

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND.
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.860/Del/2016
Assessment Year: 2010-11

Intertec Farm No.8, Dera Mandi Road, Mandi Village, Mehrauli New Delhi -110047 PAN No. AAIFI2013 H (APPELLANT)	Vs.	JCIT Range-24 New Delhi (RESPONDENT)
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Appellant by	Sh. M.P. Rastogi, Advocate
Respondent by	Ms. Ashima Neb, Sr. DR.

Date of hearing:	28/08/2019
Date of Pronouncement:	/10/2019

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 21.12.2015 of the CIT(A)-34, New Delhi relating to A.Y. 2010-11.

2. The only effective ground raised by the assessee reads as under :-

“The CIT(A) has erred in confirming the an addition of Rs.22,40,000/- (32,00,000 less 30% for repairs) to rental income, without issuing a proper show cause, and without considering the

schedule of property attached to the rent deed and without considering the corroborative documents.”

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of manufacturing and sales of window covering products, signage system, CRG Ceiling etc. It filed its return of income on 26.09.2010 declaring total income of Rs.2,04,73,052/-. The AO during the course of assessment proceedings noted that the assessee has shown rental income of Rs. 28 lacs. On being called by the AO to file the details of rental agreement, the assessee filed two lease agreements, the details of which are as under :-

(1) Dated 01.02.2008 between the assessee and M/s Intertec Building Products (P) Ltd. @ 5,00,000/- p.m. for a period of 18 months from 01.02.2008 to 31.07.2009.

(2) Dated 15.07.2009 between the assessee and M/s Intertec Building Products (P) Ltd. @1,00,000/- p.m. for a period of 8 months from 01.08.2009 to 31.03.2010.

4. The AO on examination of both the lease agreements noted that the leased out premises is same and identical. However, the rent has been remarkably low for the last eight months of the financial year. On being questioned by the AO to explain as to why the rental income for the entire year shall not be computed @ Rs.5 lacs per month, the assessee filed the copies of the lease

deed dated 01.02.2008 and 15.07.2009 respectively alongwith annexures for the area of the premises marked for rental.

5. However, the AO noted that if both the lease agreements are read together all the clauses are same except the period of lease and rental income. So far as the explanation of the assessee that the annexures forming part of the agreement for the area of the premises marked for rental in the lease agreements dated 01.02.2008 and 15.07.2000 respectively are concerned, the AO noted that no such annexures forming part of each agreement for the area of the premises marked for rental is mentioned in the lease agreements dated 01.02.2008 and 15.07.2009. He observed that both the lease agreements clearly speak that the leased out property is factory site and office premises at their factory at plot No.228A, Udyog Vihar, Greater Noida. He, therefore, held that the contention regarding annexures forming part of the lease agreements is incorrect, after thought and malafide and with clear motive to defraud the revenue. The AO accordingly calculated the rental income @ 5,00,000/- per month for the entire year. After allowing deduction u/s. 24 (a) of the Act to the tune of Rs.18 lacs, the AO computed the rental income from the house property at Rs.42 lacs. After deducting the admitted rental income of Rs.19,60,000/-, the AO made addition of Rs.22,40,000/-.

6. In appeal the Ld. CIT(A) upheld the addition made by the AO by observing as under :-

“5.3 Ground No, 1:

5.3.1 *The assessing officer has made the addition of Rs.22,40,000/- to the total income of the assessee on account of income from house property. The AO has held that the assessee has received rent @Rs.5,00,000/- per month. He has placed reliance on the following part of rent agreements :*

“ WHEREAS the LESSEE has approached The LESSOR for the lease of factory shed, office premises at their factory at Plot No. 28A. Udyog Vihar. Greater No Ida. ”

5.3.2 *On the other hand the assessee has relied on the sketch showing the area given on rent.*

5.3.3 *Sketch as referred by the appellant is only the attachment to the agreement, it has been clearly mentioned in both the agreements that factory shed and office premises has been letout. The appellant has not filed any document (other than the sketch) to establish that only office building was given on rent during the year under consideration. The observation of the AO that same portion has been letout for both the years is correct.*

The rent payable/ receivable is different as per rent agreements. To come to the question whether the AO has taken the rent receivable correctly, we have to go by the provisions of section 23 of the I T Act. Section 23 of the Income Tax Act 1961 stipulates that annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year. The property under consideration was let out (a)Rs.5,00,000/- per month in the immediately preceding year. If the property was letout for rent of Rs.5,00,000/- per month in the immediately previous year, it can be easily held that the property can fetch minimum Rs.5,00,000/- rent every month in subsequent years. Therefore the decision of the AO is justified and confirmed.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

8. The Ld. Counsel for the assessee submitted that as per the original agreement the assessee had let out the Industrial shed

and the administrative shed @ 5 lacs per month. Referring to the copy of the letter addressed to the Superintendent, Central Excise, Range-27, Division-4, Noida, vide letter dated 01.08.2009, he submitted that the assessee had duly informed the excise authority that they have vacated certain portion of the premises at Udyog Vihar, Noida. He submitted that the products of the assessee are excisable. Referring to page-41 of the lease deed dated 15.07.2009, copy of which is placed at page 41 to 43 of the paper book, the Ld. Counsel for the assessee drew the attention of the bench to the sketch of the site plan and submitted that assessee has taken on rent only the administrative block whereas in the original site plan the assessee had taken both the factory shed as well as the administrative block.

9. Referring to the ledger account of the lessesee, copy of which placed at paper book pages 67 and 68, he drew the attention of the bench to the monthly rent credited which has gone down from Rs.5,51,5000/- for the period from April to July to Rs.1,10,300/- for the period from August onwards. He submitted that the assessment of the lessee has been completed u/s.143 (3) and no addition has been made in their account. He accordingly submitted that the addition made by the AO and sustained by the CIT(A) is not correct.

10. The Ld. DR on the other hand heavily relied on the order of the AO and the CIT(A). She submitted that a comparison of both the lease deeds shows that the premise is same and there is

no reference at all of any sketch containing factory building and administrative block. Referring to the copy of the so called sketches of the site map placed at page No.40 and 44 of the paper book, he submitted that neither of the sketch maps has been notorised nor there any reference in the lease deeds except the monthly rent and period of lease. Further there is no witness to the second lease deed made on 15.07.2009. Therefore, the explanation offered by the assessee is not borne out from record and, therefore, the action of the AO and the CIT(A) should be upheld.

11. The Ld. Counsel for the assessee in his rejoinder submitted that there is no evasion of tax and the assessee has filed contemporary documents.

12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the ld.CIT(A) and the paper book filed on behalf of the assessee. We find the AO in the instant case made addition of Rs.22,40,000/- to the total income of the assessee on the ground that the rental income of the assessee from the leased out premises should be taken @ Rs.5 lacs per month for the whole year as against the rental income taken by assessee @ 5 lacs for four months and Rs. 1 lacs per month for 8 months. While doing so the AO noted from the two agreements that the various clauses of both the agreements are same except the period of lease and the rental income. According to the AO there is no such annexure forming part of each

agreement for the area of the premises marked for rental. We find the CIT(A) upheld the action of the AO which has been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the original lease agreement was for the factory shed and the administrative building whereas the second lease agreement is only for the administrative building for which the rental income of the assessee has gone down. It is the submission of the Ld. DR that the premises are same as per both the lease agreements and there is no reference whatsoever of any site plan in either of the agreements. We find merit in the arguments advanced by the Ld. DR. A perusal of both agreements shows that all clauses except the period of lease and rental income are same and identical. There is absolutely no mention of any sketch containing the factory shed and administrative building in any of the agreements. Further the second agreement does not bear the signature of any witnesses although the agreement says that it was signed in the presence of the witnesses. We, therefore, hold that the explanation offered by the assessee is not born out of records. The so called sketches are not signed by the notary. Therefore, these documents in our opinion are only self serving. The letter addressed to the Excise Superintendent also can be termed as self serving, since the copy of letter which is placed at page 63 of the paper book, does not bear the seal of the Excise Department whereas the previous letter dated 30.10.2006 addressed to the excise department bears the seal of the department alongwith the designation of the person who has received it. Therefore, it is only a piece of paper

ment for self serving. In view of the above discussion and in view of the detailed order passed by the CIT(A) on this issue, we find no infirmity in the same. Accordingly the same is upheld and the grounds raised by the assessee are dismissed.

13. In the result the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30.10.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 30.10.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	22.10.2019
Date on which the typed draft is placed before the dictating Member	30.10.2019
Date on which the approved draft comes to the Sr.PS/PS	30.10.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	30.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	30.10.2019
Date on which the final order is uploaded on the website of ITAT	30.10.2019
Date on which the file goes to the Bench Clerk	30.10.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	