IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No.2217/Del/2010
Assessment Year : 2004-05

ACIT, Circle 47 (1), New Delhi.	Vs.	Dr. Prabha Sanghi, 72, Janpath, 2nd Floor, New Delhi. PAN : AALPS1197D
(Appellant)		(Respondent)

Assessee by : Shri Pradeep Dinodia, Advocate
Revenue by : Shri K.K. Mishra, Sr.DR

ORDER

PER A.D. JAIN, JUDICIAL MEMBER

This is an appeal filed by the department for Assessment Year 2004-05 against the order dated 18.02.2012 passed by the CIT (A)-XXX, New Delhi, taking the following grounds:-

> "On the facts and in the circumstances of the case and in law, the ld. CIT (A) has erred in :-
>
> 1. applying the provision of Section 23 (1)(c) in respect of property at A-6A, Maharani Bagh, New Delhi, whereas this property has never been let out any time during the relevant previous year;
>
> 2. ignoring to apply the provision of Sec.23(4)(b) in so far as the assessee is the owner of three immovable properties, land accordingly has to give option for inclusion of income from house property so specified by her;
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> 3. selectively applying the provision of Sec.23 (1)(c) to one vacant property and applying Sec.23 (4) (b) to another;

4. applying the standard rate of MCD in determining the annual letting value, whereas the assessee has previously herself let out the two properties at a much higher rent;

5. relying upon the decision in the case of Kamal Mishra v ITO [2008] 19 SOT 251 (Delhi), when the facts of the case are distinguished from the assessee's case."

2. Vide assessment order dated 19.12.2006, the A.O. made an addition of ₹ 13,83,270/- to the income of the assessee, on account of property income. It was observed that the assessee was owner in possession of a number of properties, whereas she had shown income from house property at Nil. She was asked to explain as to why the rent received in F.Y.s 2001-02 and 2002-03 in respect of properties bearing No.1-A and No.2, Ring Road and No.A-6 A, Maharani Bagh, be not deemed to attract annual letting value u/s 23(4) (b) of the IT Act, for the year under consideration. In response, the assessee submitted that the property at 2, Ring Road was self occupied and so, it did not have any annual letting value, whereas the other two properties had remained vacant throughout the year, due to which, the rent received was nil, in accordance with the provisions of Section 23 (1)(c) of the Act. The A.O., however, opined that the provisions of section 23 (4)(b) of the Act were attracted. As such, she (the A.O.) took the rent for the Maharani Bagh property at ₹ 12,76,104/-, the rent qua this property for Assessment Years 2000-01 and 2001-02 having been shown at ₹ 1,06,342/- per mensem. The rent of the property bearing No.1-A, Ring Road, was taken at ₹ 6,99,996/-, the rent for this property having been shown for assessment years 2001-02 and 2002-03 at ₹ 58,333/- per mensem. The total of both the rents thus arrived at came to ₹ 19,76,100/-. Deducting therefrom repair/renovation @ 30% amounting to ₹ 5,92,830/-, the A.O. arrived at the net property income of ₹ 13,83,270/-, which she added to the assessee's income.

3. By virtue of the impugned order, the ld. CIT (A) deleted the addition of ₹ 12,76,104/- regarding Maharani Bagh property, taking the ALV in respect thereof to be nil. Apropos the property at A-1, Ring Road, the ALV was taken at ₹ 28,620/-, the figure determined by the MCD and restricted the addition from ₹ 6,99,996/- to the said amount of ₹ 28,620/-.

4. Aggrieved, the Department is in appeal.

5. Challenging the impugned order, the ld. DR has contended that as regards the Maharani Bagh property, the ld. CIT (A) erred in applying the provisions of section 23 (1)(c) of the Act, ignoring the fact that this property was never let out during the year; that the ld. CIT (A) erred in not applying the provisions of section 23 (4) (b) of the Act, even though the assessee, being owner of three properties, had to give her option for inclusion of income from house property, which was never done; that the ld. CIT (A) erred in applying, selectively, the provisions of section 23 (1)(c) to one vacant property and those of section 23 (4) (b) to another; that the ld. CIT (A) further erred in applying the standard rate of the MCD in determining the ALV of the 1-A, Ring Road property of the assessee, ignoring the fact that the assessee had herself earlier let out the two properties at a much higher rent; and that the ld. CIT (A) went wrong in relying on “Kamal Mishra vs. ITO”, 19 SOT 251 (Del), though the facts of the said case are entirely distinguishable from those in the case at hand.

6. The learned counsel for the assessee, on the other hand, has strongly relied on the impugned order. It has been contended that the ld. CIT (A) has rightly taken the factual as well as legal position into consideration while passing the order under appeal; that the A.O. had not carried out any exercise to establish the rental value sought to be

assigned to the properties of the assessee and had merely gone by the rentals received by the assessee in the earlier year, and had wrongly completed the assessment on that basis, even though the properties were never let out during the year; that apropos the Maharani Bagh property, due to expiry of lease with the previous tenant, National Highway Authority of India, the property was vacated on 15.10.2001 and during the year, no rent had been received by the assessee; that the property had been lying vacant and the assessee had also moved an application for fixing of ALV with the MCD w.e.f. 1.4.99; that on inspection of the property, the MCD fixed its rental value at ₹ 34,600/- w.e.f. 16.10.01; that the A.O., however, erroneously fixed the ALV of the property a t ₹ 12,76,104, wrongly applying the provisions of section 23 (4) (b) of the Act, instead of the provisions of section 23 (1)(c) of the Act, which were the correct provisions applicable, though the A.O. stood duly furnished with all the facts as above, pertaining to this property; that the A.O erroneously failed to consider that the provisions of section 23 (1)(c) of the Act over-ride those of section 23 (4) (b) inasmuch as Section 23 (4) (b) leads back to Section 23 (1)(c), due to which, the ALV has to be adopted at nil, since the property remained vacant throughout the year; that concerning the 1-A, Ring Road property, the position remained much the same as in the case of the Maharani Bagh property; that the Ring Road property, like the Maharani Bagh property, remained vacant during the entire year, since the lease with the previous tenant had expired and the A.O. was duly informed about these facts, as also of the fact that here too, the MCD had, on the basis of inspection, fixed the rental value at ₹ 28,620/-; that the MCD's valuation documents with regard to both the properties were duly filed before the A.O on 12.12.06, but the A.O. wrongly ignored them; that though specifically requested to do so, the A.O. did not conduct any inspection of the vacant properties to reassess the rental value thereof and arbitrarily fixed the ALV of the properties at

figures much higher than those fixed by the MCD, without bringing on record any evidence to the effect that the assessee had not disclosed the actual rent received, or that whereas the property had been given on rent and was not lying vacant during the year, the assessee had concealed such facts; that rather, there was nothing with the A.O. to disbelieve the factum of the vacancy of these properties during the entire year; that also, there was nothing available with the A.O. to show that the ALV fixed by the MCD was incorrect and that that taken by the A.O. was the correct ALV; that the ld. CIT (A) has not at all erred in following "Kamal Mishra" (supra), wherein the attending facts were similar to those of the case of the assessee; that the ld. CIT (A) also correctly took note of the fact that "Kamal Mishra" (supra) was followed in "ACIT vs. M/s Mayur Recreational and Development Ltd.", AIT 2008 189 ITAT (SB) (Del); that therefore, the ld. CIT (A) correctly deleted the addition of ₹ 12,76,104/- made in respect of the Maharani Bagh property and restricted the addition from that of ₹ 6,99,996/- to that of ₹ 28,620/- qua the 1-A, Ring Road property; and that therefore, there being no force therein, the appeal filed by the Department be dismissed.

7. The assessee has also filed a synopsis before us, which we consider it relevant to reproduce (relevant portions) hereunder:-

> "1. Admittedly, the facts of the case are that the appellant Dr. Prabha Sanghi owns three house properties as under:-
>
> 1. 2, Ring Road, Kilokri, New Delhi.
> 2. I-A, Ring Road, Kilokri, New Delhi.
> 3. A-6A Maharani Bagh, New Delhi.
>
> In all the above three properties, the assessee has partial interest.
>
> 2. Admittedly, out of the above three properties, the property located at 2, Ring Road, Kilokri, New Delhi, is self occupied and has always been self-occupied and is therefore,

not liable to tax u/s 23(2) of the Income Tax Act. There is no dispute with regard to this property.

3. Admittedly, the remaining two properties viz., I-A, Ring Road, Kilokri, New Delhi, and A-6A, Maharani Bagh, New Delhi, had been on rent with public sector undertakings in the earlier years , but have been lying vacant during the previous year relevant to assessment year 2004-05. Admittedly, no rent was received or receivable, nor any other income was derived from the two properties throughout the previous year 2003-04 relevant to assessment year 2004-05.

4. The municipal valuation of the property located at I-A, Kilokri, New Delhi, was at the annual ratable value of Rs. 28,620/- with effect from 1.2.2003 and it was Rs. 34,600/- in respect of the property located at A-6A, Maharani Bagh, New Delhi, with effect from 16.10.2001. These ratable values fixed by the MCD were prevalent during the previous year in question.

5. Based on the above mentioned undisputed admitted facts, the A.O. invoked section 23(4)(b) of the Act and determined the ALV of these two properties as per page 2, para 2, of his order as under:-

> "Hence, on the basis of rent received in previous years 2001-02 and 2002-03 in respect of following properties, except one for residential purpose, may be deemed as annual letting value u/s 23(4)(b) of the Income Tax Act. Income from house property is computed as under:-
>
> | | |
> |---|---|
> | 1. Rent from A,6A, Maharani Bagh as shown in A Y 2000-01 & 2001-02 @Rs.106342x12 months. | Rs.12,76,104 |
> | 2.Rent shown for the property I-A Ring Road in A Y 2001-02&2002-03 @Rs.58333x12 months. | Rs. 6,99,996 |
> | Total income | Rs.19,76,100 |
> | Less Repair/renovation @ 30% | Rs. 5,92,830 |
> | Net property income | Rs. 13,83,270 |

6. The CIT (Appeals), per contra, determined the ALV of the two properties as under:-

A-6A, Maharani Bagh, New Delhi.	NIL
I-A, ring Road, Kilokri, New Delhi.	Rs. 28,620/-

(Ref: page 12, last para of CIT(A)'s order).

7. The scheme of the Income Tax Act for determination of income from house property is contained in Chapter IVC of the Income Tax Act.

8. There is no dispute that the property in question is under the ownership and in possession of the appellant (sic assessee). Therefore, it comes within the rigour of the provisions of section 22 of the Act.

9. The dispute between the appellant and the Department is confined to heading contained in Chapter IVC of the Act i.e. Annual Value how determined? This is contained in section 23 which is reproduced hereunder:-

Annual value how determined.

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

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable.

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation - For the purposes of clause (b) or (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realize.

(2) Where the property consists of a house or part of a house which-

(a) is in the occupation of the owner for the purposes of his own residence; or

(b) Cannot actually be occupied by the owner by reason of the fact that owning to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house or part of the house shall be taken to be nil.

(3) The provisions of sub-section (2) *shall not apply if -*

(a) the house or part of the house is actually let during the whole or any part of the previous year; or

(b) any other benefit there from is derived by the owner.

(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.]"*

10. Now, as per Section 23 of the Act, the procedure to be followed for determining the annual value in respect of the two properties, the first step is - "to determine" the sum for which the property might reasonably be expected to let from year to year. It is now well settled that it would be the municipal ratable value, or the standard rent as per the local Rent Control Act, whichever is higher. This would be covered under section 23(1)(a). In this case, it would be Rs. 28,620/- for l-A, Ring Road, Kalokri, New Delhi, and Rs.34,600/- for A-6A, Maharani Bagh, New Delhi. This is well settled by a plethora of judgments of Hon'ble Supreme Court and various High Courts. Ref: Sheila Kaushish vs. CIT (1981) 131 ITR 435 (SC); Amolak Ram Khosla vs. CIT (1981) 131 ITR 589 (SC); Dewan Daulat Ram Kapoor vs. NDMC (1980) 122 ITR 700 (SC); Dr. Balbir Singh vs. MCD (1985) 152 ITR 388 (SC); CIT vs. Mayur Recreational & Development Ltd. (AIT-2008-189-ITA-SB); CIT vs. Raghubir Salan Charitable Trust 183 ITR 297 – (Delhi High Court); L. Bansidhar & Sons HUF

201 ITR 655 (Delhi HC); CIT vs. Vinay Bharat Ram & Sons (HUF) 261 ITR 632 (Delhi High Court).

11. Therefore, on the first principle above, there is no mandate in section 23(1)(a) to take the annual rent derived in the previous years, when the property was tenanted, as the ALV in the current year, when the property is admittedly vacant. Therefore, the AO, in any case, was not empowered to take Rs. 12,76,104/- and Rs.6,99,996/- as the ratable value of the two vacant properties in the year under consideration, even if he sought to apply section 23(4)(b), because section 23(4)(b) again refers to section 23 (1)(a) for determination of the ALV.

12. The second step u/s 23(1)(b) is to determine if actual rent received or receivable is higher than the one determined above u/s 23(1)(a) . In this case, admittedly, No Rent, No Agreement of tenancy, property vacant, therefore, computation u/s 23(1)(b) fails and it would be NIL in the present case.

13. The third step is to determine whether any part of the property was let out and was vacant either during the whole or any part of the previous year and owing to such vacancy, the annual rent received or receivable by the owner in respect thereof was less than the sum referred to in sub-clause (a) than the amount so received or receivable.

14. The third step as mentioned above as per section 23(1)(c) in this case would be for I-A, Ring Road, Kilokri, New Delhi, in respect of which the amount would be Rs.28,620/- or NIL whichever is lower and, therefore, NIL, and in the case of A-6A, Maharani Bagh, New Delhi, this would be Rs. 34,600/- or NIL whichever is lower, thus NIL. Therefore, the third step would reduce the ALV u/s 23(1) of the Act to nil and this is also now well settled by various judgements placed on record by the appellant (sic assessee) viz., Kamal Mishra Vs. ITO 19 SOT 251 (Del), Premsudha Exports Ltd., Vs. ACT 110 TTJ 89 (Mum), Smt. Shakuntala Devi Vs. DCIT 2012-TIOL-64-ITAT (Bang,).

15 The scheme of section 23 of the Act provides as under:-

Sub-section (2) of section 23 speaks of 'the property'. In this case, it would refer to A-I, Ring Road, Kilokri,New Delhi, and A-6A, Maharani Bagh, New Delhi, and attribute to that property consisting of a house or a part of a house which is in the occupation of the owner for the purpose of her own residence.

16. In a situation wherein if these properties were in the occupation of the owner herself, then sub-section (2) provides that ALV of such a house shall be taken as nil. Sub-section (2), therefore, provides for exemption to self-occupied house

irrespective of the result of computation *u/s* 23(1). In the case of the appellant (sic assessee), the result is nil both under the computation provisions of *u/s* 23(1) of the Act as well as *u/s* 23(2), if so applied. It is further not the case of the appellant (sic assessee) that these houses were in her self occupation. The case of the appellant (sic assessee) is that both these were let out for the last many years and were, unfortunately, vacant during the previous year relevant to the assessment year. Therefore, according to the appellant (sic assessee), sub-section (2), even though it grants some concession to the tax-payer, is not relevant for the controversy at hand.

17. Sub-section (3) is again irrelevant because it puts further conditionalities for grant of relief under sub-section (2) in respect of self occupied houses, but admittedly the assessee has derived no benefit from these two properties during the previous year nor have the properties been let out during whole or any part of the previous year. Therefore, even if sub-section (3) is applied, the result would again be nil.

18. The last part is sub-section (4) which again goes back to the word 'the property' referred to in sub-section (2) consisting of more than one house i.e. if an assessee has three houses, all in its occupation, then according to clause (a), sub-section (4), the concession provided in sub-section (2) would be restricted to one house property only and the other two would have to suffer the consequences of section 23 (1) and have ALV determined on these according to section 23(1) of the Act. In the case of the appellant (sic assessee), it, again, is irrelevant for the reason that it is not the case of the appellant (sic assessee) that these two properties were in her self-occupation, but were lying vacant throughout the previous years relevant to the assessment year under consideration. For the sake of argument, even if sub-section (4) is applied, it again leads back to section 23(1) because it only restricts the exemption granted under sub-section (2) to only one house property; the other two, according to sub-section (4) would have to suffer the consequences of determination of ALV u/s 23(1) of the Act. This is made clear in the last part of section 23(4)(b) wherein it says that 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-clause (1) as if such house or houses had been let. Therefore, sub-section (4) again sends us back to section 23(1) of the Act

19. If we look at the Legislative history in respect of income derived from house property starting with 1922 Act, section 9(2) of that Act was parametery (sic pari materia with) of section 23(1) of the 1961 Act. In the 1961 Act, the 1922 Act was

repeated as regards all self-occupied properties. Even if an assessee had any number if self occupied properties, deductions would be allowable after determining the ALV thereof. For instance, in the 1961 Act, section 23(2) first determined the ALV under sub-section (1) and further reduced by one-half of the amount so determined or Rs.1800/- whichever is (sic was) less subject to the overall ceiling limit of 10% of the total income. The 1961 Act, therefore, provided that the ALV must be computed for the sum reasonably expected to let from year to year and then a concession was given by way of deduction from the ALV so determined for selfoccupation and this has been explained in CBDT Circular No. 5P dated 9.10.1967. (copy enclosed as Annexure I). The Income from House property underwent series of changes over a period of time. The Taxation Amendment Act of 1970, with effect from 1.4.1971, vide CBDT circular No. 56 dated 19.3.1971, para 65, actually clarifies the working of this section in detail.

EXTRACT FROM CBDT CIRCULAR NO. 56 DATED 19.3.1971:-

"PARA 65 - *With a view to rationalizing the provisions in section* 23(2) *and to provide a fillip to construction of house property for self-occupation, sub-section (2) of section* 23 *has been substituted by a new sub-section. Under sub-clause (2), as substituted, the annual value of house property used by the owner for the purpose of his own residence will first be computed in the same manner as if the property had been let i e. by deducting from the gross annual value the whole of the taxes levied by the local authority in respect of the property. The balance of the annual value will then be reduced by one-half thereof or Rs.1800/- whichever is less. Where the assessee has two houses, both of which are used for the purpose of his own residence, the annual value of each of such house will be computed in this manner. Where the assessee has more than two houses and uses them for his own residence, the concessional basis of computation of annual value as stated above will be allowed only in respect of two houses of the assessee's choice. The annual value of the remaining houses will be determined as if they were let out. The resultant annual of the house or two houses owned and occupied by the tax-payer for the purposes of his own residence will, as at present, be further limited, where appropriate, to ten per cent of other taxable income of the tax-payer and the excess, if any, will be disregarded. "*

20. The Taxation Amendment Act of 1975, with effect from 1.4.1976, actually added section 23(1)(b) to the Income Tax Act whereby annual rent received or receivable was in excess of reasonably expected rent as per section 23(1)(a), then the higher of the two would be taxable and this Amendment Act also reduced the exemption to self-occupied properties instead of two to one house only. Therefore, as per the Legislative history right from the 1922 Act, all houses under self-occupation had concessional treatment under the Act. Then this became restricted to two houses by amendment of Taxation Amendment Act of 1970 with effect from 1.4.1971 Para 65 of CBDT Circular No. 56 dated 19.3.1971 explaining the above has already been reproduced The Taxation Amendment Act of 1975, with effect from 1.4.1976, reduced the concessional treatment to self-occupied property to one property only and it continues to be the case today.

21. With effect from 1.4.1987 by the Finance Act of 1986, the value one self occupied residential house was taken to be at nil instead of deduction as was allowed up to assessment year 1987-88. Ref: CBDT Circular No. 461 dated 9.7.1986 - 161 ITR Statute 21. Therefore, the law up to assessment year 2001-02 was - where the property was vacant or self occupied, the ALV of the property was to be determined u/s 23(1)(a) of the Act. The value of one house property, if it was self occupied, with effect from 1.4.1987, assessment year 1987-88, had to be taken at nil and the rest of the properties would suffer tax as per ALV computed u/s 23(1) of the Act This was also in accordance with the Supreme Court decision in the case of Liquidator Mehmodabad Properties Ltd Vs. CIT 124 ITR 31 (SC)

22. The inequity of taxing vacant properties under a notional charge under the Chapter 'Income from House Property' under Chapter IVC of the Act was recognized by the Legislature and an amendment to section 23 was made by the Finance Act of 2001 with effect from 1.4.2002 and this brought in section 23(l)(c) of the Act.

23. The rationale of this was explained by CBDT Circular No. 14 of 2001 - 252 ITR Statute 65, para 29. The logic as contained in the said para had clearly explained that this amendment was brought in to rationalize the provisions of the Act so as to provide simplified determination of annual value after allowing deductions in computing the ALV itself on account of vacancy of the property and unrealized rent. Thus, after bringing the provision of section 23(l)(c) where the property is self occupied or lying vacant, partially or wholly, either in part of the year or whole of the year, has annual rent received or receivable for that part is nil, it would not have to suffer any tax due to computation *u/s* 23(1)(a) of the Act. In para 29(2) CBDT the

> Circular states - *"Where the property or any part of the property is let out and was vacant during the whole or any part of the previous year and owing to such vacancy, the actual rent received or receivable is less than the ALV, the sum so received or receivable shall be the actual value. "*
>
> 24. Therefore, in the case at hand for the assessment year 2004-05 as per law, as explained by CBDT, u/s 23(l)(c) the rent received or receivable admittedly is NIL and thus NIL would become the annual value *u/s* 23(1) of the Act for both the properties."

8. We have heard the parties and have perused the material on record. The issue is as to whether the ld. CIT (A) has rightly applied the provisions of section 23 (1)(c) rather than those of section 23 (4) (b) of the Act.

9. At the outset, it would be appropriate to reproduce hereunder, both these provisions:-

> *Section 23 (1) (c)* - where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (*a*), the amount so received or receivable :
>
> *Section 23 (4) (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.

10. A perusal of section 23 (1)(c) clearly shows the unambiguous requirements of the said section. This section requires that where the property was vacant during the year and due to such vacancy, the actual rent received or receivable in respect thereof is less than the sum for which the property might reasonably be expected to be let from year to year, the amount so received or receivable shall be deemed to be the annual value of such property.

11. On the other hand, as per section 23 (4), where the property consists of more than one house, the annual value thereof shall be determined as if such house had been let.

12. It appears that there is a difference between the provisions of Section 23 (1)(c) of the Act and those of Section 23 (4) thereof. However, it is not so. As per Section 23 (1)(c), if any part of the property was let out and was vacant during the year or any part thereof, and due to such vacancy, the annual rent received or receivable was less than the sum for which the property might reasonably be expected to let from year to year, the lesser of the two amounts, i.e., the amount received or receivable, is to be the annual value of the property. Section 23 (4), on the other hand, refers to property where it consists of more than one house, as in the present case. As per this Section, the annual value of such property shall be determined as if the property has been let.

13. Now, the provisions of Section 23 (4) (b) are very clear that where the property consists of more than one house, the annual value thereof shall be determined u/s 23 (1), as if such property had been let. This re-directs us to Section 23 (1). Applying Section 23 (1) to the facts of the present case, it is Section 23 (1) (c) which shall again come into play inasmuch as it remains undisputed, as observed hereinabove, that the property was let, but was vacant during the year, due to which vacancy, the actual rent received or receivable by the assessee in respect of such property was nil. Nil rent, then, it cannot be gainsaid, is evidently less than the sum for which the property might reasonably be expected to let from year to year.

14. On this score itself, the grievance of the department loses whatever force it could have had, if any.

15. Then, reverting to Section 23 (4), it makes reference to “property referred to in Section (2)” of Section 23. Section 23 (2) talks of “the property” and the only difference is that whereas Section 23 (2) talks of a house or a part of a house and Section 23 (4) considers property consisting of more than one house. As per Section 23 (4) (a), the concession will be available to the assessee only with regard to one of the houses constituting the property and the ALV of the remaining houses shall have to be determined, in case, all the houses are in the occupation of the assessee. In the present facts, this is not the case and the two houses, as discussed, were let earlier, but were lying vacant during the year. As such, Section 23 (4)(a) is not applicable.

16. Section 23 (4)(b) is applicable, as considered, and it leads back to Section 23 (1). So the situation is back to square one.

17. Undoubtedly, it was to cure the inequity of taxing vacant properties under a notional charge, that Section 23 (1)(c) was brought on the statute book by virtue of the Finance Act of 2001 w.e.f. 01.04.2002, as rightly contended on behalf of the assessee, in order to provide simplified determination of annual value of property on allowing deductions in computing the ALV itself on account of vacancy and unrealized rent.

18. Thus, looked at from any angle, it is the provisions of Section 23 (1)(c) of the Act which are applicable hereto and none other. Accordingly, we hold hat the Ld. CIT (A) was correct in applying the said Section to the present case.

19. For the above discussion, finding no merit in the grounds taken by the department, the same are rejected.

20. In the result, the appeal filed by the department is dismissed.

The order pronounced in the open court on 18.09.2012.

Sd/-	Sd/-
[T.S. KAPOOR] ACCOUNTANT MEMBER	[A.D. JAIN] JUDICIAL MEMBER

Dated, 18.09.2012.

dk

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

Deputy Registrar,
ITAT, Delhi Benches