

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Shri A.L.Saini, AM]

I.T.A No. 742/Kol/2018
Assessment Year: 2012-13

I.T.O. Ward 10(2), Kolkata	Vs.	M/s. Pratap Properties Limited PAN: AADCP 6647E
Appellant		Respondent

Date of Hearing	23.09.2019
Date of Pronouncement	16.10.2019

For the Appellant	Shri Supriyo Pal, JCIT, Id. Sr.DR
For the Respondent	Shri Anil Kochar, Advocate, Id.AR

ORDER

PER SHRI A.T. VARKEY, JM

This is an appeal preferred by the revenue against the order of Ld. CIT (Appeals) , 4, Kolkata dated 18-01-2018 for the assessment year 2012-13.

2. The grounds of appeal raised by the revenue are as under:-

1) The Ld. CIT(A) has erred in deleting the addition of Rs. 2.8 crores received as advance. against MoU by the assessee from M/ s. Trishakti Infradev Pvt. Ltd., by holding that the AO has not made any adverse finding in the remand report, whereas, the AO in the remand report had mentioned that the Assessing Officer has rightly added back the amount of Rs.2,80,00,000/-

2) The Ld. CIT(A) has erred in deleting the addition of Rs.13, 12,889/- as house' property income by holding that the fair rental value cannot exceed the rent received.

3) That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing .

3. Ground no. 3 is general in nature. Hence, the same is dismissed.

4. Ground no. 1 is against the action of the Id.CIT(A) in deleting the addition of Rs 2.8 crores made by the AO by relying on the AO's remand report.

5. Brief facts of the case as noted by the AO in his order is that during the year under consideration, the assessee has received Rs. 2,80,00,000/- as advance against MoU (Memorandum of Understanding) from M/ s. Trishakti Infradev Pvt. Ltd., (hereinafter in short M/s. Trishakti). The AO asked the assessee to furnish the copy of MOU between the assessee and the party, M/ s. Trishakti from which entity the advance was received. However, the AO notes that the assessee did not comply with his direction to file the copy of MoU despite giving two chances to do so. Therefore, according to the AO, he had no other alternative, but to add the advance amount of Rs. 2.80 crores received by the assessee as unexplained cash credit u/s 68 of the Income Tax Act [herein after 'the Act']. Aggrieved, the assessee preferred appeal before the Id. CIT(A), who called for remand report from the AO and after reproducing the same in the impugned order, the Id. CIT(A) has given relief to the assessee by deleting the same. Aggrieved by the aforesaid action of the Id. CIT(A), the revenue is in appeal before us.

6. We have heard both the parties and perused the records. The main grievance of the revenue is that the Id. CIT(A) has given relief to the assessee by relying on AO's remand report. However according to the Id. DR the AO in his remand report has mentioned that the AO has rightly added back the amount of Rs. 2.80 cores. Therefore, the Id.DR contended that the AO has not expressed any opinion in the remand report for giving relief to the assessee.

7. Per contra, Id. AR submitted that the Id. CIT(A) has called for remand report from the AO, wherein the AO had recorded the fact that during remand proceedings he had issued notices u/s. 133(6) to M/s. Trishakti and had acknowledged to have received reply from said M/s. Trishakti. It was pointed out by the Id. AR that in the remand report, the AO has not made any adverse comments against the money received by the assessee from M/s. Trishakti. Therefore, the Id. CIT(A) having taken note of the averments in the remand report and after conducting his own enquiry has recorded satisfaction as to the identity, creditworthiness and genuineness of the advance giver (M/s. Trishakti) ; and has made his finding, which is a speaking order and need not be interfered with.

8. Having heard both parties, we note that the AO taking note that the assessee had received Rs. 2.80 crores as advance on the strength of MoU between the assessee and M/s. Trishakti called upon the assessee to produce the copy of MoU, which the assessee has failed at the assessment stage, which prompted the AO to add the same u/s. 68 of the Act. On appeal, the Id. CIT(A) called for remand report of the AO, which is reproduced as under:-

“Regarding addition of Rs.2,80,00,000/- the Assessing Officer asked the assessee to furnish relevant details and documents. But the assessee did not comply with the requisitions at the time of assessment proceedings. Accordingly, the Assessing Officer rightly added back the amount of Rs.2,80,00,000/- found reflected in the statement of accounts as advance from M/s. Trishakti In radev Pvt. Ltd. on the ground that assessee had failed to furnish of copy of MOU and other relevant documents as well as non-compliance with the notice under section 142(1) issued by him.

However, as directed by your honour, to verify the claim of advance, letter u/ s. 133(6) of the Act was issued to M/ s. Trishakti Infradev Pvt. Ltd. and reply from the said' party has been received. The party furnished the relevant details/information. A copy of the reply along with details/documents furnished is forwarded herewith for favour of your kind perusal and record. It is pertinent to point out here t~ the source of fundi creditworthiness of the party has not been examined at the time of remand proceedings.”

9. Thereafter, the Id. CIT(A) has decided the merits of the addition as under:-

It is surprising that in the remand report, the A.O. has not made any comments regarding justification of the addition for Rs.2.8crores. It is seen that the assessee entered into MOU for development of property of 217.13 kattahs. As per the MOU, the assessee is entitled to 42.5% of the gross revenue (as per clause 7: 1 of the 'agreement). Further, the developer had to pay Rs.10 crores as an advance to the assessee for getting the premises vacated and this was to be adjusted against final consideration receivable by the assessee. It is apparent that the advance of Rs.2.8 crores received during the year has been received. from Trishakti Infradev Pvt. Ltd. I have also examined the Balance Sheet of Trishakti Infradev Pvt. Ltd. the main source of fund for Trishakti Infradev Pvt. Ltd. is Rs.6.36 crores received as share capital from. M s. Infinit Townships Pvt. Ltd. M/ s. Infintly Townships Pvt. Ltd. is a 100% subsidiary of Infinity Infotech Parks Ltd., which is showing profit of Rs.15.04 crore during F.Y. ·2011-12. Therefore, it is seen that source of advance received by the assessee is not doubtful. Similarly, the identity, capacity and genuineness of the advance giver is not doubtful, they are all reputed business groups of Kolkata. In view of the above and also in view that no adverse finding has been found in remand report, the addition stands deleted. This ground is allowed.”

10. Thus, we note that the Id. CIT(A) has taken note of the fact that the assessee has entered into MOU that M/s. Trishakti for development of property of 271.13 katahs. As per said MOU, the assessee was entitled to 42.5% of the gross revenue as is evident from clause 7.1 of the agreement. The Id. CIT(A) noted that the developer had to pay Rs. 10 lakhs as advance to the assessee for getting premises vacated and this amount would be adjusted against final consideration receivable by the assessee. The Id. CIT(A) has found that M/s. Trihakti has given of Rs. 2.8 cores to the assessee (which facts has been verified by the AO

during remand proceedings by sending notices issued u/s. 133(6) to M/s.Trishakti and got confirmation from M/s. Trishakti). The Id. CIT(A) during the appellate proceedings has also examined the balance sheet of M/s. Trishakti and has recorded factual finding that the source of fund for M/s. Trishakti is Rs. 6.63 crores which it received as share capital fund from M/s. Infinity Townships Pvt. Ltd, which is a 100% subsidiary of M/s. Infinity Infotech Parks Ltd. which entity in-turn has shown a profit of Rs.15. 04 crores during the A.Y under consideration. Thus, the Id. CIT(A) has recorded a factual finding that source of advance of Rs. 2.80 cores received by the assessee is not doubted. The Id. CIT(A) has also given factual finding that the identity, creditworthiness and genuineness of the advance giver (M/s.Trishakti) is not doubted that they are all reputed business groups of Kolkata. In the light of the aforesaid factual findings, the Id. CIT(A) has also noted that in the remand report the AO has not made any adverse finding/objection against M/s.Trishakti and thereafter, was pleased to delete the said addition. We find no infirmity in the impugned action/order of the Id. CIT(A), who enjoys co-terminus powers as that of AO and in this case the Id. CIT(A) has conducted enquiry and thereafter has recorded the aforesaid factual findings, which has not been challenged by the revenue before us. Therefore, the factual findings that the source of advance received by the assessee is not doubtful and identity, capacity and genuineness of the advance giver (M/s.Trishakti) is not doubtful, has thus attained finality. And it is also noted that Id. CIT(A) has not given relief to the assessee only on the basis of the remand report, which was also taken into consideration along with other factual aspects as noted by the Id. CIT(A) during his own enquiry to give relief to assessee as discussed (supra). Therefore, we do not find any reason to interfere with the impugned order of the Id. CIT(A), which is upheld. This ground of revenue is dismissed.

11. Ground no. 2 is against the action of the Id. CIT(A) in deleting the addition of Rs.13,12,889/- as house property income by holding that the fair rental value cannot exceed the rent received.

12. The brief facts of the case as noted by the AO is that while perusing the P & L A/c (Notes 13) that the assessee had earned rental income of Rs. 3,37,222/- and debited expenses in respect of municipal tax amounting to Rs.3,28,223/- Notes 17 (other expenses). During the course of assessment proceedings, the AO directed the A/R of the assessee company to produce the copy of the agreement of the rented property at 36, Humayun Kabir Sarani, Flat No. 4, Block, G, New Alipore, Kolkata-53 with tenant along with municipal valuation of the property. According to AO, the assessee company has failed to produce any valuation report

from the municipality. The AO issued show cause notice and since there was no compliance on the part of the assessee, he estimated the fair annual value as under:

Hence in absence of any valuation report, the computation of Annual Value u/s. 23(1) of the I.T Act is as under:

<i>Step- I (i)Municipal Value</i>	<i>: Not 'submitted</i>
<i>(ii) Fare Rental Value - Fare rental value is calculated On annual rent received of Rs.3,37,222/- by increasing 4 times (approx.) i.e. Rs.16,50,000/-</i>	<i>: Rs.16,50,000/-</i>
<i>(iii) Standard Rent under Rent Control</i>	
<i>Step-II : Actual Rent received/receivable</i>	<i>: Rs. 3,37,222/-</i>
<i>Step-III: Amount computed in Step-I or Step-II, whichever is higher.</i>	
<i>Therefore, the gross annual Value is taken :</i>	<i>Rs.16,50,000/-</i>
<i>Less: Municipal Tax already Debited in the P&L A/c.</i>	<i>-</i>
<i>Annual Value .</i>	<i>Rs.16,50,000/-</i>

House Property Income u/s.24(1) :

<i>Annual Value of the property computed as above</i>	<i>: Rs.16,50,000/-</i>
<i>Less: Rental Income already taken into P&L A/c</i>	<i>∴ Rs. 3,37,222/-</i>
<i>House Property Income</i>	<i>: Rs.13, 12,778/-</i>

On the above observation, the House Property Income of the assessee amounting to Rs.13, 12,778/- is added to the total income of the assessee.

Aggrieved the assessee preferred appeal before the Id. CIT(A), who was pleased to delete the same. Aggrieved, the revenue is before us.

13. We have heard both the parties and perused the records. We note that during the assessment stage the assessee could not meaningfully participate before the AO, which resulted in addition. Before the Id. CIT(A) the assessee company contended that since past several years, it is the owner of premise no. 25, Kishan Lal Burman Road, Howrah and that the assessee earned rental income from this property, which is shown as part of its business activities. It was brought to the notice of the Id. CIT(A) that the assessee is being assessed to tax on its income derived from business and rents received from this building, which forms part of the business activity. It was brought to the notice of the Id. CIT(A) that as per object clause of the Memorandum of Association shows that assessee has got activities relating to the properties. Hence, rental income was shown by the assessee, as it forms part of the total income. After appreciating these facts the Id. CIT(A) has observed that the AO has erred in observing that assessee was getting rental income from the property bearing 36, Humayun Kabir Sarani, New Alipore, Kolkata. It was brought to the notice of the Id. CIT(A) that this

property (i.e 36, Humayun Kabir Sarani, New Alipore, Kolkata) does not belong to assessee. This property in fact was taken on rent by the assessee, wherein assessee maintains its office. It was also brought to the notice of the Id. CIT(A) that from a perusal of the audited statements of accounts in Note 13 would reveal that rental income to the tune of Rs.3,37,222/-, which forms part of the business income of the assessee has been shown by the assessee as in the earlier years. Taking note of these facts the Id. CIT(A) called for the remand report. Thereafter, the Id. CIT(A) has decided the merits of addition by observing as under:

“4.2 The contention of the assessee that it is showing rental income from the property at Kishan Lal Burman Road at Rs.3,37,222/- ,and the property at 36, Humayun Kabir Sarani is a property not owned" by the assessee and the municipal-taxes of Rs.3,28,223/ relates to this property at Kishan Lal Burman Road., The amount of 'Rs.3,28,223/- includes an amount of Rs.2,14,488/- towards supplementary bills issued by the Howrah Municipal Corporation during the period under consideration. '

The assessee has received rent of Rs.3,37,222/- on the said property. Now the issue to be decided here is a; to whether the annual rental value or the actual rent' received could be taken. The -Ld.- A.R. has submitted 'that during F.Y. 2010-11 the municipal outgo only Rs.55,151/- and due to the entire' development agreement the municipal value as increased Rs.3,28,223/. The A/R further submitted that the property is old tenanted 'property. Therefore, rent received/receivable was only Rs.3,37,222/-. I agree with the submission of the Ld. A/R since rent received is only Rs.3,37,222/- and it is an old tenanted property: Therefore, fare rental value can't exceed this amount and, therefore, the A.O. is not right in increasing the annual value to Rs.16.5 lakhs and taxing the difference. In 245 ITR 290 (madras) court has held that actual rent receipt should be taken as annual letting value even though municipal authorities have fixed the annual value at a higher figure than actual rent. The actual rent receipt can be ignored only where the rental agreement is found to be Sham(304 ITR 401 Bombay).

Therefore, the addition is deleted. This ground is allowed. '

14. We note that the Id. CIT(A) has rightly decided the merits of addition made by the AO and has rightly deleted the same. No infirmity could be pointed out by the Id. DR. Therefore, we fully endorse the findings of the Id.CIT(A) in deleting the addition made by the AO.

15. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 16 October, 2019

Sd/-
Arjun Lal Saini
Accountant Member

Sd/-
A.T. Varkey
Judicial Member

Dated 16 -10-2019

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Revenue : The I.T.O., Ward 10(2), Kolkata, P-7 Chowringhee Square, 3rd Fl., Kolkata-69.
2. Respondent/Assessee: M/s. Pratap Properties Limited Flat No. 4 Block-G, 36 Humayun Kabir Sarani, Kolkata-53.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPS True Copy By By Order Assistant Registrar
ITAT Kolkata