

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.1653/DEL/2019  
Assessment Year: 2013-14

Swastik Build Solutions P. Ltd., 101, P-27, 1 <sup>st</sup> Floor, Malviya Nagar, New Delhi.	vs.	ITO, Ward-22(4), New Delhi.
TAN/PAN: AAACS 3179B (Appellant)		(Respondent)

Appellant by:	Shri Manoj Patwari, CA		
Respondent by:	Shri N.K. Bansal, Sr.D.R.		
Date of hearing:	17	09	2019
Date of pronouncement:	08	11	2019

**ORDER**

**PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 23.01.2019 passed by Commission of Income Tax (Appeals)-31, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2013-14. In the grounds of appeal, the assessee has raised following two issues:

- Firstly, addition of Rs.1 crore on account of alleged undervaluation of closing stock; and
- Secondly; addition of Rs.20,59,417/- on account of notional rent u/s. 23(1)(a) of the Act.

2. The facts in brief are that the assessee-company is engaged in the business of construction of buildings, roads, dams and all kind of civil construction work. Apart from that, it is also engaged in investment in properties, sale and purchase of properties and rental business from properties. The Assessing Officer during the course of assessment proceedings, from the perusal of the balance-sheet and the statements made by the assessee-company noted that value of the closing stock had been changed from Rs. 6,44,22,979/- as on 31.03.2012 to Rs.7,43,51,279/- as on 31.03.2013. The assessee had filed the breakup of the closing stock and from such details of the inventory, Assessing Officer noticed that the property as per W-54, Greater Kailash which was the rear portion of the building was valued lesser by Rs. 1 crore which than the previous year value, that is, from Rs.4,37,63,104/- to Rs.3,37,63,104/-. In response to the show cause notice, the assessee submitted that market rate of the property in that locality had depreciated in the year under reference and hence it was valued at cost or market value, whichever is less. Further, as per the Accounting Standards, it was submitted that in the financial year 2011-12 amount of interest of Rs.1,99,13,104/- was capitalized to the cost and after conducting market survey for the selling price of the same property, it was realized that the same has been over valued due to capitalization of interest components. After considering all these factors like market viability the interest components for the financial year 2012-13 the valuation of the closing

stock was revalued and cost was reduced by Rs.1 crore and same was taken at a net realizable value, which worked out at Rs.3,37,63,104/-. The Id. Assessing Officer did not accept the assessee's explanation and observed that, firstly, assessee had taken a loan from NBFC, M/s. Religare Home Loans of Rs.5,41,71,490/- for the same property which the assessee claimed to have revalued on account of decrease in market value. The loan offer amount of Rs.5,41,71,490/- was clearly higher than the cost of property recorded in the books which was at Rs.4,37,63,104/-. He was of the opinion that NBFCs after extensive verification and taking the market rate of the property as collateral calculates the loan amount on the basis of circle rate and other parameters, and after looking to these factors the loan amount is sanctioned, therefore, to accept the assessee's contention that market rate of the property is lower, is not acceptable. Secondly, he also took the Stamp Value Rate or the circle rate of the property as issued by Government of NCT of Delhi effective from 05.12.2012 and found that the same was higher than the cost of property recorded in the books of the assessee-company. He observed that the area of property at W-54, 1<sup>st</sup> Floor, rear portion of Greater Kailash was 990 sq. yards or 827.8 sq. mts. and applying the said rate considering the multiplicative factor and accordingly, held that the circle rate of the said property would come to Rs.5,25,65,300/- which is considerable high compared to the value of Rs.4,37,63,104/- recorded in the books of account. Lastly, he also observed that there was a

sale agreement of the aforementioned property, i.e., W—54, 1<sup>st</sup> Floor, both rear and front portion which has been sold for Rs.7,50,00,000/- on 16.06.2015 which is Rs.71,74,896/- higher than the original combined cost of Rs.6,78,25,104/-. Had there been downward trend of the property rates, the assessee company would not have earned so much profit. Accordingly, in view of these findings, he held that value of the property as recorded in the stock is incorrect and he made the addition of Rs.1 crore on account of undervaluation.

3. Ld. CIT (A) has confirmed the said addition based on same reasons adopted by the Assessing Officer. However, he gave direction to the Assessing Officer that in the subsequent assessment year, if the assessee has paid tax on higher income on sale of the same property as the cost of acquisition was deducted at lower value, then correction should be made and Assessing Officer should allow consequential relief in the subsequent years.

4. Before us, the ld. counsel for the assessee, Mr. Manoj Patwari submitted that for the property located at W-54 (both front and rear portion), huge interest was paid on said loan which was capitalized by the assessee to the value of the stock. A sum amounting to Rs.1,99,13,104/- was added to the cost of the impugned property (i.e. the rear portion of W-54) in earlier years. This led to overvaluation of the said property making its book value at Rs.4,37,63,104/-. After considering the market viability and in compliance with

Accounting Standard-2 to give true and fair view of financial statement, the management of the assessee-company mutually decided to revalue the said property at market value, and therefore, the cost of said property was valued as on 31/03/2013 at Rs.3,37,63,104/-. The reason for such revaluation was that the cost of the impugned property was very high compared to the market value due to capitalization of interest paid on the loan for the purchase the said property. He further gave the calculation of analysis on market value and the circle rate of the said property at the time of revaluation as on 31.03.2013 which was as under:

Total area of land covered by the rear portion = 827.75 /10  
=82.775 sq. mt. -- (a)

Circle rate of Per Sq. Mtrs. Land (Category B) = Rs.2,04,600- (b)

Circle rate of proportionate land occupied (rear portion) = Rs.  
1,69,35,765/- --[(c)=(a)X(b)]

Circle rate of Per Sq. Mtrs. Construction^ per PB page 26) =  
17,400 -- (d)

Area of constructed property = 418 sq. mts.-- (e)

Circle rate of proportionate constructed area (rear portion) =  
418.06/2 X 17400 = Rs.36,37,122/- --[(f) = (d)X(e)/2]

Circle rate of impugned property as on 31/03/2013 =  
Rs.2,05,72,887/- --[(f)+ (c)]

Book value of the impugned property after revaluation as on  
31/03/2013 = Rs.3,37,63,104/-

Further, even after revaluing the impugned property, its market value (or the revalued book value) is more than its circle rate. This fact proves that the appellant company was justified in revaluing the said property to come to terms with the market conditions and valued its stock at the lower of its cost or net realizable value.

5. He further submitted that profit earned on sale of the impugned property has been offered to tax in the year of sale, and therefore, addition of Rs.1 crore made to the income of the assessee during the year under consideration will cause undue hardship in the hands of the assessee because tax has already been applied to the Revenue on the same amount in the financial year 2015-16.

6. On the other hand, ld. DR strongly relied upon the reasoning of the Assessing Officer and ld. CIT (A) and submitted that Assessing Officer has given a very categorical finding to the revaluation done by the assessee of the said property in closing stock was not justifiable for the reason that even the circle rate was higher and the property which was sold was at a much higher rate, therefore, undervaluation was done to suppress the property during the year. Accordingly, the order of the Assessing Officer and ld. CIT(A) should be confirmed.

7. We have heard the rival submissions and perused the relevant findings given in the impugned orders. The Assessing Officer has disturbed the revaluation of the closing stock of

the inventory of the rear portion of the property situated at W-54, 1<sup>st</sup> floor, Greater Kailash, which was valued at Rs.1 crore less than previous year, i.e., it was reduced from Rs.4,37,63,104/- to 3,37,63,104/-. The reasoning given by the Assessing Officer has already been discussed above. The assessee's main contention has been that it has taken a bank loan of Rs.7.56 crores to purchase the property for both, front and rear portion of property, W-54, 1<sup>st</sup> Floor, Greater Kailash and the interest paid in the said loan has been capitalized to the value of the stock. The sum amounting to Rs.1,99,13,104/- was added to the cost of the said property being rear portion of W-54, 1<sup>st</sup> Floor, Greater Kailash in the earlier years, because of this reason there was an overvaluation of the said property and the book value get enhanced of the said amount. After considering the market viability and to give true and fair view of the financial statement, the assessee had revalued the said property and the valuation was reduced by Rs.1 crore, because as compared to the market value due to capitalization of interest shown in the affiliated figure. One of the core reasons of the Assessing Officer was that the circle rate of the impugned property was higher.

8. Now before us, the ld. counsel for the assessee has demonstrated that circle rate of per sq. meter of category B classified for Greater Kailash was Rs.2,04,600/- per sq. meter. The circle rate of the proportionate land occupied for the rear portion will work out to Rs.1,69,35,765/-. Further,

circle rate of per sq. mtr for the construction would be Rs. 17,400 per sq. mtr which worked out to Rs.36,37,122/- and accordingly, the actual circle rate as per the Government Notification as on 31.03.2013 would be at Rs.2,05,72,887/- as compared to the book value of the impugned property which has been taken at a much higher figure, i.e., Rs. 3,37,63,104/-. Accordingly, it has been established by the assessee that market value of the revalued book value was more than its circle rate. Apart from that, one important fact is that in the subsequent year, the assessee had sold the property and has offered tax on the profit and if any such enhancement in the valuation of the closing stock is made then it will lead to double addition which will cause undue hardship to the assessee and that is the reason why the Ld. CIT (A) has directed the Assessing Officer to give consequential relief in the subsequent year in which property was sold. Further, it was noticed that Assessing Officer while determining the circle rate has considered, the covered area of the impugned property wrongly at 827.8 sq. mtr and valued the cost of the property as per circle rate at Rs.5,25,65,300/-, whereas the total covered area of the impugned property is 185.80 sq. mtr. which is evident from the purchase deed of the property placed at pages 55 to 77 of the paper book; and if the correct value is determined as per the rate used by the Assessing Officer, then it would be only Rs.1,17,98,300/-. This also points out the flaw/error and the working given by the Assessing Officer. Thus, the reasoning given by the

Assessing Officer to disturb the revaluation of the property is not based on correct premise. Moreover, if the assessee has demonstrated that the revaluation of the closing stock has been done as per cost or market rate whichever is lower, which is an acceptable method of accounting for the closing stock, then no interference is called for. Accordingly, the addition made by the Assessing Officer and sustained by the ld. CIT (A) is directed to be deleted.

9. As regards the addition on account of notional rent of Rs.20,59,417/-, the Assessing Officer noted that there were certain properties which were shown as part of closing stock and one property was taken from stock-in-trade to capital asset and was shown as part of fixed asset as on 31.03.2011. AO held that provision of Section 23(1)(a) is clearly applicable and no notional rent has been offered to tax even for the flats held as stock-in-trade. In support, he relied upon the judgment of Hon'ble Delhi High Court in the case of **CIT vs. Ansal Housing Financial and Leasing Co. Ltd. (2013) 354 ITR 180**. In response to the show cause notice, the assessee's submission as under:

*“2. The property C-35, First Floor and second Floor, have been given on rent for 2 months and 3 months respectively for relevant financial year because the above mentioned property was under construction and not ready for let-out during the remaining period of relevant financial year, hence there is no rental income has been earned during that period.*”

*Further we would also like to convey you that we have applied for electricity on July, 2012. In normal practice, it takes at least two to three months for installation of commercial meters. For your perusal we are also providing electricity application receipt and rent agreement.*

*Hence the same property has been converted in to fixed assets in the month of October of the relevant financial year. Also in view of the provision of section 23(3) of Income Tax Act, Rental income is only recognized for the period for which the whole or part of the property is actually let out.*

*3. The provisions of deemed rent is not applicable in the case of properties held as stock in trade due to following reasons:*

*(A) In our case business activity is different from the referred case of Ansal Housing and leasing Co Ltd In our case business activities are to sale purchase of the house property and not involve any activities of development of the properties. But in latter company case development activities of Mini Township are involved.*

*(B) Our situation is also covered under section 23(3) of the Income Tea Act, 1961. As per this section deemed rent is only applicable when whole or part of the house properties are actually let during the whole or part of the previous years.*

*(C) Further out of the properties shown as closing stock, property No.B-100: situated at Sarvodaya enclave is self occupied by the directors of the company. Property w-54(Front & Rear Portion): the same property is under construction for that period hence not ready for let out. After becoming ready to move, we have also sold both the portion of the same (front & rear) as*

on 17\* June, 2015. The profit/loss on sale of same property has been properly recognized in the relevant financial year

(D) As we are involve in the sale and purchase of house property, hence the property remain as closing stock cannot be let-out for the short period due to lime constraint and the nature of the business.

(E) For any reason if you consider any national rental income in view of Ansal Housing Finance & Leasing Co. Pvt. Lid judgment, then full vacancy allowance should be allowed under section 23(1)(c)”

10. However, the Assessing Officer rejected the assessee’s contention and worked out the notional rent in the following manner:

S. No.	Property Description	Area (sq. yards)	Cost of the property	Type of the property	Percentage notional rate	Total Notional Rent per Year (in Rs.)
1.	B-100, Sarvodaya Enclave First Floor	200	1,65,26,175	Residential	2%	3,30,523
2.	W-54, First Floor, Front Portion	990	1,65,26,175	Residential	2%	3,30,523
3.	W-54, First Floor	990	4,37,63,104	Residential	2%	8,75,262
Annual Value from properties deemed to be let out					Total	16,87,025/-

3.4 In addition to the above, it was further seen that rental income was offered on the property located at C-75, First & Second Floor on which rental income is offered only for a part of the year. The assessee AR stated that application for electricity

*connection was given only in the month of July 2012. And it took 2-3 months for the property to be ready for letting. However, it is seen that assessee-company has offered rental income only for 2 to 3 months. Therefore, even relying on the assessee's contention and also based on the earning capacity of the property which assessee itself has offered, the notional rent as per the expected rent is calculated from the month of October 2012 for both the properties. On the property at first floor notional rent is calculated for 4 months and for the property at the second floor it is calculated for 3 months. The detailed working of the notional rent is as under:*

<i>SL No</i>	<i>Property Description</i>	<i>Rent per month received</i>	<i>Number of Months rent not offered</i>	<i>Notional Rent (in Rs.)</i>
<i>1</i>	<i>C-75, First Floor, Shivaik</i>	<i>1,90,000</i>	<i>4</i>	<i>7,60,000/-</i>
<i>2</i>	<i>C-75, Second Floor, ShivaJik</i>	<i>1,65,000</i>	<i>3</i>	<i>4,95,000/-</i>
			<i>Total</i>	<i>12,55,000/-</i>

*Total notional rent adds up to Rs.29,42,025/-. After allowing standard deduction of 30% on the said notional rent, the net notional rent works out to Rs.20,59,417/-.*

11. The said finding of the Assessing Officer has also been confirmed by the Ld. CIT (A).

12. Before us, ld. counsel submitted that there are three properties involved in which addition on account of notional rent has been made by the Assessing Officer as under.

- “1. W-54 [rear portion Rs.8.75 lakhs and front portion Rs.4.81 lakhs]*
- 2. B-100 [Rs.3.30 lakhs]*
- 3. C-75 [1<sup>st</sup> floor Rs.7.6 lakhs & 2<sup>nd</sup> floor Rs.4.95 lakhs]”*

13. With regard to each property his submission are as under:

*1. Contention in the case of W-54, rear and front portion*

*In the case of property ‘W-54’, the same was under construction and not ready for use. This fact can be verified from the first electricity bill of the said property dated 11-12-2014 which also discloses the date of installation or Energisation Date as 01-11-2014, which is after the relevant previous year.*

*Therefore, the addition on account of deemed rent of Rs. 8,75,000/- (rear portion) and Rs.4,81,000/- (front portion) in this case is baseless and liable to be deleted.*

*2. Contention in the case of B-100*

*In the case of property ‘B-100’, the same was also not ready for use. The facts in this case can be verified from the Mutation Certificate dated 19-07-2012 issued by the Municipal Corporation of Delhi which shows that the said property was not ready to let out until the above date.(Copy of Mutation Certificate at PB Page.79). It is further submitted that the said property was used for business purposes right after it was ready for use and it was only later that it was occupied by the Director of the appellant company.*

*Hence, the deemed rent for such property cannot be assumed for the full year.*

### 3. Contention in the case of C-75

*In the case of property 'C-75, First Floor and Second Floor', the construction of the said property as whole was completed w.e.f. 01.04.2013. This fact can be verified from Assessment Order under Section 123-D of DMC (Amendment) Act, 2003 passed by Deputy Assessor & Collector, South Zone, South Delhi Municipal Corporation.*

*Therefore, the impugned properties were not ready for use in the relevant previous year and applicability of provisions pertaining to deemed rent do not arise. Thus, the addition on account of deemed rent of Rs.7,60,000/- (First Floor) and Rs.4,95,000/- (Second Floor) in this case is baseless and liable to be deleted."*

14. Thus, he submitted that there are arbitrary assumption and calculation of deemed rent with the impugned property, i.e., 2% of the cost and the entire addition should be deleted.

15. Ld. DR strongly relied upon the order of the Assessing Officer.

16. After considering the rival submission and perusal of the relevant finding given in the impugned orders, we find that, first of all, in the case of property, W-54, 1<sup>st</sup> Floor, Greater Kailash, the same has been under consideration and was not ready for use and this is evident from the first electricity bill and the date of installment, which was installed in the month of December, 2014. Once the property itself was under construction stage with no electricity connection then there cannot be any deemed or notional rent which can be added

u/s. 23(1)(a). Accordingly, the addition of Rs.8.75 lac for the rear portion of the property and Rs.4.81 lac for the front portion of the property is directed to be deleted.

17. Regarding other property of B-100, Sarvodaya Enclave, First Floor, same was also not ready to use which has been proved by way of Mutation Certificate dated 19.07.2012 issued by MCD which shows that it was not ready to let out. Further, the said property has been used for the business purpose of the assessee when it was ready for use which was much later and had occupied by the Director of the company. Hence on this property also, there cannot be any addition on account of deemed rent. Lastly, with regard to the property at C-75, 1<sup>st</sup> and 2<sup>nd</sup> Floor, Shivalik, again it has been brought on record that the said property was completed after 01.04.2014 for which ld. counsel has filed copy of the assessment order passed by Deputy Assessor & Collector of South Delhi Municipal Corporation. Once, this property was not ready for use, there is no question of any deemed rent. Accordingly, no addition on account of notional deemed rent u/s.23(1)(a) can be made, once the property itself was either in the stage of construction or was not ready for use. On the facts of the present case, as discussed above, the ratio of the principle of Hon'ble Delhi High court in the case of **CIT vs. Ansal Housing Financial and Leasing Co. Ltd.** (supra) cannot be applied.

18. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open Court on 8<sup>th</sup> November, 2019.**

Sd/-

**[B.R.R. KUMAR]**

**[ACCOUNTANT MEMBER]**

DATED: 8<sup>th</sup> November, 2019

PKK:

Sd/-

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**