

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
(SMC)**

IT(IT)A No.886/Bang/2014
(Assessment year: 2009-10)

Smt.Aravapalli Bindhu,
143, 14th floor, North Block,
Maya Indraprastha Apartments,
Kanakapura Main Road,
Bangalore-560078. ... Appellant
PAN: ANZPB2320C

Vs.

Income-tax Officer (International Taxation)
Ward 1(1),
Bangalore. ... Respondent

Appellant by: Shri Parimal Prasad, CA.
Respondent by: Shri G. Ramesha, JCIT(DR)

Date of hearing : 08/09/2015
Date of pronouncement: 24/09/2015.

ORDER

This appeal by the assessee is directed against the order dated 28/5/2014 of the CIT(A)-IV, Bangalore, for the assessment year 2009-10.

2. The assessee has raised the following grounds:

1. *"The order is opposed to law and to facts inasmuch as the assessing officer has estimated the Fair rental value of the property at K.K.Nagar Chennai and the disposed off property at Jubilee Hills Hyderabad without any basis.*

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2. *The disallowance of vacancy allowance is opposed to law and facts.*

3. *The disallowance of 50% of cost of improvement is opposed to law and to facts especially wherein an affidavit in this regard has been produced.*

4. *For these and other reasons that may be adduced at the time of hearing, this appeal may be allowed."*

3. Ground No.1 is regarding computation of annual letting value (ALV) in respect of the property at K.K.Nagar Chennai.

4. I have heard the learned AR of the assessee as well as the learned departmental representative and considered the relevant material on record. At the outset, it is noted that the assessee is co-owner of the property in question along with his wife. It is further noted that in the case of wife of the assessee Smt. Mithravinda Bindu in IT(SS)A No.26/Bang/2014, this Tribunal has considered and decided the issue of computation of ALV in respect of this property vide order dated 22/6/2015 in paragraphs 6 to 8 as under:

"6. We have considered the rival submissions as well as the material available on record. The AO has given the details of the property and the annual letting value estimated by the assessee in para-3 of the order as under;

"3. It was seen from the return of income that the assessee is the owner of the following property and has estimated the annual let out value of the immovable property as under;

Property addresses		ALV
(a)	Property at B-3, II Floor, Krishna garden apartment, Kaval Byrasandra, Bangalore (Co-ownership with Sri Aravapalli Bindu)	24,000
(b)	Property at 1933, 5 th Cross, Sarakki, Bangalore (CO-ownership with Sri Aravapalli Bindu)	30,000
(c)	Property at No.43,39 th Cross, 9 th Block, Jayanagar, Bangalore	Claimed as self occupied
(d)	Property at 8-2-293/82/BE/131 Road No.71, Jubilee Hills, Hyderabad (sold on December, 2008) (252 s.ft)	Nil

7. As it is clear from the above table, the assessee has estimated the annual letting value in respect of property at Jubilee Hills, Hyderabad as 'nil'. The AO, while considering the issue of annual letting value in respect of the property at Sl.No. a & b of the table situated at Bangalore has accepted the claim of the assessee being Municipal value as under;

"The assessee was asked to furnish copies of the returns of assessment of the property submitted to the Municipal/Corporation authorities. The assessee has furnished the copies of the return only in respect of the property at J.P.Nagar and Kaval byrasandra, Bangalore. Hence the assessee's claim relating to these two properties is acceptable keeping in view the judgments relied on by the assessee. However, similar view cannot be taken in respect of the other property at Jubilee Hills, Hyderabad as the assessee has not produced the proof of Municipal valuation in respect of the properties at Jubilee Hills, Hyderabad. In the absence of production of Municipal valuation the

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annual value of the properties is computed as under u/s 23(1)(a)".

8. Thus, it is clear that the AO accepted the estimation of annual let ting value given by the assessee based on Municipal value of the property situated at Bangalore, because the assessee has furnished the return of the assessment of the property. The claim of the assessee in respect of the property at Jubilee Hills, Hyderabad was rejected by the AO on the ground that the assessee has not produced the proof of Municipal valuation in respect of the said property. The assessee produced the receipt of the property tax as well as the summary of the property tax due demand in respect of the property at Jubilee Hills, Hyderabad before the CIT(A), but the CIT(A) has not considered the Municipal valuation of the said property while deciding the issue. As it is manifest from the assessment order, the AO accepted the annual letting value based on the Municipal value in respect of the properties situated at Bangalore. Therefore, the Municipal value in respect of the property at Jubilee Hills, Hyderabad is also required to be considered while determining the annual let out value u/s 23(1)(a) of the Act. Therefore, in the facts and circumstances of the case, as well as the in the interest of justice, we set aside this issue of determination of annual letting value in respect of the property at Jubilee Hills, Hyderabad to the record of the AO to re-do the exercise of computation of annual let out value, after considering the property tax payment record filed by the assessee.

Following the order of the co-ordinate bench of this Tribunal in the case of the wife of the assessee, this issue is set aside to the record of the AO for determination of the ALV in respect of the property in question after considering the property tax record

filed by the assessee in terms of the direction given in the above order.

5. Ground No.2 is regarding vacancy allowance. I have heard the learned AR of the assessee as well as the learned departmental representative and considered the relevant material on record. An identical issue has been considered and decided by the Tribunal in the case of the assessee's wife Smt. Mithravinda Bindu (supra) in para.9 as under:

"9. As regards the vacancy allowance claimed by the assessee, we note that the assessee never let out the property at Jubilee Hills, Hyderabad. Therefore, the question of remaining the property vacant during the year for the purpose of vacancy allowance does not arise. Accordingly, the claim of the assessee is devoid of any merit, when the assessee never let out the property in question. Hence, the claim of vacancy allowance is rejected. "

Accordingly, this ground of the assessee is dismissed.

6. Ground No.3 is regarding disallowance of cost of improvement. An identical issue has been considered and decided by the Tribunal in the case of the assessee's wife Smt. Mithravinda Bindu in para.13 as under:

"13. We have considered the rival submissions and the material available on record. Though, assessee has not produced any supporting evidence regarding the expenditure incurred by the assessee on account of improvement of the property in question, however, as

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pointed out by the learned counsel for the assessee, the property in question was purchased by assessee vide sale deed dated 19-10-1995 and as per the schedule of the property, there is no mention of any construction or any structure on the said property purchased by the assessee. We note that the assessee had sold the property vide sale deed dated 2nd December, 2008 and as per the schedule of the property, being part of the sale deed dated 2nd December, 2008 the property is described as 'House No.'. Therefore, prima facie it appears that what is sold by the assessee is a constructed property. However, it is a matter of verification and examination. Accordingly, this issue is set aside to the record of the AO to examine the facts of any construction physically existing on the property in question at the time of sale, in comparison to the state of property at the time of purchase vide sale deed dated 19-10-1995. In case, it is found that the assessee has carried out any construction or improvement work in the property and also produced the record of payment of money then the claim of the assessee cannot be brushed aside, merely because the assessee has not produced the bills of the expenditure. This ground of the assessee's appeal is allowed for statistical purpose."

Following the order of this Tribunal, I set aside this issue to the record of the AO to re-adjudicate this issue in similar way.

7. In result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on 24th September, 2015.

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

eksrinivasulu

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore