

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO. 13/MUM/2024 : A.Y : 2021-22

Mrs. Meena Ashwin Gogari
802, Kesar Solitaire Building,
Plot No. 5, Sector No. 19, Thane,
Navi Mumbai, Sanpada S.O 400 703.
PAN : AACPG3772D (Appellant)

Vs. Asstt. Director of Income Tax,
Central Processing Centre.
(Respondent)

**Appellant by : Shri Nishit Gandhi
Respondent by : Smt. Mahita Nair**

**Date of Hearing : 02/09/2024
Date of Pronouncement : 03/09/2024**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 16.11.2023 passed by learned Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' for short) and it relates to Asst. Year 2021-22.

2. The only issue urged in this appeal is related to adjustment of Rs.15,93,684/- made by the CPC while processing the return under Section 143(1) of the Income Tax Act, 1961 ('Act' for short).

3. The learned AR submitted that the assessee has got five properties, out of which one property located at 1201 Sathe Residency, Sir Bhalchandra Road, Matunga, Mumbai 400 019 is “self-occupied property”. The Annual Letting Value of self occupied property shall be taken as NIL as per Section 23(2)(a) of the Act. Accordingly, while filing the return of income of the year under consideration, the assessee marked the above said property as self-occupied property and declared NIL income. However, the software used by the assessee appears to have mentioned the Annual Letting Value of the said property as Rs.22,76,692/- even though ultimate income from the above said property was shown as NIL in the return of income. The CPC took cognizance of the Annual Letting Value of the said property at Rs.22,76,692/- and computed income from self occupied property also. After allowing deduction of 30% towards repairs u/s 24 of the Act, the CPC made an adjustment of Rs.15,93,684/- to the returned income.

4. The Id A.R submitted that the assessee brought these factual aspects to the notice of CIT(A). However, the First Appellate Authority refused to grant relief on the reasoning that the assessee herself has declared the Annual Letting value of above property in the return of income. Accordingly, he dismissed the appeal of the assessee.

5. We heard the parties and perused the record. On a perusal of the copy of the return of income filed by the assessee, we notice that the assessee has selected above said property as self-occupied property. Ultimately, the income has been computed as NIL for the above said property by the assessee. However, the Annual letting value or gross rent receivable from the above said property was shown as Rs.22,76,692/- in the return of income. According to the assessee, she has not entered above figures and the above said amount was shown in the

return of income by some mistake of software. Since ALV was shown, the CPC has made the above said adjustment. It is submission of assessee that the very same property has been declared by assessee as self-occupied property in the past years also and same has been accepted.

6. We noticed that the assessee has been declaring the above said property as self-occupied property and accordingly the Annual Letting Value of the above said property is being taken as NIL. In this year also, the income from this property has been shown as NIL only, even though some amount was mentioned as Annual letting value in the return of income. There is no material to show that the assessee has received above amount.

7. The question is whether the ALV shown against the property could be taken cognizance of, when it is accepted as self occupied property? There should not be any dispute that the total income under the Act has to be computed in accordance with the law. If the above said property is accepted as self-occupied property, then its Annual Letting Value shall be taken as NIL as per Section 23(2)(a) of the Act. There is no dispute with regard to the fact that the assessee has declared very same property as self occupied property in the earlier years also. It is also well established principle of law that there is "no estoppel against law". Accordingly, merely because certain amount was shown as Annual letting value in the return of income against self occupied property (which, according to the assessee has occurred due to software error), the same will not entitle the assessing officer to assess the same, particularly in view of the fact that there is no material to show that the assessee has actually received the said Annual letting value. Accordingly, we are of the view that the annual value of

the self-occupied property cannot be considered for arriving at the total income, merely for the reason that the same has been declared in the return of income.

8. Since the assessee claims that it is a software error, we are of the view that this factual error may be verified at the end of the Assessing Officer. Accordingly, we set-aside the order passed by the CIT(A) and restore this issue to the file of the Assessing Officer for examining the claim of assessee. The assessee should be provided with adequate opportunity of being heard. All contentions are left open.

9. In the result, appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 3rd September, 2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/09/2024

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai