

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.2378/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

Sachin Sharad Pilgaonkar A/9, Juhu Apartments Juhu Tara Road, Santacruz (W) Mumbai-400 049.	बनाम/ Vs.	ACIT-16(1) Aaykar Bhawan M.K.Road Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAMPP-9852-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ashok Patil-Ld. AR
Revenue by	:	Shri T.S. Khalsa- Ld. Sr.DR
सुनवाई की तारीख/ Date of Hearing	:	14/01/2021
घोषणा की तारीख / Date of Pronouncement	:	14/01/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year 2013-14, contests the order of Ld. Commissioner of Income Tax (Appeals) - 4, Mumbai [CIT(A)], Appeal No.CIT(A)-4/IT-206/ACIT16(1)/2015-16 dated 14/05/2018 *qua* confirmation of certain addition of Rs.2.26 Lacs, being 8% of book value of the property.
2. The appeal has been filed with a delay of 250 days, the condonation of which has been sought by Ld. AR on the strength of

condonation petition dated 10/04/2019 which is supported by the assessee's affidavit. It has been submitted that the appellate order got misplaced by assessee's staff and the same remained to be communicated to assessee's Chartered Accountant. This fact came to light upon receipt of show-cause notice u/s 274 r.w.s. 271(1)(c). Thereafter, the assessee took immediate step to file the appeal. Upon perusal of these documents, the bench formed an opinion that the assessee successfully established reasonable cause in late filing of appeal and therefore, the delay is condoned and we proceed to adjudicate the appeal on merits.

3. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4.1 The assessee being resident individual was assessed for year under consideration u/s 143(3) wherein returned income of Rs.356.20 Lacs e-filed by the assessee on 30/09/2013 was assessed at Rs.357.71 Lacs after certain additions / disallowances. The addition of Rs.1.50 Lacs as made under the head 'Income from House Property' is the sole subject matter of present appeal before us. The assessee is an Actor, film producer and director in Marathi / Hindi Television Serials, Games shows, feature film and advertisement films.

4.2 During assessment proceedings, it transpired that the assessee offered deemed rental income of Rs.8,400/- against flat No.2103, Blue Ridge, Pune. This flat was in self occupation. Finding the deemed rental income so offered to be on the lower

side, the assessee was show-caused as to why the deemed rental value of the property should not be increased. The assessee submitted that no rental was received from the property and the income was offered on the basis of municipal valuation of the property. However, rejecting the same, Ld. AO estimated rental income @8% of value of the property which came to Rs.2.26 Lacs. After providing standard deduction of 30% u/s 24(a) and after deducting the rental income of Rs.8,400/- as already offered to tax, the net addition thus came to Rs.1.50 Lacs which was added to the income of the assessee. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further appeal before us.

5. The Ld. DR placed reliance on Google search results for the submission that the rental value as estimated by Ld. AO was in line with the prevailing market prices and therefore, the addition may be confirmed. The Ld. AR, on the other hand, submitted that the rental income as offered on the basis of Municipal Valuation was correct approach as held in various judicial decisions.

6. So far as the factual matrix is concerned, the same is not under dispute. It is evident that the assessee has offered the deemed rental value on the basis of Municipal Valuation. The property has not been let out, at all, during the year. As per the provisions of Sec. 23(1)(a), the annual value of such property shall be deemed to be the sum for which the property might reasonably be expected to be let out from year to year.

7. The Hon'ble Bombay High Court, in the case of **CIT V/s Tip Top Typography (2014 368 ITR 330)** concurred with following principles laid down by full bench of Hon'ble Delhi High Court in the

case of **CIT V/s Mani Kumar Subba (2011 333 ITR 838)** for determination of Annual Letting Value of the property: -

- (i) ALV would be the sum at which the property may be reasonably let out by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances.
- (ii) An inflated or deflated rent based on extraneous consideration may take it out of the bounds of reasonableness.
- (iii) Actual rent received, in normal circumstances, would be a reliable evidence unless the rent is inflated / deflated by reason of extraneous consideration.
- (iv) Such ALV, however, cannot exceed the standard rent as per the Rent Control Legislation applicable to the property.
- (v) If standard rent has not been fixed by the Rent Controller, then it is the duty of the assessing officer to determine the standard rent as per the provisions of rent control enactment.
- (vi) The standard rent is the upper limit, if the fair rent is less than the standard rent, then it is the fair rent which shall be taken as ALV and not the standard rent.

It has been held that Annual Letting Value (ALV) of the property could not exceed Standard Rent as per the Rent Control Legislation as applicable to the property and the Standard Rent is the upper limit. ALV of the property has to be determined at sum at which property might reasonably be let out between willing parties. We find that the methodology as adopted by Ld. AO to estimate the income @8% of value of the property is not in accordance with the above principles laid down by Hon'ble Court and therefore, the same could not be sustained. Nothing has been brought on record by Ld. AO that the aforesaid estimation was the approximate sum between willing parties. The assessee, on the other hand, has offered the rent on the basis of Municipal Valuation which is in accordance with the principle laid down by Hon'ble Court as above. Therefore, the estimation thus made and confirmed by lower authorities could not be sustained. We direct Ld. AO to adopt the

ALV of the property at Rs.8,400/-, being deemed rental value based on municipal valuation of the property.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 14th January, 2021.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 14/01/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.