

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.7778/M/2019  
Assessment Year: 2014-15**

M/s. AMS Realty Pvt. Ltd., 1 <sup>st</sup> Floor, Orbit Plaza, New Prabhadevi Road, Prabhadevi, Mumbai – 400 025 <b>PAN: AAGCA3604B</b>	Vs.	Income Tax Officer-12(1)(1), Room No.226/262, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 15 . 09 . 2022  
Date of Pronouncement : 29 . 09 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. AMS Realty Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 19.09.2019 passed by Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2014-15 on the grounds inter alia that :-

*“1. The Ld Commissioner of Income Tax (Appeals) has grossly erred in pronouncing the present OIA without considering the new rent Agreement of the Appellants.*

***2. The Ld Commissioner of Income Tax (Appeals) has grossly erred in not granting sufficient time to the Appellants to submit the new rent Agreement.***

***3. The Appellant craves leave to add to, alter or amend any of the grounds of the appeal raised herein before the final hearing of the appeal.”***

2. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee is engaged in letting out premises on rents and Assessing Officer (AO) noticed that the assessee let out its premises at Santacruz measuring 2400 sq. ft. and earned the rental income of Rs.18,00,000/- as per agreement entered into with M/s. Platinum Incentives and Events Pvt. Ltd. for a period of three years with effect from 01.04.2010. It is also noticed that during the year under consideration assessee has offered rental income of Rs.12,00,000/- only. The AO by relying upon A.Y. 2012-13 in which market value of rent was taken by the AO at Rs.125 per sq. ft. and added the difference to the total income of the assessee and proposed to adopt fair market value of the rent at Rs.150 per sq. ft. which comes to Rs.40,00,000/- and called upon the assessee to explain. Declining the contentions raised by the assessee the AO proceeded to compute the effective rates of rent per sq. ft. at Rs.152.66 by making comparison of 10 cases as against Rs.62.5 sq. ft. adopted by the assessee. Consequently, the AO determined the fair rental value of the property at Rs.40,00,000/- instead of Rs.12,00,000/- shown by the assessee and assessed income of the assessee from the house property accordingly and thereby made the addition of Rs.19,60,000/-.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal by taking the annual rental value for the year under consideration at Rs.18,00,000/- as against Rs.40,00,000/- determined by the AO. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. This appeal was presented on 17.12.2019 and thereafter 12 notices through registered post with acknowledgement due (RPAD) which have not been received back served or unserved. Since period of more than one month has already elapsed the notices sent to the assessee are presumed to be served, but the assessee has not preferred to put in appearance to prosecute this appeal. Consequently, the Bench has decided to dispose of the appeal on the basis of documents available on record with the assistance of the Ld. D.R. for the Revenue.

5. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. I have perused the order passed by the Ld. CIT(A) who has duly thrashed the facts in the light of the statutory provisions with the assistance of the Ld. A.R. for the assessee and gave part relief by returning following findings:

***“6.1 I have considered the submissions of the AR and the AO. The Assessing Officer has estimated the ALV of the house property at 40,00 000/-which works out to whopping 24.47% of investment made in the property its cost being Rs.1,63,45,260/-. In the course of appeal***

*proceedings, the AR of the submitted that the ALV estimated by the appellant is unreasonably high. In my view, the AO was not justified in determining the Annual Value of the property on the basis of the rates of space in the locality quoted in a website. The AO overlooked the fact that the value may vary widely based on the quality of*

*6.2 There are a very large number of parameters which determine the rent a property can fetch in the market. The locality, the type and quality of construction, the floor in which the space is located, the orientation of the building, availability of natural light and air, the view from the property, connectivity and age of the building are some of the factors. Therefore,, the market rent reflected in the websites such as magic brick etc. is only indicative at best. Similarly, taking the annual value as certain percentage, say 8.5%, of the investment in the property can give only a very rough estimate of the annual value of the property. The reliability of this method is low because the investments in two similar properties may vary vastly depending upon when they are purchased. Therefore, the annual value arrived determined by that method may also very vastly. Therefore, those methods are useful only when there is no reliable method for ascertaining the annual value.*

*6.3 In this case, I find that the appellant had entered into a rent agreement for the aforesaid property with M/s Platinum Incentives and Events Pvt. Ltd for Rs. 18,00,000/- on 1<sup>st</sup> April, 2010 with an escalation clause of 15% after 36 months. As per that agreement, the rent of the property was to be enhanced to Rs.22,70,000/- from 01.04.2013. The appellant submitted that a new agreement was made as per which the rent was fixed at Rs. 12,00,000/- only. But, the appellant did not file the copy of the new agreement though the AR was requested to furnish copy of the same by 18.09.2019.*

*6.4 The agreement dated 1<sup>st</sup> April, 2010 is a very good guide for determining the annual value of the property. That rent was fixed after taking into account all the 'negative'<sup>1</sup> factors mentioned by the appellant. All those factors were also present when the rent agreement dated 01.04.2010 was made. The appellant has claimed that there was a slump in the rent during the FY 2013-14 in Mumbai but it has not been able to substantiate its claim. Considering that fact, I take the annual value as Rs.18,00,000/- (annual rent for AY 2012-13). Accordingly, I direct the AO to take the annual value as Rs. 18,00,000/-. Thus, the ground of appeal is partly allowed.”*

7. The Ld. CIT(A) has rightly taken care of the fact that the AO has based his findings merely on the basis of website rates of the space in the locality which certainly cannot be applied ipso facto

for the reason that for determining the rental value numerous factors like construction quality, age of the building, locality etc. are to be taken care of. Assessee has merely challenged the findings returned by the Ld. CIT(A) on the ground that his new agreement has not been considered while determining the annual rental value.

8. However, it is apparent on the record that the annual rental value has been determined by the Ld. CIT(A) on the basis of agreement otherwise relied upon by the assessee wherein rent was determined at Rs.18,00,000/- with an escalation clause of 15% after 36 months. SO in the absence of any new agreement otherwise pleaded by the assessee, which has even not brought on record even before the Bench, I do not find any illegality or perversity in the impugned findings returned by the Ld. CIT(A). Hence, present appeal filed by the assessee is hereby dismissed.

**Order pronounced in the open court on 29.09.2022.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

\* 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.