

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.892/PUN/2023  
Assessment Year : 2018-19**

Jewel Housing 601, Orbit Plaza, New Prabhadevi Road, Prabhadevi, Mumbai – 400025	<b>Vs.</b>	ACIT, Central Circle 1 (1), Pune
<b>PAN: AADFJ4475H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Suhas P Bora  
Department by : Shri Pawan Bharati  
Date of hearing : 18-06-2024  
Date of pronouncement : 26-06-2024

**ORDER**

**PER R.K. PANDA, VP :**

This appeal filed by the assessee is directed against the order dated 25.08.2022 of the CIT(A), Pune-11 relating to assessment year 2018-19.

2. There is a delay of 291 days in filing of this appeal, for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with affidavit and after hearing the Ld. DR, the delay in filing of the appeal is condoned and appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is a partnership firm carrying on the business as builders and filed its return of income on 15.10.2018 declaring total income of Rs.29,84,930/-. The Assessing Officer completed the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 01.03.2021 wherein he made addition of Rs.20,32,800/- as 'Income from house property' u/s 23(4) of the Act by recording as under:

*"4.3 On the above facts and in law, the explanation furnished by the Assessee is not tenable, hence, not acceptable. Therefore, this office made enquiries to ascertain the fair market rent of the aforesaid stock-in-trade of 11 flats. Considering the size of flats and market enquiries, fair market rent is taken at Rs.22,000/- per month per unit. The said flats were held vacant for entire year. Accordingly, Gross Annual Letting Value of them are Rs.29,04,000/- (22,000x12x11) after allowing standard deduction of 30% i.e. Rs.8,71,200/-, the net annual letting value comes to Rs.20,32,800/-. Accordingly deemed rent from aforementioned properties comes to Rs.20,32,800/- which is being brought to tax."*

4. In appeal, the Ld. CIT(A) upheld the addition made by the Assessing Officer.

5. Aggrieved with such order of CIT(A), the assessee is in appeal before the Tribunal.

6. Although a number of grounds have been raised by the assessee, however, the Ld. Counsel for the assessee relying on various decisions submitted that as against fair market rent of the stock-in-trade of 11 flats, the municipal ratable value should be adopted. For the above proposition, he relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Tip Top Typography vide Income Tax Appeal No.1213 of 2011, order dated 08.08.2014, the decision of the Mumbai

Bench of Tribunal in the case of Moraj Building Concepts Pvt. Ltd. Vs. DCIT vide ITA Nos.420, 264, 263, 265 & 266/MUM/2022 for assessment years 2012-13 to 2016-17, order dated 31.03.2023 and various other decisions filed in the paper book. He accordingly submitted that the deemed rent is to be assessed u/s 23(4) of the Act on the basis of fair value adopted by the Municipal Corporation and not on estimate basis. He also relied on following decisions:

1. *DCIT vs. Shri Ashok Beharay vide ITA No.827/PN/2011, order dated 03.07.2012 and Dr. Shrikant Kelkar vide ITA No.561/PN/01*
2. *Parkpaper Industries (P) Ltd vs. ITO 25 SOT 406*
3. *CIT vs. Akshay Textiles Trading 304 ITR 401*
4. *CIT vs. J K Investor (Bombay) Ltd 248 ITR 723*
5. *M V Sonawala vs. CIT 177 ITR 246*

7. The Ld. DR on the other hand heavily relied on the order of CIT(A).

8. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed by both the sides. We have also considered the various decisions cited before us. The only question that is to be decided in the impugned appeal now is as to whether the fair value adopted by the Municipal Corporation or the fair market rent of the stock-in-trade of the flats as per the provisions of section 23(4) of the Act is to be adopted. Now the issue stands decided in favour of the assessee by various decisions wherein it has been held that the deemed rent to be assessed u/s 23(4) of the Act is on the basis of fair value adopted by the Municipal Corporation and not on estimate basis. We, therefore, deem it appropriate to restore this issue to the file of

the Assessing Officer with a direction to determine the municipal ratable value and adopt the same for computing the deemed rent u/s 23(4) of the Act for the 11 flats under dispute. Needless to say, the Assessing Officer is directed to give reasonable opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly partly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 26<sup>th</sup> June, 2024.

**Sd/-**  
(ASHTA CHANDRA)  
JUDICIAL MEMBER

**Sd/-**  
(R. K. PANDA)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 26<sup>th</sup> June, 2024  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	19.06.2024		Sr. PS/PS
2	Draft placed before author	25.06.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			