

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI '1' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 645/Mum/2023 (A.Y. 2013-14)

| | | |
|--|-----|---|
| Dhaval Jitendra Buch 602, Signia Pearl G Block, Bandra Kurla Complex, Bandra East Mumbai-400 051. PAN : AADPB6761G (Appellant) | Vs. | Assessing Officer Int. Tax Ward- 1(3)(1) Room No. 1809 Air India Building Nariman Point Mumbai-400 021. (Respondent) |
|--|-----|---|

I.T.A. No. 644/Mum/2023 (A.Y. 2013-14)

| | | |
|---|-----|---|
| Madhabi Puri Buch 602, Signia Pearl G Block, Bandra Kurla Complex, Bandra East Mumbai-400 051. PAN : AAIPB8795K (Appellant) | Vs. | Assessing Officer Int. Tax Ward- 1(3)(1) Room No. 1809 Air India Building Nariman Point Mumbai-400 021. (Respondent) |
|---|-----|---|

| | |
|-----------------------|--------------------------|
| Assessee by | Shri D.S. Kabra |
| Department by | Shri Soumendu Kumar Dash |
| Date of Hearing | 18.05.2023 |
| Date of Pronouncement | 18.05.2023 |

O R D E R

Per B.R.Baskaran (AM) :-

The appeals filed by both the assesseees mentioned above are directed against the orders passed by Ld CIT(A), NFAC, Delhi in their respective hands and both relate to the assessment year 2013-14. Since common issue is urged in these appeals and further it is arising out of common set of facts, both the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The only issue urged in the appeals of both the assesseees is related to the assessment of rental income from a let out property, which remained vacant during whole of the year.

3. The facts relating to the above said issue are set out in brief. Both the assesseees herein are “non-resident” under the Income tax Act. The AO initially completed the assessment u/s 143(3) of the Act. Later he noticed that both the assesseees herein jointly own a house property located at Ghorpadi, Koregaon Park, Pune. He noticed that they did not offer any income under the head “Income from House Property” in respect of above said property. Accordingly, the AO passed a rectification order u/s 154 of the Act assessing rental income, which was arrived at on estimated basis.

4. Before Ld CIT(A), the assessee’s submitted that the above said property had been let out in the preceding years and it has remained vacant during the whole of the year under consideration. It was submitted that the assesseees proposed to sell the house property and accordingly did not let out the same during the year under consideration. Accordingly, it was submitted that no rental income is assessable in respect of this property, since it remained vacant for whole of the year. Accordingly, it was contended that the AO was not correct in estimating rental income. The Ld CIT(A) did not accept the contentions of the assessee. By placing reliance on the decision rendered by Hon’ble Punjab & Haryana High Court in the case of Susham Singlavs. CIT (2016)(76 taxmann.com 349), the Ld CIT(A) took the view that the assessee is not entitled for vacancy allowance and the rental income is required to be assessed u/s 23(1)(a) of the Act. Accordingly, he dismissed the appeals filed by both the assesseees herein. Aggrieved, the assesseees have filed these appeals before the Tribunal.

5. Before us, the Ld A.R furnished copies of returns of income filed by both the assesseees herein for AY 2011-12 and 2012-13 and submitted that

both of them have declared rental income from the above said house property in AY 2011-12 and 2012-13. Accordingly, he submitted that the impugned property qualifies as “rented property”. Since it remained vacant for whole of the year, the Ld A.R submitted that the Annual letting value should be determined as NIL as per sec. 23(1)(c) of the Act. On the contrary, the Ld D.R supported the orders passed by Ld CIT(A).

6. We heard the parties and perused the record. The determination of Annual letting value is governed by the provisions of sec. 23 of the Act, which reads as under:-

"23. *Annual value how determined.*—

(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:

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation.—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.

(2) Where the property consists of a house or part of a house which—

- (a) is in the occupation of the owner for the purposes of his own residence; or
- (b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be *nil*.

(3) The provisions of sub-section (2) shall not apply if—

- (a) the house or part of the house is actually let during the whole or any part of the previous year; or
- (b) any other benefit therefrom is derived by the owner.

(4) Where the property referred to in sub-section (2) consists of more than one house—

- (a) the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;
- (b) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let."

7. Since this property has been let out during the earlier years, which fact is evidenced by the returns of income filed by the assessees for AY 2011-12 and 2012-13, it qualifies as "let out property". Hence the Annual Letting Value has to be determined in terms of sec.23(1)(c) of the Act, as per which the actual rent received or receivable is to be taken as Annual letting value. Since the impugned property has remained vacant for whole of the year, the assessee has not received any rent and hence the Annual letting value should be taken as NIL.

8. We notice that the Ld CIT(A) has taken support of the decision rendered by Hon'ble Punjab and Haryana High Court in the case of Susham Singla (*supra*). We notice that the said decision has been rendered in the context of self occupied properties and not in the context of let out properties. Accordingly, we are of the view that the above said decision is not applicable to the facts of the present cases.

9. In view of the foregoing discussions, we are of the view that the Annual letting value of the impugned property is to taken as NIL for the year under consideration, since it remained vacant during whole of the year.

Accordingly, we set aside the order passed by Ld CIT(A) on this issue in the hands of both the assesseees and direct the AO to delete the addition made in the house property income in respect of above said property in the hands of both the assesseees.

10. In the result, the appeals filed by both the assesseees are allowed.

Pronounced in the open court on 18.5.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 18/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS