

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "A", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD

BEFORE DR. BRR KUMAR, VICE PRESIDENT  
AND  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1091/Ahd/2025  
निर्धारण वर्ष /Assessment Year : 2021-22

Mohit Vijaykumar Gupta B-1001, Juhu Trishul, Gulmohar Cross Road No.6 JVPD Vile Parle West Mumbai - 400 049	<u>बनाम/</u> <u>v/s.</u>	The DCIT Circle-2(1)(1) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: ADFPG 7162 D		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
------------------------	--	--------------------------

Assessee by :	Shri J. C. Desai, CA
Revenue by :	Shri B.P. Srivastava, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/08/2025  
घोषणा की तारीख /Date of Pronouncement: 06/11/2025

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JM:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'] dated 14/12/2025 passed u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year (AY) 2021-2022.

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

1. *“(a) The Ld. CIT(Appeal)/The National Faceless Appeal Centre('NFAC') has erred in confirming addition of ₹. 7,43,199 as deemed rent in respect of five flats situated at Mumbai as against the deemed rent considered Nil as per provisions of section 23(1)(c) of the Act by your Appellant.*

*(b) Your appellant prays that, on the facts and circumstances of the case, the Ld. A O may be directed to delete the addition made to the total income.*

2. *(a) The Ld. CIT (Appeal)/The National Faceless Appeal Centre('NFAC') has erred in confirming addition of ₹. 13,86,000/- as deemed rent in respect of Office premises in self-use as against the contention of your Appellant that the same is not chargeable to tax under section 22 of the Act.*

*(b) Your appellant prays that, on the facts and circumstances of the case, the Ld. A O may be directed to delete the addition made to the total Income.*

3. *(a) The Ld. CIT(Appeal)/The National Faceless Appeal Centre('NFAC'), in the event the office premises is subject to tax under section 22 of the Act, erred in not considering the said office premises as one of the two property permitted to be considered as self-occupied House property and Property at 2. Ruby Villa, AB Bypass Road, Indore, Madhya Pradesh, PIN 452020 be considered as property subject to deemed rent and thereby making an addition of ₹.13,86,000 to the total income as against deemed rent offered by your appellant of ₹. 2,53,575 (Deemed rent of Ruby Villa ₹.362,250 less deduction u/s 24 ₹.108,675).*

*(b) Your appellant prays that the Ld. A O may be directed to modify the addition on account of deemed rent to ₹.2,53,575/- as against ₹.13,86,000/-.*

4. *Your Appellant craves leave to add, to alter to vary or to amend the above grounds of appeal.”*

3. The brief facts of the case are that the assessee, Shri Mohit Gupta, filed his return of income on 02.10.2021 for the Assessment Year 2021-22 declaring total income of ₹10,60,37,350/-. The case was selected for scrutiny under CASS owing to large deductions/exemptions claimed under sections 54, 54B, 54EC, 54EE, 54F, 54G, 54GA and 54GB of the Act. During the course of assessment proceedings, the Assessing Officer passed an order assessing the total income at ₹11,02,69,810/- as against the returned income of

₹10,60,37,350/-. The additions made by the AO included (i) ₹21,03,258/- under the head "Long-term Capital Gain", (ii) ₹7,43,199/- as deemed rent on five flats situated at Mumbai, and (iii) ₹13,86,000/- as deemed rent on office premises claimed as self-occupied.

4. In respect of the **first addition relating to deemed rental income of ₹7,43,199/-** that the assessee owned five flats in Mumbai which were neither let out nor shown as self-occupied during the relevant year. **The assessee had offered deemed rent on these flats in earlier years; however, for the year under consideration**, he reported nil deemed rent under section 23(1)(c) of the Act, **claiming that the flats were intended to be let out but remained vacant due to the COVID-19 pandemic, and were eventually sold during the year.** The AO rejected the assessee's explanation on the ground that no evidence of efforts to let out the flats was furnished, and that the flats had remained vacant from F.Y. 2018-19 to F.Y. 2020-21. The AO had accordingly computed deemed rental income of ₹7,43,199/- and added the same to the total income. Before the CIT(A), the assessee reiterated that he had indeed made efforts to rent out the said flats through brokers but could not produce confirmations as the same were not preserved upon the subsequent sale of the flats. He relied upon judicial precedents including *Premisudha Exports (P.) Ltd. v. ACIT* [(2008) 110 ITD 158 (Mum.) / 17 SOT 293] and *Shri Sachin R. Tendulkar v. DCIT* [ITA No. 3755/Mum/2016, order dated 09.02.2018] to argue that the benefit of section 23(1)(c) applies even if the property, held with an intention to let out, remains vacant for the whole or part of the year. The CIT(A), however, noted that no corroborative material was filed either before the AO or during the appellate proceedings to substantiate the claim of such efforts. It was also noted that the appellant himself admitted that the confirmations from brokers were not available. The CIT(A), therefore, held

that the appellant failed to discharge the onus to establish the intention to let out the property and consequently upheld the AO's addition of ₹7,43,199/-, dismissing ground no. 1 of the appeal.

5. Regarding the second addition of ₹13,86,000/-, the Assessing Officer observed that the assessee owned an office premises at Hariom Chambers, Andheri (West), Mumbai, **for which no rental income was offered. The assessee contended that the premises were used as an office to manage his investments in the capital market, hence the same was not chargeable to tax under section 22 of the Act.** The AO rejected this explanation on the ground that the assessee was not carrying on any business or profession, as reflected in the ITR-2 filed, and hence the premises could not be excluded under section 22. **The AO further rejected the alternative plea that the office premises should be considered as one of the two self-occupied properties allowed under section 23(4),** and instead treated the property at Ruby Villa, Indore, as self-occupied while computing deemed rent of ₹13,86,000/- for the office premises. In appeal, the assessee reiterated that the office premises were used for managing substantial investments in shares and securities, and hence not liable to tax under section 22. **Alternatively, he pleaded that if the office premises were considered for taxation under the head "House Property", the same should be treated as one of the two self-occupied properties, and the property at Ruby Villa, Indore, may be subjected to deemed rent of ₹2,53,575/- instead of ₹13,86,000/-.** The CIT(A), after considering the submissions, held that section 22 exempts income from property used for business or profession where the profits are chargeable to tax under that head. As the assessee's income was not assessed under the head "Profits and Gains of Business or Profession", the exemption could not be claimed. The CIT(A) further held that the option to designate **two**

properties as self-occupied lies with the assessee at the time of filing of return, and the AO has rightly adopted the second alternative furnished by the assessee himself during assessment. Finding no infirmity in the AO's action, the CIT(A) upheld the addition of ₹13,86,000/- and dismissed grounds nos. 2 and 3.

6. Accordingly, CIT(Appeals) sustained the additions made on account of deemed rental income of ₹7,43,199/- and ₹13,86,000/- against which the assessee is in appeal before us.

7. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. Before us, the Counsel for the assessee submitted that the authorities below had erred both in law and on facts in sustaining the additions made towards deemed rent on the five flats situated at Mumbai and on the office premises at Hariom Chambers, Andheri (West), Mumbai. In respect of **Ground No. 1 relating to deemed rent on the five vacant flats**, the Counsel submitted that the assessee was the owner of five residential flats at Mumbai. These flats were initially contemplated for personal use or business purposes and had not been let out. However, in the earlier assessment years 2019-20 and 2020-21, the assessee had voluntarily offered deemed rental income of ₹19,70,935/- from these very flats under the head "Income from House Property". During the relevant previous year, i.e., F.Y. 2020-21, the assessee decided to let out the said flats and accordingly engaged real estate brokers to identify suitable tenants. However, due to the COVID-19 pandemic and its economic aftermath, the flats remained vacant throughout the year despite bona fide efforts made to rent them out, and were ultimately sold during the same financial year. Therefore, in accordance with the provisions of section 23(1)(c) of the Act,

which provides that where property remains vacant despite efforts to let out, the annual value shall be taken as nil, the assessee rightly considered nil deemed rent for the year under appeal. The Counsel further submitted that both the Assessing Officer and the CIT(A) erred in rejecting the assessee's claim on the sole ground that no documentary evidence of efforts to let out the properties was produced. The ld. counsel for the assessee submitted that the assessee had indeed given a mandate to brokers for renting out the flats but was unable to furnish confirmations as the same were not preserved or traceable after the eventual sale of the flats. **It was pointed out that the flats were ultimately sold through brokers, which itself corroborates that the assessee was in contact with property dealers during the relevant period and had taken genuine steps towards renting the properties before their sale.** The Counsel placed reliance on the decision of the Hon'ble ITAT, Mumbai Bench in the case of **Shri Sachin R. Tendulkar v. DCIT-23(3), ITA No. 3755/Mum/2016**, wherein it was held that the expectation of the revenue authorities that an assessee should maintain an infallible record or obtain documentary evidence such as acknowledgments from brokers to substantiate efforts for letting out is unrealistic and beyond normal human conduct. The Tribunal observed that where the property is held with an intention to let out and efforts are made, though unsuccessfully, the assessee is entitled to the benefit of section 23(1)(c). The Counsel also relied upon the judgment of the Hon'ble ITAT, Mumbai Bench in **Premudha Exports (P.) Ltd. v. ACIT [(2008) 110 ITD 158 / 17 SOT 293]**, wherein it was held that the expression "property is let" in section 23(1)(c) does not require actual letting out but covers cases where the property is held with an intention to let out and bona fide efforts are made for the same. On these legal propositions and factual circumstances, it was contended that the assessee's case falls squarely

within the purview of section 23(1)(c) and the authorities below have erred in taxing deemed rental income of ₹7,43,199/-. It was therefore prayed that the addition sustained by the CIT(A) be deleted in full. As regards **Ground No. 2 relating to deemed rent on the office premises at Hariom Chambers**, the Counsel submitted that the said premises is a commercial property used by the assessee for managing his substantial investment portfolio in shares and securities. The assessee had deployed large sums of money in the capital market, and it was imperative to maintain an office infrastructure for monitoring and administering such investments. The Counsel submitted that section 22 of the Act specifically excludes from charge any property which is used for the purpose of the assessee's business or profession, and the presence or absence of taxable business income in a particular year does not alter the applicability of this provision. The test of exemption under section 22 is the "use" of the property for business or professional purposes and not the quantum of profit earned therefrom. Therefore, once it is accepted that the office was used for managing investment operations, the same cannot be subjected to deemed rent taxation under section 22 of the Act. **Without prejudice to this primary contention**, the Counsel submitted that the assessee had alternatively requested the Assessing Officer to consider the office premises at Hariom Chambers as one of the two self-occupied properties permitted under the Act, and consequently, to treat the property at 2, Ruby Villa, Indore, as deemed let out. The Assessing Officer, however, ignored this first alternative and instead adopted the second alternative furnished by the assessee, computing deemed rent at ₹13,86,000/- based on rent received in subsequent years. The CIT(A) mechanically confirmed the addition, merely observing that the assessee did not have income taxable under the head "Profits and Gains of Business or Profession." The Counsel

contended that this finding is legally unsustainable and contrary to the language of section 22, which does not restrict exemption only to cases where profits are assessable under that head. It was therefore urged that the addition on account of deemed rent of ₹13,86,000/- be deleted. In respect of **Ground No. 3 concerning change of self-occupied property during assessment proceedings**, the Counsel submitted that this ground was raised in the alternative, without prejudice to Ground No. 2. It was argued that the Assessing Officer erred in refusing to consider the assessee's request to treat the office premises at Hariom Chambers as self-occupied and the property at Ruby Villa, Indore, as deemed let out. The learned CIT(A), in para 2.8 of his order, upheld the Assessing Officer's view on the reasoning that such an option could be exercised only at the time of filing of return. The Counsel contended that this finding is contrary to the judicial precedents of the Hon'ble ITAT, Mumbai Bench in **Asha Bhonsle v. ITO (ITA No. 2552/Mum/2010, order dated 21.09.2011)** and **Venkatavarthan N. Iyenger v. ACIT (ITA No. 5616/Mum/2015, order dated 23.05.2018)**, wherein it was categorically held that the assessee can exercise or modify the option for choosing self-occupied house property even during the course of assessment proceedings. In light of the above submissions, the Counsel prayed that the additions sustained by the learned CIT(A) on account of deemed rent of ₹7,43,199/- on the five vacant flats and ₹13,86,000/- on the office premises be deleted, and the benefit of section 23(1)(c) and section 22 of the Act be allowed. It was further prayed that in the alternative, the option exercised by the assessee during assessment to treat the office premises as self-occupied and to offer deemed rent in respect of Ruby Villa, Indore, be accepted, and consequential relief be granted in the interest of justice.

8. In response, Ld. DR placed reliance on the observations made by CIT(Appeals) in the appellate order.

9. We have carefully considered the rival submissions, perused the assessment order, the order of the learned Commissioner of Income Tax (Appeals), and the material placed on record including the judicial precedents relied upon by the learned counsel for the assessee. Insofar as **Ground No. 1** relating to deemed rent on the five vacant flats at Mumbai is concerned, it is an admitted fact that the assessee was the owner of five flats which were intended to be let out but remained vacant during the year due to the unprecedented situation created by the COVID-19 pandemic and were subsequently sold during the year itself. The assessee had duly offered deemed rental income on the said flats in earlier years, but for the year under appeal, determined the annual value as Nil under section 23(1)(c) of the Act on the ground that the properties, though intended to be let out, remained vacant despite bona fide efforts made to rent them. The authorities below have rejected the assessee's claim merely on the basis that no formal evidence or confirmation from brokers was produced. In our considered opinion, the denial of benefit under section 23(1)(c) of the Act to the assessee is not justified. The said provision provides that where the property remains vacant for the whole or part of the year despite efforts to let it out, the annual value shall be the actual rent received or receivable, which in this case is Nil. The coordinate bench of this Tribunal in **Shri Sachin R. Tendulkar v. DCIT-23(3), ITA No. 3755/Mum/2016 (order dated 09.02.2018)**, has held that the expression "property is let" in section 23(1)(c) includes cases where the property is held with an intention to let out and efforts are made, though unsuccessfully. The Tribunal further observed that the expectation that an assessee should maintain infallible records of efforts made to let out the

property is unrealistic and contrary to normal human conduct. Similar view has been taken in **Premasudha Exports (P.) Ltd. v. ACIT [(2008) 110 ITD 158 (Mum.) / 17 SOT 293]**, wherein it was held that if a property is held with an intention to let out and remains vacant despite efforts, the benefit of section 23(1)(c) cannot be denied merely because the letting out did not materialize. In the present case, the assessee has explained that mandates were indeed given to brokers for renting out the flats, but due to the pandemic and the subsequent sale of the properties, confirmations could not be preserved or traced. The explanation is plausible and in line with the commercial reality of the situation and also in light of the fact that the properties in question were sold during the impugned year under consideration, which supports the fact that the assessee was in touch with the brokers. We find merit in the submissions of the assessee that the intention to let out and the bona fide efforts made are sufficient to attract the provisions of section 23(1)(c). Accordingly, we hold that the addition made by the Assessing Officer and confirmed by the learned CIT(A) towards deemed rent of ₹7,43,199/- in respect of five flats at Mumbai is unsustainable in law. The same is hereby directed to be deleted. Hence, **Ground No. 1 of the assessee's appeal stands allowed.**

10. With regard to **Ground No. 2**, relating to deemed rent on the office premises at Hariom Chambers, Andheri (West), we find that the assessee had claimed exemption from notional rent under section 22 of the Act on the ground that the premises were used as an office to manage his investments in shares and securities. However, as noted by the learned CIT(A), the assessee was not carrying on any business or profession with income chargeable under that head, and his income was assessable under other heads. Section 22 of the Act exempts from tax the annual value of property

used for the purposes of business or profession, the profits of which are chargeable to income tax. In the instant case, there is no material on record to establish that the assessee was carrying on any organized business or professional activity in relation to his investment operations. Hence, we find no infirmity in the conclusion drawn by the learned CIT(A) in upholding the addition on this count. Accordingly, **Ground No. 2 of the assessee's appeal is dismissed.**

11. Coming to **Ground No. 3**, which is raised in the alternative, the assessee contends that even if the office premises at Hariom Chambers are considered chargeable to tax under the head "Income from House Property," the same ought to be treated as one of the two self-occupied properties, and the property at Ruby Villa, Indore, should be treated as deemed let out. The learned CIT(A) has rejected this contention observing that such an option can be exercised only at the time of filing of the return of income. We find merit in the alternative contention of the assessee. The coordinate bench of the Tribunal in **Asha Bhonsle v. ITO (ITA No. 2552/Mum/2010, order dated 21.09.2011)** has categorically held that the assessee is entitled to modify the option for choosing a self-occupied property even during the course of assessment proceedings. The Tribunal, after examining the provisions of section 23(4), held that when an assessee has exercised an option which is not beneficial and subsequently during the assessment seeks to substitute another property as self-occupied, such a claim should be allowed. The Tribunal in that case relied on the decision of the Hon'ble Bombay High Court in *Balmukund Acharya v. DCIT* [(2009) 310 ITR 310 (Bom)] to hold that the Assessing Officer should not take advantage of an assessee's ignorance of law and that beneficial interpretation should be given to the taxpayer where permissible. Following the ratio laid down by the coordinate bench in *Asha*

*Bhonsle v. ITO* (supra), we hold that the assessee is entitled to exercise the option of treating the office premises at Hariom Chambers as self-occupied property and to offer deemed rent in respect of the property at Ruby Villa, Indore, accordingly. The Assessing Officer is directed to recompute the income from house property on this basis. Hence, **Ground No. 3 of the assessee's appeal is allowed.**

12. In the result, the appeal of the assessee is **partly allowed**, Ground No. 1 and Ground No. 3 being allowed, and Ground No. 2 being dismissed.

**Order pronounced in the Open Court on 06/11/2025 at Ahmedabad.**

**Sd/-  
(DR. BRR KUMAR)  
VICE PRESIDENT**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 06/11/2025

टी. सी. नायर, व. नि. स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad