

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.245/SRT/2022

निर्धारण वर्ष/Assessment Year: (2017-18)

(Virtual Court Hearing)

Manish Umed Doshi, 403, Dalamal House, Jammalal Bajaj Road, Nariman Point, Mumbai – 400021.	Vs.	The CIT(Exemption), Ahmedabad.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABPD3578R		

Appellant by	Shri Saurabh Soparkar Sr. Advocate with Ms. Urvashi Shodhan, Advocate
Respondent by	Shri Ashok B. Koli, CIT(DR)
Date of Hearing	06/02/2023
Date of Pronouncement	17/04/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (In short ‘NFAC’), Delhi, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 24.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

“1. NATURAL JUSTICE

1.1 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:

- (i) The same is framed in breach of the principles of natural justice; and*
- (ii) The same is perverse, passed without application of mind to the facts on record.*

1.2 Without prejudice to the generality to the above, in the facts and the circumstances of the case, and in law, the order is bad in law as:

- (i) The same is passed without granting proper, sufficient and adequate opportunity of being heard to the Appellant; and*

(ii) *The order is passed without application of mind to the facts and the submissions brought on record.*

2. ADDITION OF RS. 50,29,290/- AS INCOME UNDER THE HEAD 'INCOME FROM HOUSE PROPERTY'

2.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs.50,29,290/- as income under head 'Income from House Property' by computing notional rent u/s 23(l)(a) of the Act as against the income declared by the Appellant in the return of income.*

2.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

2.3 *Without prejudice to the above, in the alternative, assuming - but not admitting - that some addition was called for, the computation of the same is not in accordance with the law, is arbitrary and excessive.*

3. LIBERTY

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing."

3. The facts of the case which can be stated quite shortly are as follows: The assessee before us is an individual. One of the reasons for selection of assessee's case for scrutiny was that the amount credited in form 26AS (section 194-I) was significantly more as compared to income shown in return of income of the assessee. On perusal of Form 26AS, the AO noted that assessee had received rent of Rs.25,92,000/- from ICICI Bank Limited, however the same was not shown in house property income of the assessee. Therefore, vide letter of assessing officer dated 22/12/2019, the assessee was asked to furnish the detail of amount of Rs.25,92,000/- shown as rent receipts in form 26AS and was show caused why the amount should not be added to his income, since he has not shown the income in its return. Content of the show-cause letter of AO is as under:

"On perusal of your submission, it is seen that you have not shown house property receipts of Rs.25,92,000/- received from ICICI Bank, in your return of income. In this regard, please furnish the reason for this discrepancy alongwith supporting documentary evidences. Falling to provide the requisite details with supporting documents, you are Hereby show caused why the amount of Rs.25,92,000/- shown in 26AS as house property receipts should not be added to your total income for the year."

4. The assessee filed his submission, in response to the show cause and submitted that the rent income shown in Form 26AS from M/s ICICI Bank Limited is actually rent for earlier year, which is received in this year. However,

the assessing officer rejected the plea of the assessee. The assessing officer noted that if the claim of the assessee is accepted that rent receipts of Rs.25,92,000/- is of earlier year that means the assessee has not received any rent from M/s ICICI Bank Limited. However, the assessee nowhere claimed that M/s ICICI Bank Limited is not his tenant in the A.Y. 2017-18 and he has not received any rent income from them for the A.Y. 2017-18. Also the assessee has not furnished any certificate or proof that the rent receipt pertains to earlier year. Therefore, assessing officer noted that assessee has not shown his house property income from M/s ICICI Bank Limited for the A.Y. 2017-18. Therefore assessing officer taken Gross Annual Value (GAV) of the property given on rent to M/s ICICI Bank Limited, for computation of house property income for the assessment year 2016-17 at Rs.71,84,700/- and then after house property income was worked out by the assessing officer as under:

<i>Gross Annual Value</i>	<i>Rs.71,84,700/-</i>
<i>Less:</i>	
<i>Standard deduction u/s 24</i>	<i>Rs.21,55,410/-</i>
<u>Income from House property</u>	<u>Rs.50,29,290/-</u>

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the action of the Assessing Officer. The Id CIT(A) noted that assessee has not submitted any proof that the property was vacant during the year and the assessee had not claimed any vacancy allowance as per section 23(1)(c) of the Act. Under these circumstances in the facts of this case the AO's action to adopt gross annual value from the said property to be at Rs.71,84,700/- on par with the actual rental receipts received from the same property, during the earlier FY is found to be reasonable on the quantum estimated and is in accordance with the law. Therefore, Id CIT(A) held that this notional rent, gross annual value (GAV) adopted by the AO was correct.

6. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before us.

7. Shri Saurabh Soparkar (Sr. Advocate), Learned Counsel for the assessee submitted that assessee has let out his property to ICICI Bank for a lease period of nine years. In the previous year, the assessee has shown a full rent, however during the year the ICICI Bank occupied the property only for eighteen days and rent was paid to the assessee for 18 days, which the assessee has offered for taxation. The Assessing Officer treated, as if the assessee has let out the property for the whole year. Therefore, Assessing Officer without accepting the claim of the assessee, assessed the rental income for the entire assessment year 2017-18 instead of assessing the rent for 18 days for assessment year 2017-18. However, for the period 01.04.2016 to 18.04.2016 (18 days period) relevant to AY.2017-18, as the assessee received rent for eighteen days, which has been shown by the assessee and offered to tax. The Ld. Counsel submitted that assessee could not let out the property after 18.04.2016, as assessee, could not get the customer. The Ld. Counsel took us through paper book page no.3 wherein the ICICI Bank has given a notice for termination of lease deed and contended that the termination letter of the ICICI Bank shows that rent agreement has been terminated with effect from 18.04.2016. The Ld. Counsel also invited the attention of the Bench at page no. 5 and 6 of the paper book, wherein the assessee has shown rental income for AY.2016-17 and the rent paid to the assessee is also getting reflected in Form No.16. The Ld. Counsel also submitted the computation of total income (vide page no.7 of paper book) wherein the Ld. Counsel contended that assessee has offered rental income for eighteen days in respect of property at Rs.4,55,532/- and also stated that relevant TDS has been deducted by ICICI Bank (vide paper book page no.8). The assessee also submitted the copy of the tax paid to the municipality in respect of the property. The Ld. Counsel also took us through the agreement between the assessee and the ICICI Bank which is placed at paper book page no.14, wherein the rent schedule has been shown. The Ld. Counsel also produced before the Bench electricity bills to demonstrate the electricity consumption during the period when the premises remained vacant, is almost zero or negligible, and this proves that the property has not been let out to any other person during the assessment year 2017-18. The assessee has not received any rental income and that is why

the assessee did not disclose in the return of income and hence whatever the rental income the assessee has earned for assessment year 2017-18, has been shown by him in his return of income, therefore Id Counsel prays the Bench that addition sustained by the Ld. CIT(A) should be deleted.

8. On the other hand, Ld. Departmental Representative (Ld. DR) for the Revenue submitted that assessee has not established how and why the property was vacant during the entire year. The Ld. DR also pointed out that assessee has submitted electricity bill, as an additional evidence to demonstrate that electricity expenses of the premises which was vacant, is almost zero or negligible, therefore it proves that the property was vacant in the entire year, therefore to examine the electricity bill the matter should be remitted back to the file of the Assessing Officer.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that assessee had received the sum of Rs.4,55,532/- for assessment year 2017-18, towards rent from the relevant property for the period 01.04.2016 to 18.04.2016. The relevant rent income received has been offered to tax by the assessee as per the computation reproduced below:

Tenant Details	
Name of Tenant(s) and PAN	
ICICI BANK (PAN : AAAC1195H)	
Gross Annual Value (100% value)	455532 ✓
Municipal Taxes Paid	351621
Net Annual Value	103911
Share on net annual value (100% value)	103911
Ded U/s 24 -Standard Deduction U/s.24(a)	31173
Income From let out House Property (2.3)	
Income From House Property	72738

1004340

10. Thus we note that assessee has offered gross rent received of Rs.4,55,532/- from this relevant property for the F.Y.2016-17, relevant to the AY.2017-18. Against this the AO has presumed and assessed the Gross annual value at Rs.71,84,700/- in the assessment year 2017-18, as the notional rent.

That is, assessing officer has taken Gross annual value at Rs.71,84,700/- in the assessment year 2017-18, on hypothetical basis, instead of actual Gross annual value at Rs. 4,55,532/- (actual rent received by the assessee in the assessment year 2017-18). We note that as per agreement, the assessee's premises situated at office no.7, 8 and 9, 3rd floor, Suyog Platinum Tower Apartment Naylor Road, Taluka Haveli, Dist. Pune, was leased for a period of 9 years for the purpose of operating and running the bank branch. As per the terms and conditions of the agreement, vide Clause No.8 of the said agreement, by which the lessee may terminate the said agreement anytime during the currency of the said agreement by giving a prior written notice of three months (3 months). Accordingly, the lessee bank has given 3 months' notice on 18.01.2016 to the assessee, to terminate the agreement with effect from 18.04.2016. Therefore, during the financial year 2016-17, the assessee has received 18 days rent from 01.04.2016 to 18.04.2016, which the assessee has offered for tax in the relevant AY.2017-18. After 18.04.2016 the property was vacant, as the assessee could not get any customer to let out the property.

11. We note that on rental income TDS has been deducted by the ICICI Bank during the current year. Moreover, the ICICI Bank has issued a letter to the assessee, which shows that the lease agreement has been terminated by the ICICI Bank on 18.04.2016. Based on this factual position, the assessee has received the rental of Rs. 4,55,532/-, as rent income only for eighteen days in the AY.2017-18 which has already been offered for tax on which TDS has also been deducted. Therefore, since the assessee has not received rental income from 19.04.2016 to 31.03.2017, hence, hypothetical rent should not be taxed in the hands of the assessee. Therefore, we note that assessee has disclosed the actual rent received by him, therefore fictitious rental income should not be taxable in the hands of the assessee. Neither the Assessing Officer nor before the Ld. CIT(A) has demonstrated with cogent evidences that assessee has let out the property for the remaining period from 19.04.2016 to 31.03.2017. Therefore the notional rental income assessed by the Assessing Officer should be deleted. Hence, we delete

the notional income assessed by the Assessing Officer to the tune of Rs.50,29,290/-.

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

Order pronounced on 17/04/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 17/04/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat