

**आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष  
Before Shri Joginder Singh, Judicial Member,**

**ITA No.7557/Mum/2014  
Assessment Year: 2004-05**

Mrs. Preeti G Mehta, 22, Bennett Villa, 27, Wode House, Colaba, Mumbai-400001	<b>बनाम/ Vs.</b>	Income Tax Officer, Ward-11(3)(2), Aaykar Bhavan, M.K.Road, Churchgate, Mumbai-400020
निर्धारिती / Assessee		राजस्व / Revenue
P.A. No.ADRPM3856E		

निर्धारिती की ओर से / Assessee by	Shri Nitesh Joshi
राजस्व की ओर से / Revenue by	Shri Vishwas Jadhav-DR

सुनवाई की तारीख / <b>Date of Hearing</b>	<b>09/03/2016</b>
<b>आदेश की तारीख / Date of Order:</b>	<b>11/03/2016</b>

**आदेश / ORDER**

The assessee is aggrieved by the impugned order dated 23/08/2013 of the Ld. First Appellate Authority, Mumbai. The first ground raised by the assessee is with

respect to challenging the reopening of assessment u/s 147/148 of the Act without appreciating the fact that there was no escapement of income. During hearing, the ld. counsel for the assessee, Shri Nitesh Joshi, did not press this ground, therefore, it is dismissed as not pressed.

2. The next ground pertains to determining the annual letting value (ALV) of the property at Rs.6,72,526/- as against Rs.65,736/- determined by the assessee. It was explained by the ld. counsel for the assessee that the assessee is having two properties out of which one is self occupied and the remaining one was lying vacant and was never rented out. The vacant property was kept by the assessee for its near future use, therefore, in the absence of renting out either the assessee standard rent or the municipal valuation has to be considered. On the other hand, the ld. DR, Shri Vishwas Jadhav, strongly defended the impugned order.

2.1. I have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee declared total income of Rs.5,90,349/- in her return filed on 01/11/2004. During the year under consideration, the assessee was the owner of the two residential properties, one at Colaba (jointly owned by the assessee and her husband) and the remaining was situated at Bandra. The assessee showed

both the properties as self occupied. As per the Revenue, the assessee exercised option u/s 23(4) to treat the ALV of the Bandra property as nil and offered deemed ALV of Colaba property at Rs.65,736/- as income from house property. The case of the assessee was reopened u/s 147/148 of the Act. The assessee challenged the valuation of the property adopted by the Assessing Officer at 7.5% of the cost of the property. Now question arises, when the property in question was rented out whether the standard rent or the municipal valuation is the right method of valuation? The obvious reply is “yes”, because as oozes out from the facts that the property in question was never let out by the assessee and was lying vacant for the future use of the family. The valuation of the property at 7.5% of the cost of the property in anyway not justified more so the ld. Assessing Officer neither cited any rent of a flat situated in the same society/adjoining society nor assigned any reason for adoption at 7.5% of the cost of the property. No reason/methodology has been assigned in the assessment order for such adoption. In the absence of ascertainment of ALV, in my view, standard method or the municipal valuation is the right approach because even as per section 23, which is a deeming provision, the property which can normally fetch the rent or the amount on which identical property may be rented out, is to be considered. During hearing, the ld. counsel for the

assessee contended that for A.Y. 2005-06 onwards, the annual letting value was accepted by the Department and for A.Y. 2009-10, the order was passed u/s 143(3) accepting the annual letting value. The only dispute is only with respect to present assessment year i.e. 2004-05. In such a situation, I am of the view that if the Department had been accepting the annual letting value from A.Y. 2005-06 and till 2009-10 (order u/s 143(3)) then on the principle of consistency, the ALV, declared by the assessee, has to be accepted. Even otherwise, the judicial principle says that consistency has to be maintained. Our view find supports from the ratio laid down in following decisions:-

- i. Parshuram Pottery Works Ltd. vs ITO 106 ITR 1 (SC)
- ii. Security Printers 264 ITR 276(Del.)
- iii. CIT vs Neo Polypack Pvt. Ltd. 245 ITR 492 (Del.)
- iv. CWT vs Allied Finance Pvt. Ltd. 289 ITR 318 (Del.)
- v. Berger Paints India Ltd. vs CIT 266 ITR 99 (SC)
- vi. DCIT vs United Vanaspati (275 ITR 124) (AT)(Chandigarh ITAT)
- vii. Union of India vs Kumudini N. Dalal 249 ITR 219 (SC)
- viii. Union of India vs Satish Pannalal Shah 249 ITR 221
- ix. B.F.Varghese vs State of Kerala 72 ITR 726 (Ker.)
- x. CIT vs Narendra Doshi 254 ITR 606 (SC)

- xi. CIT vs Shivsagar Estate 257 ITR 59 (SC)
- xii. Pradip Ramanlal Seth vs UOI 204 ITR 866 (Guj.)
- xiii. Radhaswamy Satsang vs CIT 193 ITR 321 (SC)
- xiv. Aggarwal warehousing & Leasing Ltd. 257 ITR 235 (MP)

The sum and substance of the aforesaid judicial pronouncements is that on the basis of principle of judicial discipline, consistency has to be followed and once in a particular year, if any view is taken, in the absence of any contrary material, no contrary view is to be taken as finality to the litigation is also a principle which has to be followed. Before us, no contrary facts or any adverse material was brought on record by the Revenue, therefore, we find merit in the argument of the ld. counsel for the assessee and therefore, this ground deserves to be allowed. It is also observed that if for A.Y. 2009-10, a particular ALV is accepted by the Department, the ALV for A.Y. 2004-05 may not be more than the A.Y. 2009-10. Safely, it can be concluded that the ALV for A.Y. 2005-06, accepted by the Department (which is nearer to A.Y. 2004-05) can at best be adopted, more specifically when, the Department has not brought out any evidence on record that the property of the assessee could fetch more rent than the declared one. Thus, this ground of the assessee is allowed.

Finally, the appeal of the assessee is partly allowed.

This order was pronounced in the open in the presence of ld. representative from both sides at the conclusion of the hearing on 09/03/2016.

*Sd/-*  
(Joginder Singh)  
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11/03/2016

*Shekhar, P.S/निजी सचिव*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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