and the additions made on this score requires to be cancelled.”*

11. So far as the decision relied upon by the Ld. CIT(A) in the case of CIT vs Moni Kumar Subha (supra) is concerned, the ld. Counsel for the assessee successfully distinguished the same since in that case the issue was in

respect of addition of notional interest on interest free security deposits. Even in the said decision also the Hon'ble High Court has held that the annual letting value fixed by the municipal authorities can be a rational yardstick. Since, the assessee in the instant case has declared the deemed income from the ground and first floor on the bases of municipal rateable value and the basement was used for her profession/business activity, therefore, respectfully following the decision of the Mumbai Bench of the Tribunal in the case of Pankaj Wadhwa vs ITO cited (supra), I hold that the ld. CIT(A) was not justified in confirming the action of the Assessing Officer. I, therefore, set-aside the order of the ld. CIT(A) and direct the Assessing Officer to delete the addition. Grounds raised by the assessee are accordingly allowed.

12. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in the open court on 23<sup>rd</sup> December, 2021.

**Sd/-**

**[R.K.PANDA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 23/12/2021

*Shetkar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi