

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 545/MUM/2024
Assessment Year: 2017-18**

Asst. CIT Circle-6(1)(2),
Room No. 506, 5th floor,
Aayakar Bhavan, M K Road,
Mumbai-400020.

Appellant

Vs.

Sameer Kishore Koticha,
2301, 23rd floor Raheja Princess,
S.K. Bole Road, Dadar (W),
Mumbai-400028.

**PAN NO. AAWPK 9080 A
Respondent**

Assessee by : Mr. Madhur Agrawal
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 27/05/2024
Date of pronouncement : 30/05/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 11.12.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

- 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in directing the AO to delete the*



addition of Rs.1,43,50,580/- on account of rental income earned by the assessee but not offered to tax on the ground that property being vacant during the year under consideration?

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is erred in holding that deeming provision of Section 23(1)(c) of the Act is not applicable in the case of assessee as property being vacant and not let out and as such estimating the market rate of vacant deemed let out property as worked out by the AO is not as per Law ?*
3. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

2. At the outset, the Ld. counsel for the assessee submitted that the tax effect involved in the appeal by the Revenue is below the threshold limit of Rs.50,00,000/- which is prescribed by the Central Board of Direct Taxes (in short 'CBDT') vide Circular No. 3/2018 dt. 20/08/2018 for filing appeal before the Income-tax Appellate Tribunal (in short 'the Tribunal') and therefore, this appeal is liable to be dismissed as infructuous.

2.1 The Ld. counsel for the assessee filed a copy of the computation sheet which is part of the assessment order. According to this computation sheet aggregate income tax liability including surcharge has been worked out to Rs.18,56,39994/-. Further, the Ld. counsel referred to the tax liability worked out by the assessee on the returned income as reflected in the return of income filed for the year under consideration, which is Rs.18,11,31,379/-. The Ld. counsel for the assessee has filed a chart whereas difference of the assessed tax liability of Rs.18,56,39,992/- and returned income tax liability of Rs.18,11,31,378/- has been worked out to Rs.45,08,614/-. In view of this working the tax effect in the issue in



dispute challenged before the ITAT is below the prescribed threshold of Rs.50,00,000/-. Accordingly, the Ld. counsel for the assessee submitted that the Revenue should not have filed this appeal and therefore, it need to be dismissed as infructuous.

3. The Ld. Departmental Representative (DR) however submitted that in the effect in the form No. 36 has been worked out to Rs.50,99,478/- which is marginally higher than the prescribed threshold limit. Therefore, the objection of the Ld. counsel for the assessee need to be rejected.

4. We have heard rival submission of the parties and perused the relevant material on record. Though in the form No. 36 filed by the Revenue the tax effect has been stated to be Rs.50,79,478/- but on verification of the computation of the sheet issued along with the assessment order , the assessed tax effect liability has been worked out to Rs.18,56,39,994/- whereas the returned tax liability is Rs.18,11,31,378/- and difference of assessed tax liability and returned tax liability of Rs.45,08,614/- has not been disputed by the Ld. DR. The difference of the assessed and the returned tax liability works out to Rs.45,08,614/- which is below the threshold limit prescribed by the CBDT for filing appeal before the ITAT vide CBDT Circular (supra). The Ld. DR did not refer to any of the exceptions provided in the said Circular therefore, in terms of the CBDT Circular, therefore, this appeal should not have been filed by the Revenue. Hence same is dismissed as infructuous. If the



Revenue finds that the appeal falls in any of the exceptions provided in the CBDT Circular or due to any apparent mistake in the tax effect computation , same is found to be more the Rs.50,00,000/-, then Revenue is it liberty to file a Miscellaneous Application seeking recall of the appeal. The appeal of the Revenue is accordingly disposed off as indicated above.

Order pronounced in the open Court on 30/05/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/05/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai