

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.289/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2008-09)

Noshir P. Katrak Unique House, 2 nd Floor, 25 S.A. Brelvi Road, Fort, Mumbai - 400001	बनाम/ Vs.	The Income Tax Officer, ward 12(1)(1) Aayakar Bhavan, Marine Lines, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPK9908R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri J. D. Mistri
Department by:	Shri Sumit Kumar

सुनवाई की तारीख / Date of Hearing: 27.05.2016
घोषणा की तारीख /Date of Pronouncement: 12.08.2015
आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 11.10.2011 passed by the Commissioner of Income Tax (Appeals) 23, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2008-08.

2. The assessee has raised the following issue:

"1. The learned CIT(A) has erred in upholding the Assessment Order passed by the Assessing Officer by

overlooking the facts of the case for the assessment year under reference and contrary to the provisions of the Income Tax Act, 1961.

2. *The learned CIT(A) erred in upholding the Assessment Order passed by the Assessing Officer when the flat at Planet Godrej, Tower I, (Terra), at simplex Mills Compound, 30K Khadye Marg, S.G.M. Chowk, Mahaluxmi, Mumbai – 400011, was not habitable for the assessment year under consideration as it was a bare flat. The flat did not have doors, flooring, bathroom fittings, electricity fittings, water connection, nor the outside lobby flooring have to be undertaken and hence it was not fit for habitation.*
3. *The learned CIT(A) erred in upholding the addition made by the Assessing Officer when;*
 - i. *The appellant out of abundant caution had declared and offered for taxation the Goa property which was self occupied at Rs.6000/- although it was an error for offering the said amount for taxation and which in actual has not been received by the Appellant.*
 - ii. *the Goa property, being the only habitable property, can be considered as self occupied property for the relevant assessment year.*
 - iii. *the annual value of the house in Goa is Nil as it was in the occupation of the owner for the purpose of his own residence under the provisions of Section 23 of the Act.*
4. *The CIT(A) has erred in upholding the Assessing Officer erroneous reliance upon Darshan Mehta 33 ITD 670, and Municipal Corporation of Greater Mumbai Vs. Polychem Ltd. ITR 1974 (SC) 1979 which in turn resulted into erroneous computation of the rateable value of the property at Rs.1,22,500/- as the aforesaid cases are not relevant to the facts and the annual value of the property, if any to be determined as per the provisions of Section 23 of the Income Tax Act.*
5. *The AO erred in levying interest u/s.234A, 234B and 234C of the Act.”*

3. The brief facts of the case are that the assessee filed its return of income declaring total income on 31.07.2008 to the tune of Rs.7,25,535/-. Subsequently, the case was selected for scrutiny under CASS and notice u/s.143(2) of the Income Tax Act, 1961 (in short “the Act”) dated 07.09.2009 was issued and served upon the assessee. Thereafter, notice u/s.142(1) dated 06.09.2010 was also served upon the assessee. The main source of income for the assessee was retainer of income for taking accounting work who earned brokerage income from investments advises from Kotak Bank and R. R. Investor’s Capital Services Pvt. Ltd. and has income from derivative trading. Thereafter, the income of the assessee was assessed by assessing the annual rent value of the house of the assessee at Row Villa No.3, situated at L’eisha Gardens Moraes Colony, Per Seraulim, Salcete, Goa to the tune of Rs.8,48,035/-. Feeling aggrieved the assessee has filed the appeal before CIT(A) who confirmed the order, therefore the assessee filed an appeal before us.

ISSUE NO.1 TO 5:-

4. All the issues are interconnected therefore are being taken up together for adjudication. Infact all the issues raised only one point which has been challenged by the assessee and is in connection with the income of house of the assessee situated at Goa. We have heard the arguments advanced by the learned representative of the parties and perused the record. The sole point which has been raised before us is that the assessee was owner of the only one residence situated at Row Villa No.3, situated at L’eisha Gardens Moraes Colony, Per Seraulim, Salcete, Goa. However, the another house is

situated at Flat No.3001, Planet Godrej Tower I (Terra), at Simplex Mill Compound, 30K, Khadye Marg, S G M Chowk, Mumbai – 400011 was not under the ownership of him and he has not taken possession of the same. The Assessing Officer has wrongly assessed annual rental value of the house situated at Goa to the tune of Rs.1,75,000/- whereas the assessee did not receive the possession as well as ownership of the house situated at Mumbai. Therefore, the assessment order which has been confirmed by the CIT(A) is wrong against law and facts and is liable to be set aside.

5. On the other hand the learned DR has strongly relied upon the finding of the CIT(A) on record. The assessment order perused which speaks that the Assessing Officer has assessed the annual rental value of the house situated at Goa to the tune of Rs.1,75,000/- which is under the ownership of the assessee. The assessee is asserting that he was residing at the house situated at Goa. The contention of the assessee is that the another flat is situated at Mumbai was not under his ownership nor he took the possession, therefore, the Assessing Officer has wrongly treated the house belonging to him for assessment purpose. The present assessment is for the year of 2007-08. The Godrej Properties Limited issued the letter dated 12.04.2008 to the assessee for taking the possession. The electricity bill lies at page 8 of the paper book speaks that the electricity bill was the first electricity bill of the house which is of the dated 20.08.2008. The letter of Godrej Properties Pvt. Ltd. dated 12.04.2008, 18.04.2008, 20.08.2008 and 25.10.2008 lies at page 4 to 10 of the paper book speaks about some construction work / repair work in the flat of the assessee. It is not apparent on record that when the assessee took the actual possession and when the right of ownership has been

transferred in favour of assessee. Without ascertaining these points the assessment in question does not seem justifiable, therefore, in view of the said circumstances we set aside the order passed by the CIT(A) in question and remand the case to the Assessing Officer to ascertain the ownership and possession of the assessee on the flat situated at Mumbai and thereafter assess the income of the assessee in accordance with law after giving an opportunity of being heard to the assessee.

6. In the result the appeal filed by the assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 12th August, 2016.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12th August, 2016

MP

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai