

## Benefit of vacancy allowance was available if assessee made appropriate efforts in letting out property: ITAT

**Summary – The Delhi ITAT in a recent case of Ms. Priyananki Singh Sood, (the Assessee) held that where assessee intended to let out property and took appropriate efforts in letting property, however, due to fall in property prices failed to let out same year after year because of which property remained vacant, assessee was entitled to claim benefit under section 23(1)(c)**

### Facts

- The assessee filed her return of income. The assessee had earned income from salary, house property business, capital gain and other sources during the year under consideration.
- The Assessing Officer observed that assessee in a statement of affairs had mentioned owning of property. It was further observed that no income from this house property was offered for year under consideration. The Assessing Officer made an addition under section 23(1)(A) considering the annual value of property to be the sum for which the property might reasonably be expected to let out year to year. The Assessing Officer took certain amount as income from house property receivable from property and after allowing 30 per cent of standard deduction as per provisions of section 24(a) made an addition of certain amount as assessee's income from house property.
- On appeal, the Commissioner (Appeals) also upheld the order passed by the Assessing Officer.
- In instant appeal the assessee submitted that the property under question was a commercial flat which was purchased back 1980 and was let out. The property was continuously let out till assessment year 2001-02 and thereafter from assessment year 2002-03 a suitable tenant could not be found and the flat remained vacant. Thus, the property had to be considered as per provisions of section 23(1)(c).

### Held

- In order to attract section 23(1)(c), the following requirements must be fulfilled; (i) the property, or any part thereof, must be let; and (ii) it should have been vacant during the whole or any part of the previous year; and (iii) owing to such vacancy the actual rent received or receivable by the owner in respect thereof should be less than the sum referred to in clause.
- It is only if these three conditions are satisfied together, would clause (c) of section 23(1) apply, in which event amount received or receivable, in terms of clause (c) of section 23(1), shall be deemed to be the annual value of the property.
- Further, clause (c) does not apply to situations where property has either not been let out at all during any of the previous years or, even if let out, was not vacant during whole or any part of previous year. Further under Explanation to section 23(1), for the purposes of clause (b) or (c), amount actually received or receivable by the owner shall not include the amount of rent which the owner cannot realize.

- In present facts of case, admittedly property in dispute has remained vacant post assessment year 2002-03 till date. It is not the case of revenue that the property after being vacant, remained under self occupation of assessee. It is also not been disputed by the revenue that prior to assessment year 2002-03 the property was not let out.
- On a question being posed by the bench to the assessee regarding view of revenue during interregnum assessment years, the assessee submitted that there has been no addition made by the authorities during assessment years 2003-04 to 2011-12. Further, the submissions of the assessee that assessee has made all efforts to let out the property in dispute.
- From the above provision of law, it can be construed that in case the property or part thereof was vacant during the period, the proportion deduction should be allowed from the sum on which the property might reasonably be let out from year to year. It is the plea of the assessee that due to inherent defects, the flat could not be let out. Hence, the flat remained vacant. Hence, the assessee has claimed benefit of section 23(1)(c) which duly permits deduction in this regard. On a plain reading of section 23(3) that, Legislature in their wisdom used words, 'house is actually let', which shows that words, 'property is let' cannot mean actual letting out of property, because had it to be so, there was no need to use words 'actually' in section 23(3). It is not at all relevant as to whether property was let out in past or not. These words do not talk of actual let out, but talk about intention of assessee to let out. If property is held by owner for letting out and efforts are made to let it out, such property will be covered by section 23(1)(c), and this requirement has to be satisfied in each year that property was being held to let out, but remained vacant for whole or part of the year. 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).
- The fact in the present case that assessee always had the intention of letting out the property post assessment year 2002-03, however, it has been submitted that due to fall in property prices, the same could not be let out year after year because of which disputed property remained vacant. One more relevant factor is that, the Assessing Officer in any of preceding assessment year, post assessment year 2002-03, has never disputed that the property was not vacant. In fact in assessment order passed for year under consideration, the Assessing Officer is admitting to the fact that property in question was let out only till assessment year 2002-03 and thereafter it was vacant, even during year under consideration. Under such circumstances, benefit under section 23(1)(c) has to be granted.