

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

Before Sh. K. N. Chary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5554/Del/2018 : Asstt. Year : 2014-15

Vijay Processors Pvt. Ltd., Plot No. 1, Film Centre, Sector-16A, Noida-201301	Vs	ACIT, Circle-26(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACV1590R		

Assessee by : Sh. Hiren Mehta, CA

Revenue by : Sh. B. S. Anant, Sr. DR

Date of Hearing: 16.11.2021	Date of Pronouncement: 15.02.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-6, New Delhi dated 07.06.2018.

2. Apropos the issue before us, the assessee company let out property bearing no. C-1, Sector-3, Noida to three tenants which are as under:

S. No.	Name of Party	Area (sq. ft.)	Rent per month	Rent per month per sq. ft.
1.	M/s Flora & Fauna Housing & Land Development Pvt. Ltd.	40000	13.50 lacs	Rs.33.75
2.	M/s Wave Infratech Pvt. Ltd.	20000	6.5 lacs	Rs.32.50
3.	Uppal Chadha (Hi-Tech Developers Pvt. Ltd.)	20000	7 lacs	Rs.35

3. The AO invoked provisions of Section 23 of the Income Tax Act, 1961 which states as under:

"23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(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 :"

4. The AO held that ALV of the property is the value for which the property might reasonably be expected the let during the year or actual rent receipt whichever is higher.

5. The AO determined the ALV of the property @ Rs.35/- per month per sq. ft. and recomputed the rent receivable as under:

S. No.	Name of Party	Area (sq. ft.)	Actual Rent yearly	ALV 35* Area*12	Addition
1.	M/s Flora & Fauna Housing & Land Development Pvt. Ltd.	40000	162 lacs	168 lacs	Rs.6,00,000
2.	M/s Wave Infratech Pvt. Ltd.	20000	78 lacs	84 lacs	Rs.6,00,000
3.	Uppal Chadha (Hi-Tech Developers Pvt. Ltd.)	20000	84 lacs	84 lacs	Nil
	Total				Rs.12,00,000

6. The AO made addition on account of the value of the properties mentioned at serial no. 1 & 2 in the table above taking into consideration, the rent received from the party at serial no. 3 which is Rs.35/- per sq. ft. The AO held that while Rs.35/- is charged from Uppal Chadha (Hi-Tech Developers Pvt. Ltd.), the same should have been charged from other two tenants also which is at presently charged @ Rs.33.75 and Rs.32.50.

7. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the action of the AO disregarding the submissions of the assessee.

8. Heard the arguments of both the parties and perused the material available on record.

9. The reply of the assessee dated 09.05.2018 is as under:

"Sub:- Appellant proceedings in the case of Vijay Processors Pvt. Ltd., AY 14-15.

With regard to the captioned subject matter this has reference to hearing held on 25.04.2018. The only issue in the appeal is with regard to the enhancement of the rent (ALV) of property bearing no. C-1, Sector-3, Noida. It is the contention of the appellant that the annual letting value (ALV) can only be municipal value or the standard rent or the actual rent received whichever is higher, while framing the assessment the AO has increased the rent notionally. During the course of hearing your honor had required the appellant to furnish municipal valuation or the standard rent of the immovable property. In connection with the same it is submitted as under:-

1. *There is no house tax in Noida, Uttar Pradesh and hence municipal valuation cannot be determined.*
2. *As regards standard rent it is submitted that Uttar Pradesh Urban Buildings (Regulation of letting, rent and eviction) Act, 1972 is applicable in Noida. A copy of the said Act is enclosed herewith, Section 9 the said Act provides for determination of standard rent. Provisions of section 9 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provides as under:*

"(1) in the case of a building to which the old act was applicable and which is let out at the time of the commencement of this Act in respect of any other case where there is neither any agreed rent nor any assessment in force, the District Magistrate shall, on an application being made in that behalf, determine the standard rent.

(2) In determining the standard rent, the District Magistrate may consider:-

(a) the respective market value of the building and of its site immediately before the date of commencement of this Act or the date of letting, whichever is later (hereinafter in this section referred to as the said date);

(b) the cost of construction, maintenance and repairs of the buildings;

(c) the prevailing rents for similar buildings in the locality immediately before the said date;

(d) the amenities provided in the building;

(e) the latest assessment, if any, of the building;

(f) any other relevant fact which appears in the circumstances of the case to be material.

(3) Every other made under sub-section (1) shall, subject to the result of any appeal preferred under section 10, be final."

3. It is submitted that so far the immovable property of the appellant has not been subjected to section 9 of the UP Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972. However, it is requested that your honor may ascertain the standard rent of the immovable property by making a reference to the District Magistrate of Noida.

S. No.	Name of the Tenant	Area (sq Ft)
1.	M.s Flora & Fauna Housing & Land Development Pvt. Ltd.	40000
2.	M/s Wave Infratech Pvt. Ltd.	20000
3.	Uppal Chadda (Hi Tech developers Pvt. Ltd.)	20000

10. The Id. CIT(A) held that the assessee has not been able to produce any cogent document issued by the competent authorities much less the computation of standard rent as applicable in its case in terms of Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 applicable to the property located in Noida.

11. We find that the AO was under the wrong impression that equal rate of rent should be charged from all the tenants disregarding the time, location and the facilities enjoyed by each tenants. Once, the revenue comes to a conclusion that the rent received by the assessee is less than the ALV, it is for the revenue to obtain the details of the ALV from the competent authorities to prove that the rent receivable by the assessee is less than the ALV. In this case, the revenue failed to do so instead they have embarked upon a flat rate of determination of rent. The Id. CIT(A) also failed to utilize the opportunity of obtaining the details of ALV from the district authorities while denying the standard rent received by the assessee. The entire action of the revenue simmers down to determination of a notional rent without any support of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972. Hence, the action of the revenue authorities cannot be sustained.

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

Order Pronounced in the Open Court on 15/02/2022.

Sd/-

(K. N. Chary)
Judicial Member

Dated: 15/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR