IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "SMC-B", BANGALORE

Before Shri George George K, Judicial Member

ITA No.203/Bang/2022 : Asst.Year 2016-2017

Sri.Yash Vardhan Arya D-24, Golden Enclave Old Airport Road Bangalure – 560 017. **PAN : AEOPA6398D.**	v.	The Income Tax Officer (International Taxation) Ward 1(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.Suman Lunkar, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 15.06.2022		**Date of Pronouncement : .06.2022**

O R D E R

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 25.02.2022. The relevant assessment year is 2016-2017.

2. Two issues are raised in this appeal –

(i) Addition under the head "house property".
(ii) Addition under the head "other sources".

I shall adjudicate the above issues as under:

Addition under the head "house property"

3. The assessee along with two others had purchased two immovable properties at Golden Enclave, Old Airport Road, Bangalore. The said properties were leased to M/s.IBIBO Group Private Limited on 01.02.2016. As per the lease agreement, the lease rentals are to be paid from the date of handing over the building to lessee (i.e., was from

01.06.2016). The Assessing Officer, however, held that the rental income of the property commenced on 01.02.2016 itself and has brought the corresponding amount of lease rental receivables from M/s.IBIBO Group Private Limited for the period 01.02.2016 to 31.03.2016. The relevant observation of the A.O. are as follows:-

> *"During the F.Y. 2015-16 relevant to AY. 2016-17, the Assessee has purchased two immovable properties namely 1st and 2nd half of 2nd floor in Tower B1, Golden Enclave, Kodihally Village, H. A Sanitary Board, Bangalore. The Assessee along with M/s Economic Transport Organization Ltd. and Shri Vardhan Arya has entered into a lease agreement with M/s IBIBO Group Pvt. Ltd. on 01.02.2016 for renting out Tower B1, Golden Enclave. As per the said agreement, total rent for the leased commercial premises is Rs.11,70,840/- and out of the total rent, a sum of Rs.3,73,800 is payable to the share of the Assessee. Hence, it is clear that the Assessee was in receipt of rental income of Rs. 3,73,800 pm for the month of February and March 2018 but the same has not been offered to tax in ITR filed for AY. 2016-17. Therefore, income of Rs.7,47,600/- is now added back to the returned income."*

4. Aggrieved, the assessee filed an appeal before the first appellate authority. The CIT(A) accepted the contention of the assessee that the possession of the property was given only on 01.06.2016, and hence, no lease rental could be brought to tax for the month of February 2016 and March 2016. However, the CIT(A) directed the assessee to show cause why income from house property should not be calculated on the basis of Annual Letting Value (ALV) as per section 23(1)(a) of the I.T.Act. To the proposed enhancement notice, the assessee filed objection vide its reply dated 22.02.2022. However, the objection of the assessee was rejected and the CIT(A) enhanced the addition made by the A.O. at Rs.5,23,320 to Rs.28,78,260 by working out the income from house property

on the basis of ALV. The relevant finding of the CIT(A) reads as follows:-

> *"11 These submissions are further examined. The assessee had purchased the property in April 2015 He had got into a lease deed in the month of Feb 2016 The claim of he assessee is that the property had remained vacant all through AY 2016-17. In such a situation the annal lettable value of the property needs to be computed. This is in accordance with the Supreme Court decisions already brought on record. In the following cases the courts have held that fair rental value can be determined u/s 23(1}(a) of the IT Act.*
>
> *CIT Vs G Ramesan [Kerala] [241 ITR 426]*
> *CIT Vs Johny Joseph [Kerala] [241 ITR 423]*
> *ataraj Vs DCIT [Madras] [266 ITR 277J*
> *J K. Investors Bombay Ltd [Bombay 248 ITR 723]*
> *MAE Pacs [Bombay] [230 ITR 60]*
>
> *Considering the above, I am of the view that the annual lettable value of the property needs to be computed where the property is claimed vacant throughout the year and where the assessee had not admitted any rental Incomes. The taxable house property Income from the property is worked out at Rs.23,54.940/- after allowing deductions. The enhancement of income is ordered. AO to issue notice under 156. Penalty proceedings u/s 271(1)(c) are also initiated on account of filing wrong particulars of income and for concealing the particulars of income for the year under house property income."*

5. Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The assessee has filed a paper book comprising of 213 pages inter alia enclosing the financial statement along with copy of the return filed for the assessment year 2016-2017, copy of the lease agreement, copy of the confirmation letter, written submission filed before the CIT(A), etc. The assessee has also filed a paper book enclosing therein the compilation of case laws relied on. The learned AR reiterated the submissions made before the

Income Tax Authorities. On a query from the Bench, it was submitted that in the hands of the co-owner, there is no addition made u/s 23(1)(c) of the I.T.Act.

6. The learned Standing Counsel supported the order of the CIT(A).

7. I have heard rival submissions and perused the material on record. The property was let out on 01.02.2016, however, the rent commenced from 01.06.2016. It is clearly mentioned in the lease deed that the rent commencement date shall be the date of handing over the physical possession of the fully fitted out and operational possession of the property. Section 23 of the I.T.Act was substituted with effect from 01.04.2002 by Finance Act, 2001 for and from assessment year 2002-2003. The case laws relied on by the learned CIT(A) are all pertaining to assessment years prior to 01.04.2002. Subsequent to the substitution of section 23 of the I.T.Act for the purpose of section 22, the annual value of property shall deemed to be –

- the sum for which the property might reasonably be expected to let from year to year [**s.23(1)(a)**]; or

- 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 section 23(1)(a), the amount so received or receivable [**s.23(1)(b)**]; or

- 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 section 23(1)(a), the amount so received or receivable [**s.23(1)(c)**].

7.1 In the case of S.M.Chandrashekar v. ITO reported in (2016) 76 taxmann.com 278 (Bangalore-Trib.), the Bangalore Bench of the Tribunal, had held that meaning and interpretation of the words `property is let' cannot be `property actually let out'. It was further held by the Tribunal that if a property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out property and the same would fall within the purview of clause (c) of section 23(1) of the I.T.Act. The relevant finding of the Bangalore Bench of the Tribunal in the case of S.M.Chandrashekar v. ITO (supra), reads as follows:-

> "6. *I have considered the rival submissions as well as the relevant material on record. The Assessing Officer has assessed the annual value of the house in question by applying the deeming provisions of section 23(4) of the Act that if the house is not self-occupied then it shall be deemed to be the sum for which the property expected to fetch the rent from year to year. The Assessing Officer has proceeded on the presumption that the house was let out in the year under consideration. Since it was purchased in the earlier year, therefore, during the year there was no reason to believe that the house was not let out. Whereas the assessee has produced the lease rent whereby the house was let out from next year. When the assessee has explained the reason that the house was under renovation and therefore, it could not be let out during the year under consideration. Further it was not intentionally kept vacant by the assessee. The vacancy of the house was beyond the control of the assessee and therefore the benefit of vacancy is available to the assessee as per the provisions of section 23(1)(c) of the Act. It is pertinent to note that even otherwise it may not be always possible to let out the property just after its acquisition or its readiness to be occupied. The process of letting out may take some time in searching the suitable tenant and for settling the terms and conditions of the letting out. Therefore even if it is presumed that the house was ready for occupation if it is not*

intentionally kept vacant by the assessee then it cannot be presumed that the assessee has deliberately not let out the house during the year under consideration. The co-ordinate bench of this Tribunal in the case of Shakuntala Devi (supra) has considered an identical issue in para 8 as under :

> "8. We have considered the submission of both the parties and carefully gone through the material available on record. In the present case, it is not in dispute that the properties in question were earlier let out but remained vacant and could not be let out for the year under consideration since those were inhabitable. A similar issue has been adjudicated by the ITAT, Lucknow Bench 'B' in the case of Smt. Indu Chandra Vs. DCIT (supra). In the said case, one of us (AM) is the signatory. In the case of Smt. Indu Chandra (supra), addition which was made in similar circumstances, was deleted by following the decision of the ITAT, Mumbai Bench 'C' in the case of Premsudha Exports (P) Ltd. Vs. ACIT (2008) 110 ITD 158 (Mum) and the relevant findings have been given in para 11 and 11.1 of the order dated 29.4.2011 which are reproduced as under :
>
> *"11. After" considering the submissions of both the parties and the material on record, it is noticed that the property in question remained vacant and claim of the assessee was that she made all the efforts to let out the property, but the same could not be let out because the property was situated at 5th floor and the lift was not working. On a similar issue, the I.T.A.T. Mumbai Bench 'C' in the case of Premsudha Exports (P) Ltd. Vs. ACIT, CC 10, Mumbai (supra), has held as under:*
>
> *"It was the case of the revenue that clause (c) of section 23 (1) can only be invoked in those cases where the property was let out in earlier years or in the present year. The assessee, on the other hand, contended that the intention of letting out the property was to be seen for invoking clause (c) of section 23 (1) for computing the annual letting value of the property and it was irrelevant whether the property is/was let out. [Para II] Therefore, the sole dispute, in the instant case, was regarding the interpretation of the words 'property is let' in clause (c) of section 23(1). One interpretation suggested-by the revenue was that the property should be actually let out in the relevant previous year. This interpretation was not correct, because as per clause (c) of section 23(1), the property can be vacant during whole of the relevant previous year. Hence, both these*

situations cannot coexist that the property is actually let out also in the relevant previous year, and that the property in the same year is vacant also during whole of the same year. [Para 12] The second interpretation suggested by the revenue was that the property should be actually let out during any time prior to the relevant previous year and then only, it could be said. that the property is let out and clause (c) would be applicable. The tense of the verb used prior to the word 'let' is present tense and not past tense. It means that the provisions of clause (c) talk regarding the relevant previous year and not of any earlier period and if that be so, the contention of the revenue was not acceptable. [Para 13] Now the question arose as to what would be the correct and workable interpretation of the words 'property is let' in clause (c) of section 23 (1). For this, it is to be determined as to whether actual letting out is a must for a property to fall within the purview of clause (c) of section 23(1). [Para 15] From a reading of the provisions of sub-section (3) of section 23, it appears that the Legislatures in their wisdom have used the words 'house is actually let'. This shows that the words 'property is let' cannot mean actual letting out of the property because had it been so, there was be no need to use the word 'actually' in subsection (3) of section 23. Regarding the scope of referring to actual letting out in preceding period, there was no force in the contention of the revenue, as the Legislature has used the present tense. Even if it is interpreted so, it may lead to undesirable result because in some cases, if the owner has let out a property for one month or for even one day, that property would acquire the status of 'let out property' for the purpose of clause (c) of section 23(1) for the entire life of the property, even without any intention to let it out in the relevant year. Not only that, even if the property was let out at any point of time even by any previous owner, it could be claimed that the property is let out property because the clause talks about the property and not about the present owner and since the property was let out in past, it is a let out property, although the present owner never intended to let out the same. Therefore, it is not at all relevant as to whether the property was let out in past or not. These words do not talk of actual let out also but talk about the intention to let out. If the property is held, by the owner for letting out and efforts are made to let it out, that property is covered by clause (c) and this requirement has to be satisfied in each year that the property was being held to let out but remained vacant for whole or part of the year. Above discussion shows

that meaning and interpretation of the words 'property is let' cannot be 'property actually let out'. Thus, if a property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out property and the same would fall within the purview of clause (c) of section 23(1). [Para 16] In the instant case, the assessee-company was entitled to purchase the property for its let out and to earn rental income. Copy of resolution of board of directors was also placed on record, where from it was evident that one of the directors was authorized to take necessary steps to let out the property in question. The assessee had also fixed the monthly rent and the security deposits of the property. Consequent to the resolution, the assessee had approached various Estate and Finance Consultants for letting out the property and the request was also duly acknowledged by the Estate and Finance Consultants. Unfortunately, during the year under appeal, the assessee could not get the suitable tenant on account of hefty rent and security deposits. Thus, during the whole year, the assessee made continuous efforts to let out the property and under these circumstances, this property could be called to be let out property in terms of observations made in foregoing paras. Since the property had been held to be let out property, its annual letting value could only be worked out as per clause (c) of section 23 (1) and since the rent received or receivable from the said property during the year was nil the same was to be taken as the annual value of the property in order to compute the income from house property. [Para 18]

" 11.1 In our opinion the aforesaid referred to case is on the same facts, so respectfully following the decision of the coordinate Bench in the case of Premsudha Exports (P.) Ltd. vs. ACIT, C.C.-I0,Mumbai (supra), we are of the view that since the rent received or receivable from the property in question during the year was nil, the same was to be taken as the annual value of the property in order to compute the income from house property as provided in section 23(1)(c) of the Act. We, therefore, set aside the order of the learned CIT(A) and the grounds of appeal Nos.5, 6 & 7 raised by the assessee are allowed."

In the present case, the facts involved are similar to that of Smt. Indu Chandra (supra). So, respectfully following the order of co-ordinate bench 'B' of ITAT, Lucknow in the aforesaid referred to case, we set aside

> the order passed by the learned CIT(A) and the addition made by the Assessing Officer and sustained by the learned CIT(A) is deleted."

> *In the case on hand the assessee has claimed that prior to the lease agreement produced before the Assessing Officer it was not possible for the assessee to let out the property and therefore it claimed the benefit of vacancy allowance. In the absence of any contrary finding that the assessee has deliberately not let out during the year under consideration, it cannot be presumed. Therefore pre-letting out period cannot be deemed to be let out the property. In any case, if the provisions of section 23(1)(c) of the Act are to be understood that the vacancy allowance is available only in the case where the property is already let out and there is a vacancy in between then the deeming provision of section 23(4) r.w.s. 23(1) shall also be understood that in case of vacancy of the property in between from the initial letting out, it will be deemed as let out. Therefore, these provisions cannot be applied when there is a time lag between the acquisition of the property and letting out of the property and there is no allegation of deliberate unreasonable delay in letting out of the property. Thus in view of the above facts and circumstances of the case as well as the decision of the co-ordinate bench (supra), the addition made by the Assessing Officer is not justified and the same is deleted."*

7.2 A similar view was taken by the Mumbai Bench of the Tribunal in the case of Sachin R.Tendulkar v. DCIT reported in (2018) 172 ITD 266 (Mumbai). The relevant finding of the Mumbai Tribunal reads as follows:-

> *"13. Now we examine the present case on the touch stone of the provision of section 23(1)(c) of the Income Tax Act, 1961 and the case law as afore-said. We find that the assessee has claimed that the said flat had remained vacant throughout the year despite assessee's reasonable effort to let out the same. That the assessee had requested the builder to identify the tenants. In this regard, the assessee has submitted three letters written to the builder. It may be noted that as emanating from the records and the letter, the same builder had identified the tenant for another flat of the assessee which was let out and whose rent has been offered and accepted for taxation. In this factual scenario, the authorities below have doubted the veracity of these letters and doubted the credentials of the assessee's claim. In our considered opinion, this does not display application of mind to the facts of the case. The assessee is a well renowned cricketer. He is furnishing the return of income of Rs.61,23,14,400/-. The let out value of the property in*

> *dispute is assessed as only Rs.1,26,000/- by the ld. Commissioner of Income Tax (Appeals) as rent for the whole year. When the same builder has helped the assessee to find tenant for another flat, why his letters to the same builder to help him identify one more tenant, can be considered as fake, defies logic. That the assessee should maintain a dispatch register for his letters as expected by the authorities below, is also abnormal expectation. That the assessee should get stamped receipt from the builder for the receipt of his letters, is equally quixotic proposition. In these circumstances, the insinuation that the assessee has submitted bogus and fake documents to support the case that reasonable efforts were made to find out a tenant for the vacant flat, is not sustainable in law. The expectation that despite his unarguably busy professional engagements commanding huge amount of money Shri Sachin Tendulkar should have embarked upon and displayed a more robust and exuberant expedition to find a tenant for his vacant flat by approaching other real estate brokers and keeping an infallible record thereof, is beyond normal conception. Hence, we have no hesitation in setting aside the orders of the authorities below and deleting the addition. Hence, we decide the issue in favour of the assessee."*

7.3 In the instant case, as mentioned earlier, the assessee and two other co-owners executed a registered lease deed on 01.02.2016 (within the relevant financial year) with the lessee for a monthly rent of Rs.11,70,840. Out of the total rentals, the assessee's share of rental was Rs.3,73,800 per month. A perusal of the lease deed shows that the lease commencement date shall mean the date on which the lease deed is executed between the parties, i.e. 01.02.2016 and the lease rentals commencement date shall be the date of handing over physical possession of fully fitted out and operational possession of the demised property. The possession of the leased premises was given to the lessee on 01.06.2016. This fact is also confirmed by the lessee vide letter dated 26.12.2018. Therefore, during the relevant financial year, the property in question was let out by executing lease deed dated 01.02.2016. However, physical possession was handed over only on 01.06.2016, since works for the period between

01.02.2016 and 01.06.2016 was being undertaken to make the demised property as operational. Further, when the lease was executed on 01.02.2016, the lessee has paid the security deposit equivalent to 10 (Ten) months rent towards an interest free security deposit in respect of leased premise (Refer clause 7.1 of the lease deed at page 90 of the paper book). Therefore, the lease commenced as on date of executing the lease deed and hence, the `property was let' as per the provisions of section 23(1)(c) of the I.T.Act, within the relevant financial year. In the case of Bangalore Tribunal and Mumbai Tribunal, referred supra, it was held that only an intention to let out a property and coupled with efforts to let out the property is sufficient to come within section 23(1)(c) of the I.T.Act. The case of the assessee in this appeal stands on better footing, inasmuch as, the property was actually been let out during the relevant financial year. Hence, I am of the view that the applicable section is 23(1)(c) of the I.T.Act instead of section 23(1)(a) of the I.T.Act invoked by the CIT(A). Since the lease rental received for the relevant assessment year being `Nil', the same has to be adopted instead of ALV as ordered by the CIT(A). Further, the lease rental received by the assessee from 01.06.2016 was disclosed under the head "income from house property" for the subsequent assessment year, namely, A.Y. 2017-2018 onwards. For the aforesaid reasons, I delete the addition made by the CIT(A). It is ordered accordingly.

8. Therefore, grounds 2 to 5 are allowed.

Addition under the head "other sources"

9. The A.O. made an addition of Rs.2,89,211 by observing as under:-

> *"During the F.Y. 2015-16 relevant to AY. 2016-17, the Assessee has earned dividend income of Rs.62,905/- and interest on PPF of Rs 11,059/- and claimed as exempt. The Assessee has also offered negative income of Rs. 96,208/- under head income from other sources after claiming deduction of Rs. 2,89,211/- as interest paid to M/s Divya Prakash Sup Pvt. Ltd. Vide this office notices dated 27.11.2018 & 30.11.2018, the Assessee was required to provide detailed note on such deduction along with relevant evidentiary documents. In response to the notices, the Assessee's representative & CA submitted an extract of ledger account of M/s Divya Prakash Suppliers Pvt. Ltd. maintained in Assessee' books of account. The document I explanation provided by the Assessee to sustain his claim of expenditure of Rs. 2,89,211/- under the head income from other sources is not satisfactory. As the Assessee could not provide any reliable piece of evidence to allow the deduction of Rs.2,89,211/-, same is hereby disallowed."*

10. The CIT(A) reduced the addition to Rs.1,83,003. The relevant finding of the CIT(A) reads as follows:-

> *"7. The assessee has also objected to charging of income from other sources to the extent of Rs.2,89,211/-. As represented, it is seen that the gross income from other sources was only Rs.96,208/-. The assessee had claimed an interest expenditure of Rs.2,89,211/- against the same. Thereby claiming a loss of Rs.1,93,003/-. The disallowance of interest expenditure claimed against income from other sources is upheld. To this extent the income from other sources is computed at Rs.1,93,003/-. Eligible for deduction for 80TTA to the extent of Rs.10,000/-. The net income of the assessee from other sources is to be taken only at Rs.1,83,003/-. The double disallowance of Rs.2,89,211/- made in the assessment order stands deleted."*

11. I have heard rival submissions and perused the material on record. The assessee has not brought on record any documentary evidence to show that it had incurred interest expenditure of Rs.2,89,211 as against the income assessed under the head `income from other sources'. Therefore, the addition sustained by the CIT(A) to the extent of Rs.1,83,003 is confirmed. It is ordered accordingly.

12. Hence, ground 6 is dismissed.

13. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 17th day of June, 2022.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 17th June, 2022.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru.
4. The Pr.CIT (Intl.Taxation), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore