

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH  
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI RAM LAL NEGI, JM**

**ITA No.2681/Mum/2016  
(Assessment Year :2011-12)**

Shri Rakeshkumar Wadhawan Wadhawan House, Union Park Road, 5, Shatranj Hotel Bandra (W) Mumbai – 400 050	Vs.	ACIT, Central Circle 5(4) Mumbai
<b>PAN/GIR No. AAEPW7656G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rahul Hakani & Shri Nimesh Thor
Revenue by	Shri J. Saravanan
<b>Date of Hearing</b>	<b>28/08/2019</b>
<b>Date of Pronouncement</b>	<b>18/09/2019</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.2681/Mum/2016 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A)-53/DCCC-37/IT-81/14-15 dated 31/12/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/03/2014 by the Id. Dy. Commissioner of Income Tax, Central Circle – 37, Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is in receipt of salaries being chairman of HDIL and also engaged in the business as Builders & Developers and Share trading. The assessee filed his return of income for the Asst Year 2011-12 on 29.9.2011 declaring total income of Rs 12,11,00,000/- after claiming deduction under Chapter VIA of the Act to the tune of Rs 1,00,000/- and carry forwarding current year business loss to subsequent year of Rs 13,38,5047/- after setting off current year income from house property of Rs 2,14,200/- and income from other sources of Rs 2,03,88,163/-, short term capital loss of Rs 41,31,612/- and long term capital loss of Rs 2,43,69,321/-. The assessee has also shown agricultural income of Rs 12,05,239/-. During the year under consideration, the assessee earned dividend income of Rs 13,585/- and share of profit from partnership firms amounting to Rs 31,44,511/- and claimed the same as exempt. The Id AO made disallowance u/s 14A of the Act by applying 3<sup>rd</sup> limb of Rule 8D(2) of the Rules to the tune of Rs 2,72,82,279/- in the assessment. The Id CITA made a separate disallowance of interest under second limb of Rule 8D(2) of the Rules to the tune of Rs 92,02,535/- and in respect of administrative expenses under third limb of Rule 8D(2) of the Rules, he restricted the disallowance to the extent of 50% of total administrative expenses debited in the accounts in the sum of Rs 14,31,228 (50% of Rs 28,62,456/-). Effectively, the Id CITA reduced the total disallowance u/s 14A of the Act to Rs 1,13,48,150/- as against Rs 2,72,82,279/- made by the Id AO. Aggrieved, the assessee is in appeal before us.

4. We have heard the rival submissions. It is now well settled that the total disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules cannot exceed the exempt income claimed by the assessee. Reliance in this regard is placed on the decision of Hon'ble Delhi High Court in the case of Joint Investments Pvt Ltd vs CIT reported in 372 ITR 694 (Del). We find that the total exempt income claimed by assessee is Rs 31,58,096/- ( 13,585+31,44,511). Hence we direct the Id AO to restrict the disallowance u/s 14A of the Act to Rs 31,58,096/- . Accordingly, the Ground No.1 raised by the assessee is partly allowed.

5. The next ground to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition of notional rent of Rs 12,72,600/- under the head income from other sources in the facts and circumstances of the case.

6. The brief facts of this issue are that during the course of assessment proceedings, the Id AO vide order sheet entry dated 11.9.2013 asked the assessee's representative to submit as to why the annual value under the provisions of section 23(1)(a) of the Act should not be determined under income from house property in respect of the following properties by treating the same as deemed to be let out:-

<u>Property details</u>	<u>Annual value u/s 23(1)(a)</u>
Flat at Kalina	1,30,000
Dewan Tower Office	1,98,000
Flat at Subhada Co-op Hsg Society, Worli	1,32,000
Premises at GK-1 , New Delhi	1,32,000
D-15 East of Kailash	1,32,000
R-30 Nehru Palace	1,32,000
<b>Total</b>	<b>8,58,000</b>

Further it was submitted that during the last day of the year, Libra Hotels Pvt Ltd had credited a sum of Rs 9,60,000/- being rent for property situated at Libra House, New Delhi and deducted tax at source of Rs 96,000/-. The assessee contended that said transaction of rent of Rs 9,60,00/- recorded by him in the subsequent assessment year as there was no receipt of any amount and only credit entry was passed by Libra Hotels Pvt Ltd. However, the Id AO disregarded the same and added the same under the head income from house property. Effectively, he assessed the rental income at Rs 18,18,000/- ( 8,58,000 + 9,60,000) under income from house property. The Id AO granted 30% standard deduction towards repairs and arrived at the rental income of Rs 12,72,600/- in respect of aforesaid properties .

7. Before the Id CITA, the assessee pleaded that it is entitled for relief u/s 23(1)(c ) of the Act in respect of the aforesaid properties. In this regard, the Id CITA directed the assessee to furnish documentary evidences of having made continuous efforts to let out the concerned properties. The assessee did not furnish any documentary evidences in this regard. The Id CITA by placed reliance on the decision of Pune Tribunal in Apoorva Patni vs Addl CIT reported in 54 SoT 9 (pune) wherein it was held that it is for the assessee to establish that the property was intended to be let out and that it remained vacant despite assessee's efforts. The Id CITA observed that since the aforesaid properties were located in posh localities, being commercial centres in Mumbai and Delhi, it is very unlikely that those properties remained vacant for so many years. In respect of rental income from Libra Hotels Pvt Ltd in the sum of Rs 9,60,000/-, the Id CITA observed that the assessee had not clarified as to who Libra Hotels Pvt Ltd can create such a credit entry in the name of the assessee without the assessee having actually let out the Libra House to them. With these

observations, the Id CITA upheld the order of the Id AO in respect of this addition.

8. Aggrieved , the assessee is in appeal before us.

9. We have heard the rival submissions. The Id AR stated that in respect of properties situated at Premises at GK-1 , New Delhi , D-15 East of Kailash, R-30 Nehru Palace , these properties were let out by the assessee till Asst Year 2009-10 and thereafter the assessee could not find a suitable tenant which would honour the expected rental income and security deposit of the assessee. We find that the Id AO had estimated the rental income u/s 23(1)(a) of the Act on an adhoc basis. We find that the Id AR had placed reliance on the decision of this tribunal in the case of Vishwanath Acharaya vs ACIT reported in 157 ITD 1032 (Mum Trib) dated 16.12.2015 which placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Tip Top Typgraphy reported in 368 ITR 330 (Bom) wherein the issue was set aside to the file of Id AO for denovo adjudication. Both the parties before us agreed for restoring this issue to the file of Id AO for denovo adjudication by also keeping in mind the aforesaid decision of Hon'ble Jurisdictional High Court in 368 ITR 330 (Bom). Accordingly, the Ground No. 2 raised by the assessee is allowed for statistical purposes.

10. The Ground No.3 is with regard to charging of interest u/s 234B and 234C of the Act which is consequential in nature.

11. The Grounds Nos. 4 & 5 are general in nature and does not require any specific adjudication.

**12. In the result, the appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on this 18/09/2019

**Sd/-**  
**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 18/09/2019  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai