

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3728/Mum/2023
(A.Y. 2018-19)**

Chhotelal Gangaprasad Dubey, 1005, Blue Mountain, Shastri Nagar, Andheri West, Mumbai – 400 058	Vs.	ACIT 24(1) 6 th Floor, Piramal Chambers, Lalgaug, Mumbai – 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAEPD9496P		
Appellant	..	Respondent

Appellant by :	Aditya Maheshwari
Respondent by :	S. Arunkumar

Date of Hearing	28.02.2024
Date of Pronouncement	06.03.2024

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 30.08.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

“That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeal) erred in upholding action of Income Tax officer of adopting deemed rent of let out property at Rs.10,23,000 without considering the facts that property was not lying vacant. Due to acute financial problem at the end of tenant, rent could not be recovered. More over the tenant has also not claimed any expenses on account of rent for the same.

That on the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeal) erred in upholding actions of Income Tax officer without considering written submissions and details filed by the AR of assessee on 24th November 2022.”

2. Fact in brief is that return of income declaring total income of Rs.10,50,770/- was filed on 27.10.2018. The revised return of income

was filed on 29.03.2020. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.09.2019. After perusing the submission filed by the assessee during the course of assessment the AO noticed that assessee was having ownership of 4 residential properties and after claiming one property as self-occupied other 3 properties has been shown as let out during the year under consideration. The AO noticed that property situated at New Excel House 41B Azad Nagar Road No.2 ESAI Road Andheri (W), Mumbai was considered as deemed let out. As per Sec. 23(4)(C) of the Act ALV of the property (deemed let out property) was to be calculated. The assessee had also furnished the standard rent for this property considering 3% 3.5% and 4% of the capital value of the property as Rs.10.23 lakhs 11.94 lakhs and Rs.13.64 lakhs as per the Government of Maharashtra ready reckoner. Therefore, the AO considered 3% of the capital value of the property which was the least amount as per the 3 options provided by the assessee. Therefore, the AO has made addition of Rs.10,23,000/- being deemed rent from the property let out to Tara Meera Educational Trust.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that assessee has let out its property to Tara Meera Educational Trust in which the assessee himself was the managing trustee and assessee had neither shown any rental income from the said trust nor initiated any action to recover the unrealised rent.

4. During the course of appellate proceedings before us the ld. Counsel submitted that the premises was let out during the F.Y. relevant to the assessment year under consideration however rent could not be realised because of financial crunch of Tara Meera Educational Trust.

5. On the other hand, the ld. D.R contended that assessee himself was the managing trustee of the trust to whom the assessee had given the said premises on rent and because of interest of the assessee in the said trust no action has been taken to recover the rent. The ld. D.R also referred provision of Sec.23 of the Income Tax Act regarding determination of annual value of the property for computing the deemed rent. He also referred Sec. 23(4) of the I.T Act which says that if the property consists of more than 2 houses then the assessee has option to only specify any of the property as self-occupied property and in respect of the other house the annual value of the house has to be determined as provided in Sec. 23(1) of the Act. The ld. D.R submitted that assessee has to offer deemed rent even if no rent is charged by the assessee from the trust wherein he was interesting party as a managing trustee of the trust.

6. Heard both the sides and perused the material on record. During the year under consideration the assessee has let out one of its property as discussed to Tara Meera Educational Trust in which the assessee himself was the managing trustee. The assessee had neither shown any rental income received from the said tenant nor offered any deemed rent on the basis of annual value of the house as prescribed in Sec. 23(1) and Sec. 23(4) of the Act. The provision of Sec. 23 are reproduced as under:

- “(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 the 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.]*

[(5) Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to 2[two years] from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.]”

7. It is clear from the provision of Sec. 23(4) of the Act that where the assessee has property consisting of more than 2 houses then the annual value of the house other than the house of which the assessee has exercised an option as self-occupied shall be determined as provided in sub-section (1) of Sec. 23 of the Act as if such house has been let out.

As per Section 23 of the Act annual value of the House is to be determined for the purpose of section 22 of the Act irrespective of the fact whether or not any income was either actually received or had accrued to the assessee. In the light of the above facts and provisions of law we do not find any fault in the action of the assessing officer for determining the deemed annual value of the impugned property @ 3% of the capital value which was the least amount as per the 3 option provided by the assessee. Considering the above facts and provision of law we don't find any merit in the grounds of appeal of the assessee, therefore all the ground of appeal of the assessee are dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 06.03.2024

Sd/-
Kuldip Singh)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 06.03.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.