

Actual letting out of property during year not necessary for claiming vacancy allowance while computing “income from house property”

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In brief

The Pune Income-tax Appellate Tribunal (the Tribunal), in the taxpayer’s¹ case, held that under section 23(1)(c) of the Income-tax Act, 1961 (Act), annual letting value (ALV) of a property that was vacant during the entire year was to be taken as Nil if the taxpayer intended to, and had taken appropriate efforts to, let the property out.

In detail

Facts

- The taxpayer¹, an individual, *inter alia*, owned two commercial properties at Nashik, viz. Property 1 and Property 2.

- Both these properties remained vacant during the assessment year (AY) 2009-10.
- The taxpayer claimed the ALV for both properties as “Nil” under section 23(1)(c) of the Act.
- During the assessment

proceedings, the tax officer (TO) held that section 23(1)(c) of the Act was not applicable in a situation where the property was not let out during the year. Accordingly, the TO determined the ALV of the properties as below:

Property	ALV	Basis
Property 1	INR 96,000	<i>Ad hoc</i> valuation
Property 2	INR 151,200	Based on the actual rent received by the taxpayer during AY 2007-08

- The Commissioner of Income-tax (Appeals) [CIT(A)] determined the ALV of Property 1 at INR 40,000, which was agreed to by the taxpayer. The CIT(A) upheld the ALV of Property 2 at INR 151,200 as adopted by the TO. The CIT(A) relied

on the decision of the Andhra Pradesh High Court in the case of Vivek Jain².

Issue before the Tribunal

Would section 23(1)(c) of the Act be applicable in a situation where the property had not

been let out at all during the previous year?

Tribunal’s ruling

The Tribunal held that section 23(1)(c) of the Act also covered a situation where the property

¹ ITA No. 747/PN/2014

² Vivek Jain v. ACIT [2011] 337 ITR 74 (AP)

had remained vacant during the whole year. The relevant extract of section 23(1)(c) of the Act, on which the Tribunal relied, is reproduced below:

“23(1)(c) where the property or any part of the property is let and was vacant during the whole or part of the previous year...

- The Tribunal interpreted the provisions of section 23(1)(c) of the Act and held that:
 - a situation where the property was let during the previous year could not co-exist with one where it was also simultaneously vacant for the whole year. The words “let” and “vacant” were mutually exclusive;
 - the underlying principle of the section had to be viewed with regard to the intention, along with the efforts put in by the taxpayer in letting out the property.
 - If the taxpayer intended to let the property and took appropriate efforts toward letting the property, but ultimately failed to let the same, then the actual rent received would have to be considered as Nil (being less than the sum that might reasonably be expected to be

received on letting the property); and

- The expression “property is let” did not mean actual letting out of the property. While concluding thus, the Tribunal considered the language of section 23(3) of the Act, where the words used were, “house is actually let out.” If “property is let” were to be interpreted to mean the actual letting of the property, then there would have been no need to use the word, “actually” in section 23(3) of the Act.
- Property 2 was let out by the taxpayer in earlier years, revealing the intention of the taxpayer to let out the same. Thus, the Tribunal held that the ALV of that property had to be taken as Nil.

The takeaways

The Tribunal interpreted section 23(1)(c) of the Act to include a situation where the property had remained vacant during the entire year, if the taxpayer had demonstrated the intention to let out the property. This interpretation can be a positive one for taxpayers (including real estate developers having vacant commercial properties) wherein notional income may not be subject to tax for vacant

properties as “deemed to be let out properties.”

However, one will have to examine whether this interpretation can be extended to real estate developers having unsold stock of finished flats where, based on the decision of the Delhi High Court in the case of Ansal Housing Finance and Leasing Co. Limited³, notional income can be taxed on account of such finished flats as “deemed to be let out property”. It would have to be examined whether the interpretation of the Tribunal of the “intention to let out, together with efforts put in by the taxpayer for letting out” can be extended to the “intention to sell the finished flats together with efforts put in by the taxpayer for selling the same”.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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³ CIT v. Ansal Housing Finance and Leasing Co Limited and Ansal Properties and Indus Limited and Ansal Housing and

Construction Limited [2012] 354 ITR 180 (Delhi)

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