IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.4232/Mum/2023
(**Assessment Year :2014-15**)

Deputy Commissioner of Income Tax-23(1) Room No.511, Fifth Floor, Piramal Chambers, Lalbaug Maharashtra-400 012	Vs.	M/s. Laxmi Finance And Leasing Company Co-op Society Ltd. Laxmi Towres, Plot C-25 BKC, Bandra East Maharashtra-400 051
PAN/GIR No.AAAJL0006F		
(Appellant)	..	**(Respondent)**

CO No.125/Mum/2024
(Arising out of ITA No.4232/Mum/2023)
(**Assessment Year :2014-15**)

M/s. Laxmi Finance And Leasing Company Co-op Society Ltd. Laxmi Towres, Plot C-25 BKC, Bandra East Maharashtra-400 051	Vs.	Deputy Commissioner of Income Tax-23(1) Room No.511, Fifth Floor, Piramal Chambers, Lalbaug Maharashtra-400 012
PAN/GIR No.AAAJL0006F		
(Appellant)	..	**(Respondent)**

ITA No.4233/Mum/2023
(**Assessment Year :2015-16**)

Deputy Commissioner of Income Tax-23(1) Room No.511, Fifth Floor, Piramal Chambers, Lalbaug	Vs.	M/s. Laxmi Finance And Leasing Company Co-op Society Ltd. Laxmi Towres, Plot C-25

Maharashtra-400 012		BKC, Bandra East Maharashtra-400 051
PAN/GIR No.AAAJL0006F		
(Appellant)	..	**(Respondent)**

CO No.126/Mum/2024
(Arising out of ITA No.4233/Mum/2023)
(**Assessment Year :2015-16**)

M/s. Laxmi Finance And Leasing Company Co-op Society Ltd. Laxmi Towres, Plot C-25 BKC, Bandra East Maharashtra-400 051	Vs.	Deputy Commissioner of Income Tax-23(1) Room No.511, Fifth Floor, Piramal Chambers, Lalbaug Maharashtra-400 012
PAN/GIR No.AAAJL0006F		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Madhur Agrawal
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	**29/08/2024**
Date of Pronouncement	**29/08/2024**

आदेश / O R D E R

PER BENCH:

The aforesaid appeals have been filed by the Revenue and Cross Objections by the assessee against order dated 27/09/2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi for A.Y.2014-15 & 2015-16.

2. The appeal for the A.Y.2014-15 was taken as the lead case and the decision rendered thereon shall apply with equal force for A.Y.2015-16 also except with variance in figures.

3. The following grounds have been taken:-

1 i) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO, in respect of let out property holding that in the case of let out property if the actual rent received is less than municipal rateable value then the rental value should be adopted as ALV. Ground

2 (ii) Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in directing to adopt the Municipal rateable value for computation of ALV without appreciating the fact that AO has determined the ALV on the basis of Section 23(1)(a) of the I.T. Act, 1961 i.e. sum for which the property might reasonably be expected to Ict from year to year

3 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in principle by not appreciating the contention of the AO in determining the annual value of the property

4 Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in not applying of the provisions of section 23(1)(a), 23(1)(b), 23(1)(c) of the I. T. Act 1961.

5 Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 36,56 800/- received as transfer fees under the Head income from other sources' ignoring the decision of the Hon'ble Special Bench, in Walkeshwar Triveni Co-Op Hsg. Society 83 ITO 159 (Mum) (SB), wherein it was held that transfer fees received from the transferee members was not exempt from tax on the ground that at the time of payment of fees, he was not a member of the society and if an amount is received more than what is chargeable under by laws or Government directions,

the society is bound to repay the same and if retains the same, it will be in the nature of profit making and that amount will be chargeable to tax. Further, the Ld. CIT(A) ignored the decision of the Hon'ble Bombay High Court in Presidency CHS Ltd (1995) 216 ITR 321 (Bom), which was followed by the Hon'ble ITAT in Hatkesh Co-op Hsg. Soc. Ltd [TS-256-ITAT-2013(Mum)] Dated. 21.10.2013, holding tha

6 Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition on account of transfer fee without appreciating the fact that amount was received from non-members which rapture the basic concept of mutuality

7. The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary

4. The brief facts are that the assessee is a co-operative society and has filed its return declaring income of Rs.2,24,54,764/- on 30/09/2014. . The assessee is a conglomerate of private financial bodies and was formed to purchase a plot of land on lease from MMRDA to construct office premises to be utilized by its members by contribution of funds at equal rates and on completion of the said project, society was in possession of surplus office premises to be utilized for the purpose of renting to tenants and thus the assessee earns income from house property from these premises and interest income under 'income from other sources' The society has 48 members from whom contribution towards maintenance is collected. During the year under consideration, the society has derived income as follows:

Sr No.	Nature of receipts	Receipts	Taxed under the Head
1	Contribution from members	7,53,30,000/-	Tax free under the concept of mutuality
2	Interest	3,29,31,141/-	Taxed under Other sources
3	Other Income	25,86,932/-	Taxed under Other sources
4	Lease Rent Income	4,05,69,408/-	Taxed under House property

5. There are two issues involved in this appeal. Firstly, in respect of the properties let out on lease by the assessee from which rental income is earned which has been taxed by the Assessing Officer by taking higher rent as ALV in respect of all the properties. Secondly, transfer fee of Rs.36,56,800/- was claimed as exempt by the assessee on the principle of mutuality which has been added to its income by the ld. AO after holding that the concept of mutuality is restricted to collection of maintenance charges from its 48 members who enjoyed the benefits from the society. The ld. AO has held that there is no mutuality when the vacant premises are sold to a third party at the market rates and not at the cost incurred by the assessee for its construction. He has accordingly, added the amount of transfer fee to the income of the assessee under the head 'income from other sources.'

6. Ld. CIT(A) vide order dated 27/09/2023 has deleted the addition on account of transfer fee by holding that the transfer fee is covered by the principle of mutuality. He has followed the order of the Co-ordinate Bench for A.Y.2017-18 in this regard. In respect of addition of Rs.85,01,001/- on account of enhanced ALV on rented properties, the same has also been deleted in view of the order of the Co-ordinate Bench for A.Y.2017-18. However, with regard to addition of Rs.3,26,82,720/- on account of ALV on vacant properties, ld, CIT(A) has directed the ld. AO to adopt municipal reteable value for computation of ALV of vacant properties.

7. We have heard rival submissions and perused the material available on record. Before us, ld. AR pointed out that the grounds taken by the Revenue with regard to transfer fee and enhanced ALV on rented properties are squarely covered by the order of the Co-ordinate Bench for A.Y.2011-12.

8. With regard to the issue of ALV (Ground No.1,2,3 & 4), the relevant portion of the order of the Co-ordinate Bench is reproduced below:-

"4.1. We have heard rival submissions and perused the material available on record. At the outset, we find that assessee has raised by way of additional ground challenging the addition made on account of ALV in respect of vacant properties. We find that this ground was inadvertently omitted to be raised before us in the original grounds of appeal by the assessee. Hence, the same was raised as an additional ground. In any case, this issue is also the subject matter of dispute before us in ground No.3 of the Revenue appeal. Since

all the facts relatable to this issue are already on record, we are inclined to admit the additional ground raised by the assessee and take it up for adjudication together with ground No.3 and 4 of the Revenue's appeal.

4.2. As stated earlier, the assessee had six office premises which was lying unsold with it. Out of that, one office premise was let out to M/s. Lupin Ltd., during the year under consideration. The remaining 5 properties were indeed lying vacant during the A.Y.2004-05. The details of properties remaining vacant are as under:-

Office No.2, A Wing, 6th Floor (5000 sq.ft)	*Vacant*
Office No.2, A Wing, 4th Floor (5000 sq.ft)	*Vacant*
Office No.10, B Wing, 2nd Floor (5000 sq.ft)	*Vacant*
9B, C Wing, 2nd Floor (2500 sq. ft)	*Vacant*
B Wing, 9th Floor (960 sq.ft)	*Vacant*

4.3. The ld. AO proceeded to determine the deemed rental income in respect of this vacant properties on the basis of rent of Rs.10,25,000/- received by the assessee from Trans Expo Trade Pvt. Ltd. in A.Y.2007-08 considering the same to be the ALV of the vacant property during the year and applied 25% discount to bring it down to the ALV as applicable for A.Y.2004-05. By this process, he determined the deemed rental income of five vacant properties at Rs.3,40,69,080/- and made addition under the head 'income from house property'. This was done on the basic premise that assessee's case falls under the provisions of Section 23(1)(a) of the Act and accordingly, the ld. AO observed that he is entitled to consider the fair rental value even for the vacant property.

4.4. The ld. CIT(A) on analysing the various case laws relied upon by the ld. AO in his assessment order as well as by the assessee before him, held that in respect of vacant properties, annual value will be the municipal value u/s.23(1)(a). The assessee pleaded before the ld. CIT(A) that though these five properties as tabulated supra were remaining vacant during the year under consideration, most of them were indeed let out in subsequent years. In fact the assessee genuinely intended to let out these properties but could not find out a suitable tenant thereon. Hence, the property remained vacant for the reason

which was beyond the control of the assessee herein. It was also specifically pleaded that the said properties could not be used by the assessee for any other purpose other than letting out hence, intention to let out those properties, was proved. The ld. CIT(A) brushed aside this argument of the assessee stating that the same does not have any merit, since in his opinion, the meaning of word "let" in section 23(1)(c) cannot be equated with "intended to let" and more so, the intention to let cannot be verified. Accordingly, he held that the assessee's case does not come under the ambit of section 23(1)(c) of the Act and falls u/s.23(1)(a) of the Act and also directed the ld. AO to calculate the annual value based on the proportionate municipal value of vacant properties. Against this finding, the Revenue is in appeal before us to substitute municipal value with fair rental value as determined by the ld. AO. The assessee is in appeal before us stating that no annual value per se could be added in respect of vacant properties and it should be determined at Rs. Nil u/s.23(1)(c) of the Act.

4.5. We find that the ld. AR placed reliance on the decision of this Tribunal in the case of Sachin R Tendulkar vs. DCIT reported in 172 ITR 266 and in the case of Somu Realtors Pvt. Ltd., vs. DCIT reported in 173 ITR 82 wherein it was held that in respect of vacant properties annual value need to be determined in accordance with Section 23(1)(c) of the Act if property remains vacant for the whole of the year.

4.6. Per contra, the ld. DR placed reliance on the decision of the Hon'ble Andhra Pradesh High Court in the case of Vivek Jain vs. ACIT reported in 14 Taxmann.com 146. When the Bench confronted the ld. AR as to whether there is any other High Court decision contrary to the decision of the Hon'ble Andhra Pradesh High Court quoted by the ld. DR, the ld. AR answered in negative. Accordingly, we are inclined to follow the decision of the Hon'ble Andhra Pradesh High Court relied upon by the ld. DR supra wherein it was held as under:-

> ***"10.** While interpreting a statute, the court may not only take into consideration the purpose for which it had been enacted, but also the mischief it seeks to suppress. Sneh Enterprises v. Commissioner of Customs [2006] 7 SCC 714. It is evident that clause (c) has been inserted as a protection to the assessee in cases where, on account of*

vacancy, the rent received or receivable on a property which has been let out is less than the sum referred to in clause (a). Prior to its amendment, even in such cases it was the sum referred to in clause (a) which was to be taken as the annual value of the property.

11. *In order to attract section 23(l)(c), the following requirements must be fulfilled (i) the property, or any part thereof, must be let; and (ii) it should have been vacant during the whole or any part of the previous year ; and (iii) owing to such vacancy the actual rent received or receivable by the owner in respect thereof should be less than the sum referred to in clause (a). It is only if these three conditions are satisfied would clause (c) of section 23(1) apply in which event the amount received or receivable, in terms of clause (c) of section 23(1), shall be deemed to be the annual value of the property. Clause (c) does not apply to situations where the property has either not been let out at all during the previous year or, even if let out, was not vacant during the whole or any part of the previous year. Under the Explanation to section 23(1), for the purposes of clause (b) or (c), the amount actually received or receivable by the owner shall not include the amount of rent which the owner cannot realize. Self-occupation by the owner of a house would require the annual value of such house, or part of the house, to be taken as nil under section 23(2)(a) and, where the house cannot actually be occupied by the owner on account of his employment, business or profession, as nil under section 23(2)(b) provided that, in terms of section 23(3)(a), the house or part of the house had not actually been let during the whole or any part of the previous year. As a legal fiction is created the word "actually", as used in section 23(3)(c), does not find mention in section 23(1) of the Act.*

12. *The construction placed on section 23(l)(c), by Sri B. Chandrasen Reddy, learned counsel for the petitioner, that if there is an intention to let out the property during the relevant year, coupled with efforts being made for letting it out, it must be held the property is let, would necessitate reading words into section 23(1)(c) which do not exist. The words "where the property is let" cannot be read as*

"where the property is intended to be let". The provisions of a tax statute must be strictly construed. The words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning. Gurudevdatta VKSSS Maryadit v. State of Maharashtra [2001] 4 SCC 534. The Legislature may be safely presumed to have intended what the words plainly say. - Bhaiji v. Sub-Divisional Officer, Thandla [2003] 1 SCC 692. The intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said - Unique Butyle Tube Industries (P.) Ltd. v. Uttar Pradesh Financial Corpn. [2003] 113 Comp. Cas. 374 (SC). The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed. It cannot imply anything which is not expressed ; it cannot import provisions in the statute so as to supply any assumed deficiency. The object of this rule is to prevent a taxing statute being construed "according to its intent, though not according to its words". It has even been said that "if the provision is so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect - Gursahai Saigal v. CIT [1963] 48 ITR 1 (SC); Cape Brandy Syndicate v. IRC [1921] 1 KB 64 ; Bethlehem Hospital In re [1875] L.R. 19 Eq 457; A.V. Fernandez v. State of Kerala 1957 SCR 837 ; IRC v. Bladnoch Distillery Co. Ltd. [1948] 1 All ER 616 ; CST v. Modi Sugar Mills Ltd. [1961] 12 STC 182 (SC); CIT v. V. MR. P. Firm, Muar, AIR 1965 SC 1216 ; CED v. Kantilal Trikamlal [1976] 105 ITR 92 (SC); Aphali Pharmaceuticals Ltd. v. State of Maharashtra [1989] 4 SCC 378 ; Baidyanath Ayurved Bhawan (P.) Ltd. v. Excise Commissioner AIR 1971 SC 378. The question as to what is covered must be found out from the language according to its natural meaning fairly and squarely read. IRC v. Duke of Westminster [1936] AC 1 (HL), A.V. Fernandez's case (supra) Saraswati Sugar Mills v. Haryana State Board [1992] 1 SCC 418). The meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather

than from any notions which may be entertained by the court as to that is just or expedient. The expressed intention must guide the court. CIT v. Shahzada Nand & Sons [1966] 60 ITR 392 (SC). The Legislature does not waste its words. Ordinary, a grammatical meaning is to be assigned to the words used while interpreting a provision to honour the rule. The Legislature chooses appropriate words to express what it intends and, therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material— intrinsic or external—is available to permit a departure from the rule. Harbhajan Singh v. Press Council of India [2002] 3 SCC 722.

14. *The contention that, as clause (c) provides for an eventuality where a property can be vacant during the whole of the relevant previous year, both situations, i.e., "property is let" and "property is vacant for the whole of the relevant previous year" cannot co-exist does not merit acceptance. Clause (c) encompasses cases where a property is; let out for more than a year in which event alone would the question of if being vacant during the whole of the previous year arise. A property let out for two or more years can also be vacant for the whole of a previous year bringing it within the ambit of clause (c) of section 23(1) of the Act.*

15. *The contention that, if the owner had let out the property even for a day, it would acquire the status of "let out property" for the purpose of clause (c) for the entire life of the property even without any intention to let it out in the relevant year is also not tenable. The circumstances in which the annual let out value of a house property should be taken as nil is as specified in section 23(2) of the Act. Under section 23(l)(c), the period for which a let out property may remain vacant cannot exceed the period for which the property has been let out. If the property has been let out for a part of the previous year, it can be vacant only for the part of the previous year for which the property was let out and not beyond. For that part of the previous year during which the property was not let out, but was vacant, clause (c) would not apply and it is only*

clause (a) which would be applicable, subject of course to sub-sections (2) and (3) of section 23 of the Act. Such a construction does not lead to any hardship, inconvenience, injustice, absurdity or anomaly and, therefore, the rule of ordinary and natural meaning being followed cannot be departed from. Sneh Enterprises' case (supra). We are in agreement with the interpretation of section 23(1)(c) by the Tribunal, and are of the opinion that the benefit thereunder cannot be extended to a case where the property was not let out at all.

16. *We find no merit in the submission that the words "property is let" are used in clause (c) to take out those properties which are held by the owner for self-occupation from the ambit of the said clause. As noted hereinabove, section 23(2)(a) takes out a self-occupied residential house, or a part thereof, from the ambit of section 23(1) of the Act. Likewise, under section 23(2)(b), where a house cannot actually be occupied by the owner, on account of his carrying on employment, business or profession at any other place requiring him to reside at such other place in a building not belonging to him, the annual value of the property is also required to be treated as nil, thereby taking it out of the ambit of section 23(1) of the Act. Section 23(3)(a) makes it clear that section 23(2) would not apply if the house, or a part thereof, is actually let during the whole or any part of the previous year. Thus, only such of the properties which are occupied by the owner for his residence, or which are kept vacant on account of the circumstances mentioned in clause (b) of section 23(2), fall outside the ambit of section 23(1) provided they are, as stipulated in section 23(3)(a), not actually let during the whole or part of the previous year. Clause (c) was not inserted to take out from its ambit properties held by the owner for self- occupation inasmuch as section 23(2)(a) provides for such an eventuality. It is only to mitigate the hardship faced by an assessee, and as clause (b) does not deal with the contingency where the property is let and, because of vacancy, the actual rent received or receivable by the owner is less than the sum referred to in clause (a), was clause (c) inserted. In cases where the property has not been let out at all, during the previous year under*

consideration, there is no question of any vacancy allowance being provided thereto under section 23(l)(c) of the Act."

4.7. We find that the aforesaid decision of Hon'ble Andhra Pradesh High Court also considers the fact that intention to let out is of no relevance and same cannot be equated with the word "let" in Section 23 of the Act. Hence, the argument advanced by the ld. AR in this regard that "intention to let out" is to be seen, stands dismissed, in the light of the decision of the Hon'ble Andhra Pradesh High Court referred to supra.

4.8.Now coming to the determination of annual value by the ld. AO in respect of vacant properties based on the actual rent received by the assessee for let out property in A.Y.2007-08 is concerned, we have already held that the actual rent received by the assessee in respect of let out property to some other tenant in subsequent assessment year cannot be used as a fair rental value for an earlier assessment year in respect of property that is let out to different tenant. While that has been held for a let out property, the same principle would indeed be applicable for vacant property also. We have also held in ground No.2 of the Revenue hereinabove that in such a scenario, municipal value should be adopted with the actual rent and higher of those two should be considered as the annual value. We find that the ld. CIT(A) has also directed the ld. AO to consider only the municipal value as the annual value in respect of vacant properties, on which finding, we do not find any infirmity. Accordingly, the ground Nos. 3 & 4 of the Revenue are dismissed and additional ground raised by the assessee is dismissed. In effect, the order of the ld. CIT(A) with regard to determination of annual value for the vacant properties is upheld.

9. With regard to the taxability of transfer fee (Ground No.5 & 6), the relevant findings of the Co-ordinate Bench of the Tribunal are as under:-

"6.6. We find that in the aforesaid decision, the Hon'ble Supreme Court had categorically held in para 24 of the

notification dated 09/08/2001 which has been heavily relied upon by the ld. AO in the instant case before us. It is applicable only to Co-operative housing societies and not applicable to a premises society (like assessee herein). Hence, reliance placed by the ld. AO on the said notification does not advance the case of the revenue.

6.7. The ld. DR also pointed out that the decision of Mumbai Tribunal in the case of Hatkesh Co-operative Housing Society Ltd., relied upon by the ld. CIT(A) in ITA Nos. 494-500/Mum/2011 dated 04/09/2013 has been subsequently reversed by the Hon'ble Bombay High Court reported in 75 Taxmann.com 39. The Revenue had preferred a Special Leave Petition against the said decision before the Hon'ble Apex Court and the same has been admitted by the Hon'ble Supreme Court which is reported in 84 Taxmann.com 240. We find that this argument of the ld. DR need not be gone into at all in view of the fact that as on date, the issue in dispute before us is already decided by the Hon'ble Apex Court in the case of ITO vs. Venkatesh Premises Co-operative Society Ltd., reported in 402 ITR 670. Respectfully following the aforesaid decision of Hon'ble Supreme Court, we hold that the receipt of Rs.5 lakhs on account of transfer fee / amenities fee cannot be brought to tax as income of the assessee. Accordingly, the ground No.1 raised by the assessee is allowed.

10. Accordingly, appeal of the department is dismissed.

ITA No.4233/Mum/2023(Assessment Year :2015-16)

11. We have already given our finding in appeal for A.Y.2014-15 and accordingly, our finding given therein will apply *mutatis mutandis* in this appeal also.

CO No.125/Mum/2024 & 126/Mum/2024: Before us ld. AR submitted that Cross Objections have not been pressed. Therefore, the same are dismissed as infructous.

12. In the result, appeals of the Revenue and Cross Objections of the assessee are dismissed.

Order pronounced on 29th August, 2024.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(RENU JAUHRI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 29/08/2024
KARUNA, *sr.ps*

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,

(Asstt. Registrar)
ITAT, Mumbai