

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.7955/M/2019
Assessment Years: 2013-14**

M/s. IGI Investments Pvt. Ltd., 702, 7 th Floor, The Capital BKC, Bandra East, Mumbai- 400 051 PAN: AACCI1484R	Vs.	Dy. CIT – 5(2)(1), R. No.571, 5 th Floor, Aayakar Bhavan, MK Road, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satish Mody, A.R.
Revenue by : Shri Dinesh Singh, D.R.

Date of Hearing : 20 . 07 . 2022
Date of Pronouncement : 27 . 07 . 2022

ORDER

Per Amarjit Singh, Accountant Member:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals)-10, Mumbai.

2. The fact in brief is that the return of income declaring loss of Rs.1,21,04,553/- was filed on 11.09.2013. The case of the assessee was reopened by issuing of notice under section 148 of the Act on 05.03.2015 on the reasoning that during scrutiny proceedings for assessment year 2012-13 it was noticed that assessee was having income from house property. However, during the year under consideration it was observed that assessee had offered rental income after claiming standard deduction under section 24(a) of the Act and also claimed depreciation on the said property under section 32 of the Act. Therefore, it was observed that assessee had incorrectly claimed benefit of both the sections 32 & 24(a) of the Act during the year under consideration. In

response to the notice under section 148 the assessee furnished return of income declaring loss of Rs.6,390/- on 27.06.2015 as against loss of Rs.1,21,04,553/- declared in return of income furnished on 11.09.2013. The assessee has submitted during the course of assessment that it had inadvertently claimed depreciation on house property which was let out and income from which was shown under the head "Income from house property". However, in the return of income filed in response to notice under section 148 the assessee had withdrawn the claim of depreciation in regard to the house property. The AO was of the view that withdrawal of depreciation claimed by the assessee indicates that impugned property was not used for the purpose of business during the year under consideration. The AO also stated that during assessment year 2011-12 & 2012-13 the assessee had also withdrawn the depreciation on this property which was subjected to rent income accrued under the head "income from house property" suo moto. The AO also stated that assessee had taken deposit of Rs.70 lakhs appearing in the balance sheet as on 31.03.2013 therefore assessee's plea that the property was vacant not correct. The AO has taken the annual value of the property No.1 at Rs.79,41,600/- as assessed in the preceding assessment year 2012-13. The AO has also stated that provision of section 23(1)(c) of the Act was also not applicable to the case of the assessee and assessed the income from house property in case of property No.1 at Rs.55,59,120/-.

3. Aggrieved assessee filed appeal before the Ld. CIT(A), however, the Ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the Ld. Counsel vehemently contended that the AO has committed error in taxing notional rent of Rs.55,59,120/- in respect of property No.1 at Laxmi Towers based on rent received in assessment year i.e. 2012-13. The Ld. Counsel further submitted

that neither the AO nor the Ld. CIT(A) has particularly adjudicated the plea of the assessee that its case is covered under section 23(1)(c) and not under section 23(1)(a) of the Act.

5. On the other hand, the Ld. D.R. has supported the order of lower authority.

6. Heard both the sides and perused the material on record.

7. During the year under consideration the assessee has not offered any income from house property, however, the AO has taxed notional rent on the basis of rent received in the assessment year 2012-13. During the course of appellate proceedings before us the Ld. Counsel has referred the order of co-ordinate Bench of the Tribunal in case of M/s. Sonu Realtors Pvt. Ltd. vs. DCIT order ITA No. 5081/Mum/2018 dated 06.12.2019. With the assistance of the Ld. Representatives, we have gone through the above referred decision of co-ordinate Bench of the Tribunal wherein after referring the decision of Hon'ble Andhra Pradesh High Court in case of Vikas Jain held that section 23(1)(c) had purposively been used to exclude those properties from the ambit of the clause which are held by the owner for self occupation purposes. In the case of the assessee it is required to examine whether the impugned property no. 1 was under the self occupation of the assessee during the vacant period in accordance to the conditions laid down in the decision of the coordinate bench as supra, therefore we consider it appropriate to restore this issue to the file of the AO for deciding the matter pertaining to applicability of section 23(1)(c) or 23(1)(a) in accordance to the fact of the case of the assessee after following the decision of the co-ordinate Bench of the Tribunal and after giving due opportunity to the assessee. It is needless to say that observation made by us will not injure or impair the case of the A.O and will not cause any prejudice to

the defense explanation of the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.07.2022.

**Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.07.2022.

* 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.