

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. MAHAVIR PRASAD, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.4739/Del/2017
Assessment Year: 2013-14

Love Kumar Khosla Khosla Farm, Sultanpur, Mahrauli Gurgaon Road, Delhi PAN No.AAAPK9263H	Vs	JCIT Range-72 Delhi
		(RESPONDENT)

Appellant by	Sh. Pradeep Agarwal,CA
Respondent by	Sh. Gourav Pundir, Sr. DR

Date of hearing:	13/07/2021
Date of Pronouncement:	13/07/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-21, New Delhi dated 26.04.2017 pertaining to A.Y. 2013-14.

2. The revised grounds of appeal are as under :-

1. That the order passed by Commissioner of Income Tax Appeals-22, New Delhi is cryptic, bad in law and against the facts of the case.
2. On the facts and circumstances of the case the learned CIT(Appeals) has contradicted himself by stating that the assessing officer has correctly worked out the annual letting value of the said property after allowing vacancy allowance, whereas he has relied on the figures submitted by the assessee.
3. The Learned CIT(A) has wrongly passed strictures against the Authorised Representative(AR) .
4. ~~On the facts and circumstances of the case, the Ld. CIT(Appeals) has erred in not dealing with the issue of standard deduction of 30% of annual value as claimed by the assessee as per section 24(a) of the Income tax Act,1961.~~
5. That the Learned. Assessing officer failed to comprehend the provisions of section 23(1)(c) of the Income Tax Act,1961 while determining the annual rental value of the house property and erred in not allowing vacancy allowance despite the fact that the appellant specifically submitted that the house property remained vacant from 01st November to 3rd March,2013.
 - 5.1 That the learned Commissioner of Income Tax(Appeals) has erred in law and on facts in sustaining the method adopted by Learned Assessing officer while determining the Annual Rental Value and failed to appreciate the provisions of law regarding the allowability of vacancy allowance.
6. Each of the above grounds are without prejudice to one another and the appellant craves leave of Your Honour to add, alter, modify or substitute any of the grounds of appeal as and when the occasion may arise.

3. Before us, at the very outset, the counsel stated that he would be pressing only ground No.5 with its sub ground 5.1.

4. On such concession all other grounds are dismissed as not pressed.

5. The underlying facts in the surviving ground are that during the course of scrutiny assessment proceedings the AO noticed that assessee has shown income from house property from renting out of property at DLF city, Gurgaon and has declared

annual rental value u/s.23 of the Act at Rs.34,18,726/- and claimed deduction @ 30% u/s.24 (a) of the Act amounting to Rs. 10,25,618/-.

6. Assessee was asked to furnish the rental details. The details were furnished and it was explained that during the year under consideration the assessee had let out this property on a monthly rental of Rs.4.30 lacs which was to be increased by 5% from 06.08.2012. It was further explained that the tenant vacated the property in October, 2012 and the property remained vacant till 04.03.2013 and thereafter the premises was let out on a monthly rent of Rs. 4,00,000/-.

7. The AO was of the firm belief that if the property had been occupied by the tenants from the entire year the assessee would have received Rs.52,84,926/- and this should be the ALV of the property. The AO took the ALV of Rs.53,32,000/- being monthly rent of Rs.451500/- and after allowing deduction u/s. 24(a) of the IT Act @ 30% made the addition of Rs.13,39,296/-.

8. Assessee carried the matter before the CIT(A) but without any success.

9. Before us the counsel for the assessee fairly conceded to the determination of the ALV at Rs.53,32,000/-. But vehemently stated that the assessee is entitled for vacancy allowance as per the provisions of section 23 (1)(c) of the Act.

10. Per contra the DR strongly supported the assessment order.

11. We have given a thoughtful consideration to the orders of the authorities below. Since the ALV has been accepted at Rs.53,32,000/-, all that has to be seen is whether the assessee is entitled for vacancy allowance. The undisputed fact is that property remained vacant from October, 2012 to 04.03.2013. This clearly attracts the provisions of section 23 (1) (c) of the Act wherein it has been provided that if 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 by the owner in respect thereof is less than same referred to in clause a of section 23 (1) of the Act.

12. The undisputed fact is that the assessee was receiving a monthly rent of Rs.4.30 lacs and the tenant vacated the property and the property remained vacant from October 2012 to March, 2013 and thereafter the property was again let out for a monthly

rent of Rs. 4 lacs. This means that now the properties rent which is less than the previous rent.

13. Considering the facts in totality we are of the considered view that the assessee is entitled for vacancy allowance for a period October, 2012 till 04th March, 2013 and we direct the AO to allow the vacancy allowance on the ALV determined by him.

14. Needless to mention the assessee is also entitled for the statutory deduction @ 30%.

15. In the result, the appeal of the assessee is allowed as per above directions.

16. Decision announced in the open court in the presence of both the representatives on 13.07.2021.

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-13.07.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13.07.2021
Date on which the typed draft is placed before the dictating Member	13.07.2021
Date on which the typed draft is placed before the Other member	13.07.2021
Date on which the approved draft comes to the Sr.PS/PS	13.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	13.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	13.07.2021
Date on which the final order is uploaded on the website of ITAT	13.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	