

“Intent of letting” not enough to claim vacancy rent allowance while computing income under the head “income from house property”

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In brief

The Mumbai Income-tax Appellate Tribunal (Tribunal), in the taxpayer’s¹ case, held that to claim vacancy allowance under section 23(1)(c) of the Income-tax Act, 1961 (Act), the property should actually be let out during the financial year. Mere “intention to let out” was not sufficient to claim vacancy allowance.

In detail

Facts

- The taxpayer¹ purchased two properties in Mumbai on 18 December, 2008. One of the properties was purchased with the intention of letting it out to earn rental income.
- The taxpayer had also entered into negotiations for letting out the said property. The same was let out with effect from 1 April, 2009.
- During the assessment proceedings, the tax officer (TO) computed the annual value of the property for the period from January 2009 to March 2009 and sought to tax the same in the taxpayer’s hands.

Issue before the Tribunal

Would section 23(1)(c) of the Act be applicable in a situation where the property was intended to be let out, but could not be actually let out at all during the previous year?

Taxpayer’s contentions

- The taxpayer, relying on the decision of the Mumbai Tribunal in the case of Prensudha Exports,² contended that for the purpose of section 23(1)(c) of the Act, the condition of the property being let was met by the intent to let out the same.
- The taxpayer contended that not adopting the above interpretation would lead to absurd results, as in a case where the property was not let for a single day of the year and was vacant for the

entire year, the annual value would be computed by taking the lettable value for the entire year, while in a case where it was let even for a single day during the year, the same would stand restricted to the actual rent received/ receivable, i.e., for one day. Further, the property being “let” and being “vacant” for the whole year could not co-exist.

Revenue’s contentions

- The Revenue contended that the notion of “proposed to be let” or “held for letting” etc. could not be imported into section 23(1)(c) of the Act that sought to bring notional income to tax.
- The Revenue placed reliance on the decision of the Andhra Pradesh High Court (HC) in the case of

¹ ITA No 6717/Mum/2012

² Prensudha Exports (P.) Ltd. v. Asst CIT [2007] 295 ITR 341 (Mumbai)

Vivek Jain,³ wherein the HC had held that in case the property was not let out at all during the previous year, there was no question of providing any vacancy allowance under section 23(1)(c) of the Act.

Tribunal's decision

- The Tribunal held that the basis of charge in respect of a house property was its annual value, i.e., the income potential as reflected in its fair rental value (the rent at which it may reasonably be expected to be let from year-to-year). This was irrespective of whether the property had actually been let out (subject to exception of one house property).

- The Tribunal held that the words, “where the property is let” in sections 23(1)(b) and 23(1)(c) of the Act represents a state of “actual letting” and could not be extended to a state of “intended letting.”
- The Tribunal followed the decision of Andhra Pradesh HC in the case of Vivek Jain³ as against its own decision in the case of Preamsudha Exports,² by according a higher precedential value.
- The Tribunal held that the decisions relied upon by the taxpayer were rendered without considering the decision of the HC in the case of Vivek Jain.³

The takeaways

The issue of “actual letting” v/s “intended letting” has been a subject of dispute before the tax authorities. Recently, the Pune Tribunal,⁴ ([Please refer to our news alert dated 20 July 2016](#)) after taking into account the conflicting decisions in the case of Preamsudha Exports² and Vivek Jain,³ had held that “intention to let out” should be sufficient to claim vacancy allowance under section 23(1)(c) of the Act.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

³ Vivek Jain v. Asst CIT [2011] 337 ITR 74 (AP)

⁴ ITA No. 747/PN/2014

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