

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.81-84/Bang/2024
Assessment Years : 2013-14 to 2016-17

Cotha Vinod Hayagriv, 3A/1, 4 th Floor, 'A' Block, The Touchstone Main Guard, Cross Road, Commercial Street, Bangalore – 560 001. PAN – AAGPH 7671 A	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(2), Bangalore. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Madhusudhan, C.A
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	26.11.2024
Date of Pronouncement	:	28.11.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER :

These appeals filed by the assessee are against the order passed by the CIT(A)-11, Bangalore dated 14/09/2023 for the assessment years 2013-14 to 2016-17,

First, we take up ITA No. 81/Bang/2024 for A.Y. 2013-14 as lead case.

2. The assessee has raised the following grounds of appeal:

- "1. The impugned order of the learned Commissioner of Income-tax (Appeals)-11, passed under Section 250 of the Income Tax Act, 1961 is opposed to law, weight of evidence, probabilities, facts and circumstances of the appellant's case.*
- 2. The appellant denies himself liable to be assessed on a total income of Rs.1,01,11,042/- as against the returned income of Rs.93,69,040/- under the facts and circumstance of the case.*
- 3. The learned Commissioner of Income Tax (Appeals) is not justified in upholding an addition of a sum Rs.6,30,000/- being the alleged income under the head income from house property based on the rent received from the previous tenant on the facts and circumstances of the case.*
- 4. The authorities below failed to appreciate that the A.Y. 2013-14 being an unabated assessment year, no additions could have been made in the absence of the incriminating material as per the provisions of section 153A of the Act and consequently the assessment order passed under section 153A r.w.s 143(3) r.w.s 153D of the Act and the additions made therein are without jurisdiction on the facts and circumstances of the case.*
- 5. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the actual rent received by the appellant of a sum of Rs. 50,000/-per month is the annual value as per the provisions of section 22 r.w.s 23 of the Act, consequently the addition made is unsustainable in law on the facts and circumstances of the case.*
- 6. The learned Commissioner of Income Tax (Appeals) failed to appreciate that when the previous tenant has paid rent at a higher price the same has been offered to tax in the relevant assessment year therefore when the appellant earned rent at a lower rate the same ought have computed as the income of the Appellant on the facts and circumstances of the case.*
- 7. Without prejudice, the learned Commissioner of Income Tax (Appeals) failed to appreciate the municipal value computed in accordance with Section 108A of Karnataka Municipal Corporation Act of 1976 ought to have been considered as the annual value of the property and since the rent received and offered as income is higher than the municipal value, there was no requirement for any addition on the facts and circumstances of the case.*
- 8. Without prejudice, the learned commissioner of Income Tax (Appeals) failed to appreciate that property is the self-occupied property of the appellant and the rent received from the son of the appellant is not obligatory but out of responsibility and consequently as per the provisions of section 23(2) of the Act, the annual value ought to be taken as nil on the facts and circumstances of the case.*

9. The appellant craves for leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

10. For these and other grounds that may be urged at the time of hearing of appeal, the Appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

3. The Assessee is an individual deriving income under the heads "**Salary**" and "**Other Sources.**" The Assessee filed a return of income for the assessment year under consideration on 26-07-2013, declaring a total income of ₹93,69,040/- only.

4. Subsequently, a search proceeding under **Section 132** of the Income Tax Act, 1961 ("the Act") was conducted on 04-01-2018. In consequence of the search, a notice under **Section 153A** of the Act was issued to initiate assessment proceedings for the relevant assessment year in accordance with the provisions of Section 153A of the Act.

5. During the course of proceedings under Section 153A, the Assessing Officer (AO) observed that the Assessee owned a house property situated at **Flat No. 3, Mantri Altius, Raj Bhawan Road, Bangalore-560001**, which had been held since March 2005. The property was let out to different tenants until July 2011, with a monthly rental income of ₹3,15,000/- only. From August 2011 to November 2012, the property remained vacant. From December 2012 onwards, the property was occupied by the Assessee and his son, and the Assessee charged a nominal rent of ₹50,000/- per month from his son.

6. The AO was of the view that the fair market value (FMV) of the rent should have been ₹3,15,000/- per month, based on the historical rental income. Consequently, the AO recomputed the **income from house property** by adopting a FMV rent of ₹3,15,000/- per month. only This resulted in an addition of ₹7,42,000/- to the Assessee's total income. The AO assessed the Assessee's total income at ₹1,01,11,042/-, as against the declared income of ₹93,69,040/- only.

7. Aggrieved by the order of the AO, the Assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) upheld the AO's view that the FMV of the monthly rent was ₹3,15,000/- only. However, the CIT(A) granted relief by allowing a 50% reduction in the rental value, taking into account that the property was partly self-occupied by the Assessee.

8. Being aggrieved the order of the CIT(A), the Assessee has preferred the present appeal before the Tribunal, challenging the orders of both the AO and the CIT(A) on **technical grounds**.

9. The learned Authorized Representative (AR) for the Assessee submitted that the assessment year under dispute is an **unabated assessment year**. As such, in the absence of any incriminating material unearthed during the search, no addition could be made under Section 153A of the Act. In support of this contention, the learned AR relied on the judgment of the Hon'ble Supreme Court in the case of **PCIT vs. Abhisar Buildwell Pvt. Ltd reported in 454 ITR 212**.

10. On the other hand, the learned Departmental Representative (DR) before us filed the reports running into 31 pages and drawn our attention on the enquiry report placed on pages 22 to 31 of the Paper Book in support of her contention that there was reduction in the amount of rent which constitute incriminating materials. The Id. DR vehemently supported the findings of the lower authorities and contended that the additions made by the AO and confirmed by the CIT(A) were in accordance with the law.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The issue for adjudication pertains to whether the addition made by the Assessing Officer (AO) to the Assessee's income, by imputing a notional rental income based on fair market value (FMV), is sustainable in light of the legal principles governing unabated assessments under **Section 153A** of the Income Tax Act, 1961 ("the Act").

11.1 It is a well-settled principle that in the case of **unabated assessments**, as per the judgment of the Hon'ble Supreme Court in **PCIT vs. Abhisar Buildwell Pvt. Ltd.** (supra), no additions can be made in the absence of **incriminating material** found during the search proceedings. The relevant observation of the Hon'ble Supreme court is extracted as under:

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

11.2 In the present case, the Revenue has not demonstrated that any incriminating material was unearthed during the search proceedings conducted on 04-01-2018 under Section 132 of the Act in relation to rental income. The AO's addition is solely based on the pre-existing records and an estimation of the FMV of the rent, which cannot be treated as incriminating material. In the present case, the Assessee had declared rental income of ₹50,000/- per month from his son. In the absence of evidence found during the search indicating that the rent declared was understated or below reasonable market rates, the Revenue's estimation of FMV for unabated assessment year is arbitrary and unjustified and unsustainable.

11.3 In view of the above we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal filed the assessee is hereby allowed. In the result appeal of the assessee is hereby allowed.

Coming to ITA Nos. 82 to 84/Bang/2024 for A.Y. 2014-15 to 2016-17

12. At the outset, we note that the issue raised by the assessee in the captioned appeal for A.Ys. 2014-15 to 2016-17 is identical to the issue raised by the assessee in ITA No. 81/Bang/2024 for the assessment year 2013-14. Therefore, the findings given in ITA No. 81/Bang/2024 shall also be applicable for the assessee's ground of appeal for A.Ys. 2014-15 to 2016-17. The ground of appeal of assessee for the A.Y. 2013-14 has been decided by us vide paragraph No.11 to 11.3 of this order, wherein the issue has been decided in favour of the assessee. The learned AR

and the DR also agreed that whatever will be the findings A.Y. 2013-14 shall also be applied for the appeal of the A.Ys. 2014-15 to 2016-17 as well. Hence, the ground of appeal raised by the assessee in the said A.Ys. is hereby allowed.

13. In the result, all the appeals of the assessee are hereby allowed.

14. In the combined result, all the appeal of the assessee are hereby allowed.

Order pronounced in court on 28th day of November, 2024

Sd/-
(KESHAV DUBEY)
Judicial Member

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 28th November, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore