

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.884/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2016-17

Bharat Dewakinandan Agarwal,  
B-303 Mantri Lawns, Anand Park,  
Aundh, Pune – 411007

PAN : AAZPA4522C

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle – 13,  
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain  
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 08-02-2024  
घोषणा की तारीख / Date of Pronouncement : 20-03-2024

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 27-07-2023 passed by the National Faceless Appeal Centre ("NFAC"), Delhi for assessment year 2016-17.

2. The sole ground raised by the assessee challenging the action of CIT(A) in confirming the addition of Rs.45,70,465/- made by the AO on account of deemed rent under the head income from house property in the facts and circumstances of the case.

3. The brief facts relating to the case are that, the assessee is an individual, filed return of income declaring a total income of Rs.3,58,16,560/-. The assessee derived income by way of salary, house property, business/profession, capital gains and income from other sources. Under scrutiny, notices u/s. 143(2) and 142(1) of the Act issued. In response to the said notices, the assessee filed details before the AO which is evident from para 2 of the assessment order. According to the AO, the assessee has shown gross annual value regarding office No. 801 at "Zero one" building of Rs.4,14,350/- which is low as compared to value of similar properties No. 802 and 702 in the same premises. Further, fair rent of office No. 1 and 2 of Rs.58,250/- and 98,850, respectively at Adam Court building is also very low. In response to the show cause, the assessee contended that the property No. 801 was vacant during the year and municipal value was considered as deemed to be let out for computing income by taking support in the case of Shri Rajkumar P. Shevani of ITAT, Pune and the case of Sachin R. Tendulkar of ITAT, Mumbai.

4. The AO held the municipal value would become the comparable at stock only when no other comparable instances are available and proceeded to determine the gross annual value for property No. 801 in accordance with the conditions laid down in clause (a) of Section 23(1) of the Act. Accordingly, the net income for property No. 801 determined at Rs.15,47,489/- by giving deductions on account of taxes to local authority, standard deduction u/s. 24(a) of the Act and interest paid on forward capital. Regarding office No. 1 and 2 in Adam Court building, the AO in the absence of any working or supporting rental value, determined the income from property No. 1 at Rs.2,93,492/- and property No. 2 at loss of Rs.11,69,255 vide its order dated 26-12-2018 passed u/s. 143(3) of the Act. Aggrieved by the order of AO, the assessee preferred an appeal before

the NFAC, Delhi, the contentions of which are reproduced in pages 4 to 6 of the impugned order. It is specifically argued that the expression “the sum for which the property might be expected to be let out from year to year” as provided in Section 23(1)(a) of the Act does not mean the rent received in preceding years or the rent received for similar premises, but the rent receivable in the perfect market conditions which is best indicated by the municipal valuation. Further, it was contended as the property could remain vacant throughout the year the annual value of the same is Nil by placing reliance in the case of Vikas Keshav Garud in ITA No. 747/PUN/2014. Considering the submissions of the assessee the NFAC, Delhi observed that the assessee could not establish the municipal valuation is the reasonable value expected to let for the year in consideration and the annual value based on the municipal valuation adopted by the assessee cannot be considered as the “reasonable value expected to let” as for similar property of the assessee in the same year in the same location. By holding so, the NFAC, Delhi confirmed the order of AO on property No. 801, office premises No. 1 and 2. Aggrieved by the same, the assessee is before us by raising sole ground as mentioned above.

5. The ld. AR reiterated the same submissions as made before the NFAC, Delhi and drew our attention to para 6.2 of the impugned order. The ld. AR referred the order of Mumbai Tribunal in the case of Pankaj Wadhwa reported in 101 taxmann.com 161 and in Rajkumar P. Shewani in ITA No. 2120/PUN/2013 which are at pages 6 to 10 and 26 to 37 of the case laws compilation. The ld. DR submits that the case laws as relied on by the assessee are distinguishable and no reliance can be given thereto. Regarding property No. 801, he submits that the assessee shown the annual value for similar properties in the same premises and adopted annual municipal value as deemed rent for the subjected property. The AO

rightly determined the annual letting value for subjected property taking into consideration the average value of other properties which are situated in the same premises. The CIT(A) correctly held the same as valid. Regarding other properties in No. 1 and 2 situated in building the assessee failed to submit the workings for annual letting value and the AO rightly compared the ALV taking into consideration the similar properties in the same area. The CIT(A) correctly held the same as proper. The ld. DR prayed to dismiss the sole ground raised by the assessee and supported the order of CIT(A).

6. Heard both the parties and perused the material available on record. It is pertinent to note that the assessee offered the annual value of Rs.4,14,350/- based on municipal valuation for property No. 801 in Zero one building and for the property No. 1 and 2 in Adam Court building of Rs.58,250/- and Rs.98,850/-, respectively. Now, the ld. AR contending that the annual letting value for the said properties offered erroneously and it is a well settled law that no tax can be imposed without the validity of law, if a tax cannot be imposed, the same cannot be collected merely because the assessee has paid the same. The ld. AR placed reliance more particularly on the order of this Tribunal in the case of Vikas Garud (supra), wherein, we note that it was held that a property could remain vacant throughout the year leading to a nil annual value. The CIT(A) considered the same and observed that, subsequently, the Pune Tribunal vide order dated 07-06-2022 in the case of Arihant Patni in ITA No. 2695/PUN/2016 for A.Y. 2013-14, following the decision of Hon'ble High Court of Andhra Pradesh the case of Vivek Jain reported in 337 ITR 74 (A.P.) and the Hon'ble High Court of Punjab and Haryana in the case of Sushma Singla reported in 76 taxmann.com 349 (P. & H.), held rent for the assessee's property shall be calculated as per the provisions of section

23(1)(a) of the Act, even if the claim of nil ALV u/s. 23(1)(c) of the Act is made on the ground that the said building was vacant for the year under consideration. On perusal of the order dated 07-06-2022 in the case of Arihant Patni (supra), we note that the facts in the case of Arihant Patni (supra) that commercial building with 8 floors were completed in July, 2011, relating to A.Y. 2012-13. The said building was given in lease in April, 2016 relating to A.Y. 2017-18. A claim of ALV of nil u/s. 23(1)(c) of the Act was rejected by the AO and determined the ALV as per the provisions of section 23(1)(a) of the Act by placing reliance in the case of Vivek Jain (supra) of Hon'ble High Court of Andhra Pradesh. The Tribunal confirmed the view of AO in determining the ALV u/s. 23(1)(a) of the Act by following the decision of Hon'ble High Court of Andhra Pradesh the case of Vivek Jain (supra) and Hon'ble High Court of Punjab and Haryana in the case of Sushma Singla (supra) held the rent for the property which is vacant throughout the year shall be calculated as per the provisions of section 23(1)(a) of the Act and further held non-applicability of section 23(1)(c) of the Act. In view of the same, held orders in the case of Shri Vikas Keshav Garud in ITA No. 747/PUN/2014 and in the case of Sonu Realtors Pvt. Ltd. reported in 173 ITR 82 (Bombay) are not applicable. Therefore, we hold the order of this Tribunal in the case of Arihant Patni (supra) is applicable for the facts and circumstances in the present case.

7. The Hon'ble High Court of Bombay in the case of Tip Top Typography reported in 368 ITR 330 (Bom) dismissed the appeal of Revenue and observed that section 23(1)(a) of the Act is relevant for determining the income from house property and concerns determination of the annual letting value of such property. That provision talks of "the sum for which the property might reasonably be expected to let from year to year." Further, the words "the sum for which the property might reasonably be

expected to let from year to year" provide a specific direction to the Revenue for determining the "fair rent". The Assessing Officer, having regard to the aforesaid provision is expected to make an inquiry as to what would be the possible rent that the property might fetch. The Hon'ble High Court further observed that if the rateable value, if correctly determined, under the municipal laws can be taken as annual letting value u/s. 23(1)(a) of the Act. However, it was made it clear that rateable value is not binding on the AO, if the AO can show that rateable value under municipal laws does not represent the correct fair rent, then he may determine the same on the basis of material/ evidence placed on record.

8. In the present case, regarding office No. 801 being vacant, the assessee offered gross annual value of Rs.4,14,350/- on the basis of municipal valuation. The AO observed that the assessee has shown gross annual value for similar properties of office No. 802 and office No. 702 of the same building at Rs.57,73,680/- and Rs.14,84,843/-, respectively. The AO disregarded the gross value based on the municipal valuation and taken into account the average rate of gross value of the office No. 802 and 702, to determine net income for office No. 801. The Hon'ble High Court of Bombay in the case of Tip Top Typography (supra) held the annual rateable value fixed by the municipal laws is not binding on the AO if the AO can show the said rateable value does not represent fair rent he may determine the same on the basis of evidences before him. In the present case, the assessee itself offered gross annual value of Rs.57,73,680/- and Rs.14,84,843/- of similar other properties in the same premises office No. 802 and 702, but however, offered gross value on the basis of municipal valuation to the subjected properties i.e. property No. 801 being claiming the said subjected property was vacant under the year under consideration. The Hon'ble High Court of Andhra Pradesh in the case of

Vivek Jain (supra) and Hon'ble High Court of Punjab and Haryana in the case of Sushma Singla (supra) as relied on by this Tribunal in the case of Arihant Patni (supra), held if the property vacant for the year under consideration, the duty is cast upon the AO to determine the annual letting value u/s. 23(1)(a) of the Act, so, therefore, in our opinion, the AO rightly disregarded the municipal valuation as shown by the assessee and determined the net income taking into account the average value of other similar properties belonging to assessee in the same building by giving deductions i.e. taxes paid to local authority, u/s. 24(a) of the Act and interest paid on borrowed capital. We find the CIT(A) rightly confirmed the same, accordingly, we uphold the order of CIT(A) to the extent of office No. 801 in "Zero one" building. Therefore, we reject the submissions of ld. AR that no ALV could be determined on the property which was vacant under the year under consideration by placing reliance in the cases of Vikas Keshav Garud (supra), Rajkumar P. Shewani (supra) and Sachin R. Tendulkar (supra).

9. Regarding subjected property of office No. 1 and 2 at Adam Court, the assessee offered Rs.58,250/- and Rs.98,850/-, respectively. According to the AO, the said fair rent is very low and no working or supporting evidences furnished by the assessee for showing rental value. In such circumstances, the AO estimated @ Rs.40,000/- per month for office No. 1 and 2 at Adam Court as fair market value. The ld. AR argued that there was no basis for estimation @ Rs.40,000/- per month taken by the AO and the AO did not supply any workings to the assessee. The CIT(A) also confirmed the same without examining afresh on its own or getting report from the AO. Therefore, we find the order of CIT(A) is not justified in confirming the order of AO in determining annual letting value on estimation basis. Since, we have taken a view in the aforementioned

paragraphs that the AO has to determine the annual letting value based on the material evidences, if it is not satisfied with the workings or rateable value under municipal laws. There is no material brought on record by the AO in determining the annual letting value for office No. 1 and 2 at Adam Court except making some references to areas like Baner, commercial properties (offices) of similar nature. Therefore, the order of CIT(A) in confirming the view of AO, which is on estimation, is not justified. Therefore, we deem it proper to remand the matter to the file of AO to determine correct annual value for properties office No. 1 and 2 of Adam Court u/s. 23(1)(a) of the Act. The assessee is liberty to file evidences, if any, in support of its claim. Thus, the sole ground raised by the assessee is partly allowed for statistical purpose.

10. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 20<sup>th</sup> March, 2024.

Sd/-  
(Om Prakash Kant)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20<sup>th</sup> March, 2024.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune