

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

BEFORE: SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.53 /Chd/2020

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Fateh Homes Private Limited, H.No.2144, Sector 15-C, Chandigarh.	बनाम	The I.T.O., Ward-1(4), Chandigarh.
स्थायी लेखा सं./PAN NO: AABCF0763F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Smt.Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 05.08.2021

उद्घोषणा की तारीख/Date of Pronouncement : 12.10.2021

(Hearing through Webex)

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax(Appeals)-I, Chandigarh [(in short the ‘Ld.CIT(A)] dated 31.10.2019 relating to assessment year 2013-14, passed u/s

250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The solitary issue, it transpires, in the present appeal relates to the income assessable under the head "income from house property", which the assessee claims is to be assessed basis actual rent received while the Revenue contends the same to be assessable at fair market rent determined on the basis of report of a Govt. approved valuer

3. The issue relates to House Property bearing No. 59, at Plot No.55. Sector-4, Chandigarh, rented out by the assessee to one Mrs.Harkesh Kaur. The assessee had received rent amounting to Rs.6,50,000/- and after claiming expenses, returned income of Rs.4,09,830/- The Assessing Officer (AO) had accepted that part of the house was let out to the lessee, but treated the fair market rent for the property at Rs.3,00,000/- Per Month on the basis of report of the Approved Government Valuer, namely M/s Continental Foundations, which was received by him from the DDIT (Inv), Chandigarh alongwith report of the Punjab Vigilance

Bureau. The same was duly confronted to the assessee during the course of assessment proceedings. The assessee, in response, stated that the rent received by him was reasonable and submitted copy of lease deed for House No.330, Sector 9-D, Chandigarh where the complete house was leased out @Rs 80,000/- p.m. and copy of the Certificate & Bank Statement from tenant of House No.114, Sector 8-A, Chandigarh where the complete house was leased out @ Rs 90,000/- p.m, in support of his contention. The AO rejected the contention of the assessee stating that the Valuation Report had been prepared by a well competent valuer who had taken into account every minute detail of the property and then prepared the Valuation Report and that mere rebuttal of the same did not render the fair market rent, as worked out in the Valuation Report, invalid or erroneous. Accordingly, the fair rent of the let out portion, as assessed by the govt. approved valuer was treated as the income of the assessee amounting to Rs.14,87,604/- as against Rs.4,09,830/- returned by the assessee.

4. The assessee contested the same before the Ld.CIT(A) who also rejected the contention of the assessee holding as under:

“I have considered the contention of the appellant and the facts mentioned in the assessment order. The relevant provisions of s.23(1) and s.23(4)(b) of the Act are reproduced below:

Section 23 (4)-

Where the property referred to in sub-section (2) consists of more than one house—

(a) the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;

(b) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.

(c) Section 23(1) -

23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be— (a) the sum for which the property might reasonably be expected to let from year to year: or.....

27.2.1 Thus, aforesaid provisions show how the annual let out value (ALV) is to be determined i.e. the sum for which value of any property might reasonably be expected to let from year to year For determining the ALV u/s 23(1)(a), the AO has to determine the fair/reasonable rent expected to be fetched by the property, if the property is governed by the Rent Control Act, the standard rent is one of the various factors to be taken into account by the AO, However, the municipal value or standard rent is not binding on the AO but is a guiding factor for determining the reasonable rent expected to be fetched by the property- If the AO finds that the Municipal Value is not based on relevant material for determining fair rent in the market and there is a sufficient material on record for taking different valuation, the AO can determine the fair rent by inflating or deflating the Municipal Value or Standard Rent, If the AO finds that the actual rent received is less than the fair market rent because of the abnormally high interest-free security deposit, he can undertake necessary exercise in that

behalf In the present case the appellant lessor has accepted Rs,15,00,000/- deposit as advance rent over and above rent paid per month, However, the notional interest on interest free security/deposit cannot be taken as determinative factor to arrive at fair rent Therefore, the AO has relied on the report of the Government Approved Valuer for rent on the specific property which determined rent @Rs.3,00,000/- per month Appellant has also failed to point out specific defects in the said report with supporting evidence. In the case of Smt Indu S. Jain vs ITO (2012) 21 Taxmann.Com 471 (Mum.), Hon'ble Tribunal has held that -

“.....Municipal rateable value if determined correctly could be taken as ALV but the same was snot binding on the AO... IN case AO could show that rateable value under Municipal laws does not represent correct fair rent then, he may determine the same on the basis of material placed on record.....”

27.2.2. It is clear that, AO has been vested with the power to determine the ALV u/s 23(1)(a) of the Act. The AO has to determine the fair/reasonable rent expected to be fetched by the property. If the property is governed by the Rent Control Act, the standard rent is one of the various factors to be taken into account by the AO. However, the municipal value or standard rent is not binding on the AO but is a guiding factor for determining the reasonable rent expected to be fetched by the property. If the AO finds that the Municipal Value is not based on relevant material for determining fair rent in the market and there is a sufficient material on record for taking different valuation, the AO can determine the fair rent by inflating or deflecting the Municipal Value or Standard Rent. In the present case, the AO has estimated ALV of the let out part of the said House @ Rs 3,00,000/- p.m. totaling to Rs.36,00,000/- p.a. Applicant has failed to controvert the estimation made by the AO with any specific evidence or explanation of any example from the same sector i.e. sector-4, Chandigarh. Without repeating the discussion made in the preceding paragraphs, it is held that the AOS determination of the ALV of the let out house is fair and does not require any interference. However, AO has to add amount of 10% p.a. increase in Annual Rental Value and reduce the rental income already offered in the return of income. He is also directed to allow the Statutory Deduction allowable u/s 24 of the Act, However, as no documentary evidences in support of the various expenses claimed against the

income have been provided by the assessee before the assessing officer or during appellate proceedings, the same are rightly disallowed by the AO. Hence, the Grounds of Appeal Nos.2 to 5 are dismissed.”

5. Aggrieved by the same the assessee has come in appeal before us raising the following effective grounds:

- “1. That on law, facts and circumstances of the case, the Worthy CIT(A) in Appeal No, 10353/16-17 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*
- 2. That on law, facts and circumstances of the case, Worthy C1T(A) has erred in confirming the action of Ld. AO wherein Ld, AO had made reference to Valuation firm for valuation of rental income of property even when he lacked such powers of reference and had thereby erred in making the impugned addition of Rs. 14,87,604/- on account of alleged excess rental income receivable from, the property.*
- 3. That on law, facts and circumstances of the case, the Worthy C1T (A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in using the report of Valuation firm for valuation of rental income of property even when such report could not have been used for purposes of assessment of rental income u/s 23 and the Ld. AO has thereby erred in making impugned addition of Rs.14,87,604/- on account of alleged excess rental income receivable from the property.*
- 4. That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in making addition of Rs. 14,87,604/- by replacing the rental income received having been disclosed by the appellant with estimates of rent receivable from the property by relying blindly on valuation considering inherent weakness, damages and market as were duly provided during assessment proceedings.*

5. *That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in not allowing Statutory Deduction of 30% u/s 24 out of enhanced rental income even when the! appellant was clearly eligible for the same.*
6. *That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. JCIT wherein the Ld. JCIT had erred in not conducting the relevant assessment proceedings fairly as the application moved by the appellant u/s 144A has been disposed off by the Ld. JCIT without granting any opportunity of being heard.”*

6. Taking up ground no 2-4, where the challenge is to the reference made and reliance placed on the report of a valuer for determining the fair market value, the Ld.Counsel for the assessee reiterated his contentions made before the Revenue Authorities below to the effect that there was no provision under law allowing the AO to refer the valuation of the Annual Letting Value of the property to a valuer nor could the fair rent be determined based on report of a valuer. He also contended that the assessee had submitted instances of comparable rent and no reason had been given for rejecting the same.

7. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(A).

8. We have heard both the parties. and have also gone through the order of the Ld.CIT(A).

9. The issue for adjudication before us relates to the determination of income from house property, which is governed by the provisions of chapter IV-C of the Act. As per the charging section 22, the annual value of the property is charged to tax, which annual value has been defined u/s 23 of the Act. The remaining sections deal with deductions from the annual value and provisions relating to arrears of rent etc. Since the issue before us is confined to the determination of the annual value, section 23 is the relevant provision to be interpreted for adjudicating the issue before us.

10. On going through the order of the Ld.CIT(A), we find he has reproduced the said section which states that the annual letting out value (ALV) is the sum for which the property might reasonably be expected to be let out from year to year (section 23(1)(a). Interpreting the same he has stated that for determining the ALV, the fair /reasonable rent has to be determined by the AO. Thereafter, we find, he has stated that if the property is governed by the Rent Control Act, the standard rent is one of the various factors

to be taken into account for determining the fair rent. Even the municipal valuation, he has stated, is a factor which can be taken into account. The Ld.CIT(A) has further stated that the municipal value or standard rent is not binding on the AO but is the guiding factor for determining the reasonable rent expected to be fetched by the property and if the AO finds that the municipal value is not based on relevant material for determining fair rent in the market and there is sufficient material on record for taking different value the AO can determine the fair rent by inflating or deflating the municipal value or standard rent.

11. So far as the above interpretation of the provisions of the relevant sections by the Ld.CIT(A) are concerned, we are in agreement with the same. In fact we find that it is settled law that the annual value of a property cannot exceed its standard rent as under rent control law where applicable, laid down by the apex court in the case of Daulatrai vs New Delhi Municipal Committee 122 ITR 700 (SC) and Sheila Kaushik vs CIT (1981)131 ITR 435(SC). And by virtue of clause (1)(b) to section 23, only if actual rent exceeds fair rent/standard rent, it shall be treated as annual value of property.

12. Therefore there is no dispute with the proposition that for the purposes of determining the annual value of a property in terms of section 23 of the Act, the reasonable rent is to be determined which cannot exceed the standard rent fixed under the rent control law where applicable or ideally the municipal valuation and any digression from the same is to be supported with evidence.

13. But we find that while applying this interpretation to the facts of the present case, the Ld.CIT(A) has gravely erred. As per the facts of the case the assessee had returned actual rent received of Rs.6,50,000/- and deducted expenses therefrom disclosing income of Rs.4,09,830/-, while the Revenue has determined the fair market rent relating to assesses share of property at Rs.14,87,604/- based on valuation report of a govt. approved valuer. The Revenue while doing so has simply accepted the Valuation Report as sacrosanct for the purpose of determining the fair rental value of the property without undertaking any exercise for determining its municipal value or standard rent, when as per the Ld.CIT(A) himself and as per law interpreted by courts in this regard, these are the guiding factors for determining the annual rental value of the property and any

deviation from the same is to be based on evidence showing that it is wrong. We find the entire exercise of the Revenue Authorities in the present case for determining the annual ALV of the property as being arbitrary. No reason has been given for adopting the fair rent determined by the valuer as against the municipal valuation or of the standard rent of the property, which has not even been determined in the present case.

14. In our view, therefore, the adoption of the fair rent as determined by a govt. approved valuer as the annual rental value of the property owned by the assessee is not justified and the same is, therefore, rejected. The income so determined by the Revenue Authorities of Rs.14,87,600/- is set aside and that returned by the assessee is restored .

Grounds of appeal No.2,3,& 4 are accordingly allowed in above terms.

15. Ground of appeal No.5 relating to denial of deduction from the rental income assessed, is we find of no relevance since we have set aside the rental income assessed by the Revenue as above.

16. Vis a Vis Ground No.6, no arguments were made before

us and the same is therefore dismissed.

17. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 12th October, 2021.

Sd/-
(SATBEER SINGH GODARA)
न्यायकि सदस्य/Judicial Member

Sd/-
(ANNAPURNA GUPTA)
लेखा सदस्य/Accountant Member

दिनांक /Dated: 12th October, 2021

रती

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar