

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER  
ITA NO.6204/MUM/2018(A.Y. 2014-15)

Empire Capital Pvt. Ltd.  
609, Maker Chamber V,  
Nariman Point, Mumbai 400021  
PAN:AABCG3540M

..... Appellant

Vs.

ACIT CIRCLE 2(1)(2)  
Mumbai

..... Respondent

Appellant by : Shri Nimesh Chotani  
Respondent by : Shri Bhoopathi

Date of hearing : 12/09/2019  
Date of pronouncement : 30/10/2019

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of CIT(A) - 4, Mumbai dated 30/08/2018 for assessment year 2014-15.

2. The solitary issue raised in the appeal by the assessee is against addition of Rs.11,37,878/- on account of notional rent in respect of vacant property of the assessee situated at Anna Salai, Chennai.

3. The brief facts germane to the present appeal are: The assessee/appellant company is engaged in the business of trading in shares and commodities. The assessee owns a property situated at Anna Salai, Chennai. In the return of income for the impugned assessment year the assessee did not disclose any rental income from the aforesaid

property. During the assessment proceedings the assessee explained that since the property was lying vacant during the relevant period, no rental income was disclosed. The Assessing Officer estimated rental income of the property at 6% of the capital value and made addition of Rs.11,37,878/- as notional rent. Aggrieved against the assessment order dated 29/12/2016, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee and confirmed the addition.

3. Now the assessee is in second appeal before the Tribunal assailing the findings of CIT(A) by raising following grounds:-

*“1. On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in confirming the action of the learned Assessing Officer in computing the Annual Letting Value of the property situated at Anna Salai, Chennai at 11,37,878/- although the same ought to be taken as Nil under section 23(1)(c) of the Act.*

*2. On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in confirming the action of the learned Assessing Officer without appreciating the fact that the appellant could not let out the said property as it was beyond the control of the appellant.*

*3. On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in stating that the appellant was not able to demonstrate that it made efforts to let out the property but was unable to do so.”*

4. Shri Nimesh Chotani appearing on behalf of the assessee submitted that the property at Anna Salai, Chennai was let out to Bank of Punjab (later merged with HDFC Bank) in the year 2001 for a period of 13 years. Subsequently, Metro Rail Project came up in Chennai and the construction work on Metro Project started just opposite to the property of the assessee. Due to on going Metro Project work, HDFC Bank Ltd. vacated the premises in the year 2010. The Id.Authorized Representative of the

assessee furnished copy of termination of tenancy notice dated 01/05/2010 by HDFC Bank Ltd.

4.1 The Id.Authorized Representative of the assessee contended that after the property fell vacant, the assessee made efforts to find new tenant but fail to get any tenant due to obstruction caused by ongoing Metro Project just before the entrance of the premises. The Metro Project got delayed for more than five years, consequently the appellant also could not find suitable tenant for the premises. Thereafter, in the year 2015-16 the assessee could find a tenant and hence, the premises was again let out. The assessee in its return of income disclosed the rental income of Rs.2,10,000/- from the premises and the same was accepted by the Assessing Officer . The Id.Authorized Representative of the assessee furnished copy of the assessment order dated 18/12/2018 passed under section 143(3) of the Income Tax Act, 1961 ( in short 'the Act') for the assessment year 2016-17 and the statement of profit and loss account for year ended 31/03/2016.

4.2 The Id.Authorized Representative of the assessee submitted that assessee had intention right through to let out the property, however, for the reasons beyond control of the assessee, the assessee could not find suitable tenant for the premises. The assessee made all possible efforts to find a suitable tenant. The assessee was in constant touch with several brokers. The Id.Authorized Representative of the assessee referring to the provisions of section 23(1)(c) of the Act contended that where property is lying vacant and no rental income is received for even part of the year, no addition on account of rental income is to be made. To further buttress

his contentions, Id.Authorized Representative of the assessee relied on the decision of Sachin R. Thandulkar vs. DCIT reported as 96 taxmann.com 253 (Mum)(Trib).

4.3 On the other hand, Shri R.Bhoopathi representing the Department vehemently defended the impugned order. The Id.Departmental Representative submitted that the contentions raised by the assessee before the Tribunal are the same as were made before the first appellate authority. The CIT(A), after considering the submissions and the decision in the case of Sachin R. Tandulkar(supra) has confirmed the addition. The assessee has not placed on record any document to show that assessee took some steps for letting out the property.

5. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the addition of Rs.11,37,878/- on account of notional rent in respect of vacant property. It is an undisputed fact that the property of the assessee at Anna Salai, Chennai was let out in the past and the rental income from the said property was offered to tax by the assessee under the head, 'Income from House Property'. It was during the period relevant to assessment year under appeal that the property of the assessee was lying vacant and the assessee did not offer any rental income in the return of income. The assessee has given reasons explaining as to why the property in question could not be let out.

6. Before proceeding further, it would be relevant to refer to the provisions of section 23 of the Act dealing with determination of annual value of the property. For the sake of ready reference, the relevant

extract of provisions of section 23 of the Act are reproduced herein below:-

*“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*

*(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.”*

The provisions of clause (c) of section 23(1) of the Act are attracted if following conditions are satisfied:

- (i) The property was let out in the past;
- (ii) The property was vacant during whole or any part of the previous year;
- (iii) On account of vacancy the ‘actual rent’ received or receivable by the owner is less than the rent determined under clause(a) of section 23(1) of the Act.

If all above conditions are met the actual rent received/nil rent, as the case may be would be annual rental value of property.

6.1 In the present case it is an undisputed fact that the property in question was let out in the past, during the period relevant to assessment year under appeal the property was lying vacant for the entire year and hence, no actual rent was received by the assessee. Consequently, the

assessee did not offer any rental income to tax. In the given facts, the provisions of section 23(1)(c) of the Act get attracted.

7. In so far as the observation of the lower authorities and the arguments of the Id. Departmental Representative that the assessee has not furnished any evidence indicating efforts made for letting out the premises, we do not find force in the same. The assessee during the Financial Year 2015-16 has purportedly rented out the premises and has offered the rental income to tax. A perusal of the statement of profit and loss account for the year ended 31/03/2016 furnished by the Id. Authorized Representative of the assessee reveal that the assessee has received rental income of Rs.2,10,000/-. The Id. Authorized Representative of the assessee has also furnished copy of the assessment order dated 18/12/2018 passed under section 143(3) of the Act for assessment year 2016-17. No addition on account of rental income/notional rental income has been made by the Assessing Officer in the assessment order. Thus, rental income offered to tax has been accepted by the Assessing Officer. In the past as well the property under question was let out. It was during the period relevant to assessment year under appeal that the property was lying vacant for which reasons were given by the assessee. In the peculiar facts of the case we are of the considered opinion that no addition on account of notional rent is warranted.

8. The Co-ordinate bench in the case of Sachin R. Tandulkar(supra) in somewhat similar circumstances after applying provisions of section

23(1)(c) of the Act accepted rental income from the vacant property as 'nil'. In view of the similarity of facts, we find merit in the submissions of the assessee. Accordingly, the impugned order is set-aside and the appeal of assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Wednesday the 30<sup>th</sup> day of October, 2019.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 30/10/2019  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**