

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 194 to 197/Chd/2020

निर्धारण वर्ष / A.Ys : 2009-10 to 2012-13

M/s Kandhari Infrastructure Private Limited, 177-F, Industrial Area, Phase-1, Chandigarh	बनाम	The ACIT, Circle-2(1), Chandigarh
स्थायी लेखा सं./PAN NO: AACCK7075L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

S.A. Nos. 13 to 16/CHD/2020

In ITA No. 194 to 197/Chd/2020

निर्धारण वर्ष / A.Ys : 2009-10 to 2012-13

M/s Kandhari Infrastructure Private Limited, 177-F, Industrial Area, Phase-1, Chandigarh	बनाम	The ACIT, Circle-2(1), Chandigarh
स्थायी लेखा सं./PAN NO: AACCK7075L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate
& Shri Vineet Khurana, CA

राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, JCIT

सुनवाई की तारीख/Date of Hearing : 20.03.2020

उद्घोषणा की तारीख/Date of Pronouncement : 06.05.2020

आदेश/Order

Per Bench :

The present appeals have been preferred by the assessee against the order dated 27.12.2019 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT (A)']. Alongwith the present appeals, the assessee has also filed applications

seeking Stay against the recovery of the tax demand along with interest for the assessment years under consideration.

2. The Ld. counsel for the assessee has submitted that the assessee has already deposited 27.2% of the disputed tax demand for the assessment year 2009-10 and 20% of the tax demand for the remaining assessment years.

3. The sole issue involved in these appeals is regarding the determining the Annual Letting Value (ALV) of one of the property of the assessee which remained vacant during the period relating to the previous years relevant to the assessment years under consideration.

4. The Assessing Officer observed that the assessee was possessed of two properties, one property No.13 at Lajpat Nagar, New Delhi and the other Property No. 73 situated at Ring Road, Lajpat Nagar-III, New Delhi, as per the details given below.

Status of property

Particulars	Property No . 73	Property No. 13
Ownership	KIPL	KIPL
Vacant Possession	Stay order of the granted by Hon'ble High Court, Delhi on 28.09.2006 in CS (OS) No. 1863/2006 directing that till the above order was vacated or modified, defendant No. 2 shall be restrained from transferring, alienating or encumbering	KIPL, had vacant possession

	property bearing No. 73, Ring Road, Lajpat Nagar-III, New Delhi remained in force.	
Whether the property could be let out	No.	Yes

5. The Assessing Officer issued notice to the assessee as to why the ALV of one of the property i.e Property No. 13 be not determined as per the provisions of Sections 22 & 23 of the Income Tax Act, 1961 (in short 'the Act'). In reply, the assessee could not furnish the sufficient reasons for not determining the ALV of property No.13 as per the provisions of the Income Tax Act. The Assessing Officer, therefore, determined the ALV of Property No. 13 as per market rate and accordingly made the impugned additions after giving the benefit to the assessee of statutory deductions.

6. Being aggrieved by the above order of the Assessing Officer, the assessee preferred appeals before the CIT(A). Before the Ld. CIT(A), the assessee took the stand that Property No.13 was self-occupied property, hence, as per the provisions of the Income Tax Act, no ALV could have been determined. So far as Property No. 73 is concerned, the assessee submitted that there was a restrain order passed by the Hon'ble High Court (**in CS (OS) Appeal No. 1863/2006**) not only in respect of Petition filed by M/s Ishvakoo Grand Plaza i.e. tenant in the property against the then Landlord of the property from whom the assessee has

purchased the property in the year 2005, wherein, the said tenant M/s Ishvakoo Grand Plaza had taken the plea that he had preemption right and that he should be given first offer to purchase the property at the rate at which the same was sold to the assessee. Secondly, the assessee also preferred a Civil Suit against the said M/s Ishvakoo Grand Plaza for vacation of the property for non-payment of rent in Suit No.CS(OS) No. 101/2007.

7. The Ld. counsel for the assessee has invited our attention to the order dated 6.8.2007 of the Hon'ble Delhi High Court passed in interim application i.e. IA No.647/2007 and IA 649/2007 (u/o 39 Rule 1 and 2 of CPC) in CS (OS) No. 101/2007. The contents of the order for the sake of the ready reference are reproduced as under:-

“06.08.2007

Present : Mr Abhinav Vashist, Advocate for the Plaintiff

Mr. R.S. Endlaw, Advocate for the Defendant

+ IA No.647/200 (u/O 39 R 10 of CPC) and IA No.649/2007 (u/O 39 Rs 1 & 2 of CPC) in CS (OS) No. 101/2007

** On hearing learned counsel for the parties, it is agreed as under without prejudice to the rights and contentions of the parties in the suit:*

- 1. Interim orders dated 19.01.2007 to continue till the disposal of the suit.*
- 2. The defendant agreed to surrender possession of the suit premises to the plaintiff.*
- 3. The plaintiff will take necessary steps with the MCD for getting the premises de-sealed.*

4. On such de-sealing taking place, an inventory will be made in respect of the goods and improvements in the premises be carried out by the defendant. For this purpose, Mr. Hora Gurkamal Arora, Advocate, Chamber No.640, Lawyers' Chambers, Western Wing, Tis Hazari, Delhi; Mob. 9810124535 / 930991685 is appointed as the local commissioner to visit the premises and make the inventory. The local commissioner can engage a photographer for the said purpose. The fee of the local commissioner shall be Rs. 15,000/- apart from out of pocket expenses to be equally shared by the parties.

5. It will be open to the plaintiff to let out the premises but after moving an appropriate application before: this Court seeking leave and liberty for the said purpose . It is clarified that such leave will be granted only under directions of the Court with notice to the lessee that in case the plaintiff fails in the suit, no special equities shall be claimed by the tenant. In case the plaintiff wants to use the premises or part thereof itself after de-sealing then no further permission in that behalf is required. The applications stand disposed of.

August 06, 2007

Sd/-

SANJAY KISHAN KAUL, J.”

8. A perusal of the above order of the Hon'ble Delhi High Court reveals that firstly the property was sealed by the MCD. Secondly, that there was a restriction put by the Hon'ble Delhi High Court for further letting out of property without consent of M/s Ishvakoo Grand Plaza. However, there was no restriction for the self-occupation of the property after getting it de-sealed from the MCD. The Ld. Counsel, therefore, has relied upon the paper book pages 10 to 13 to submit that the property, in fact, was desealed in the year 2010 by the MCD. That prior to that, the property was sealed by the MCD, hence, the assessee was not able to rent out the property. The assessee could not use if for

self-occupation also. It has been submitted that the property No.13 was, in fact, self-occupied by the assessee.

However, the Ld. CIT(A) has not given any findings on any of the plea taken by the assessee before him. The order of the CIT(A) is silent relating to all these aspects. The plea taken by the assessee is based on documentary evidence which should have been required to be looked into by the CIT(A) as the powers of the CIT(A) are co-terminus with that of the Assessing Officer. It has been held time and again by the Hon'ble Apex Court and Hon'ble High Court of the County that even if a plea has not been made before the AO, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim is not barred.

This issue has been decided by the Coordinate Bench of the Tribunal vide order dated 31.8.2017 in 'M/s JSW Holdings Ltd.,Vs. DCIT' ITA No. 714/Mum/2015 for Assessment Year 2011-12', wherein it has been held as under:-

“10. We have considered the rival contentions. The question as to whether the assessee can take an additional ground at appellate stage even when the same has not been raised before the lower authorities has been thoroughly discussed by Co-ordinate Mumbai Bench of the Tribunal in the case of “Pandoo P. Naig” in ITA No.7089/Mum/2011 decided on 24.06.2016 [2016 (9) TMI 1062]. The Tribunal, while relying upon the decision of the Hon'ble

Supreme Court in the case of “National Thermal Power Company Ltd. vs. CIT” 229 ITR 383, Full Bench of the Hon’ble High Court in the case of “Ahmedabad Electricity Co. Ltd. vs. CIT” (1993) 199 ITR 351, another decision of the Hon’ble Bombay High Court in the case of “CIT vs. “CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd.” (2012) 349 ITR 336 (Bom.) has held that the appellate authorities have jurisdiction to deal not merely with additional ground which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The relevant part of the order of the Tribunal in the case of “Pandoo P. Naig” for the purpose of reference is reproduced as under:

“19. Now coming to the point, whether, the claim put by the assessee Shri Pandoo P. Naig by way of additional ground before the Ld. CIT(A) regarding the deletion of addition of Rs.4 crore offered during the survey action and thereby offered in the return of income can be allowed at this stage?

The Ld. Counsel for the assessee in this respect has placed reliance on the decision of the Hon’ble Supreme Court in the case of “National Thermal Power Co. Ltd.” vs. CIT” 229 ITR 383. The facts before the Hon’ble Supreme Court were that the assessee in that case offered the interest amount for taxation and the assessment was completed on that basis. Before the Ld. CIT(A), the assessee though had taken a number of grounds of appeal, however, the inclusion of the said amount of interest was not challenged. The inclusion of the said amount of interest was not objected to even in the grounds of appeal as originally filed before the Tribunal. However, the assessee by way of subsequent letter raised the additional ground in relation to the said inclusion of interest into the income of the assessee. In the above circumstances, the question before the Hon’ble Supreme Court was “Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has

jurisdiction to examine the same?” The Hon’ble Supreme Court while answering the said question observed that under section 254 of the Income Tax Act, the power of the Tribunal in dealing with the appeals is expressed in the widest possible terms; the power of the Tribunal under section 254 is not restricted only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals); that both the assessee as well as the department have a right to file an appeal/cross objection before the Tribunal and the Tribunal is not prevented from considering questions of law arising in assessment proceedings although not raised earlier. While answering the question in affirmative, the Hon’ble Supreme Court concluded that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee.

20. *The facts of the case in hand are on better footing. In the case in hand, though under consistent pressure, the assessee offered the additional income for taxation in the assessment proceedings but when he was burdened with many more additions, he at the first instance during the appeal before the Ld. CIT(A), challenged the offer of additional income on the basis of statement recorded under section 133A. Even the said ground was also admitted by the Ld. CIT(A) for adjudication though finally decided against the assessee. The full bench of the Hon’ble Bombay High Court in the cases of “Ahmedabad Electricity Company Ltd. vs. CIT” and “Godavari Sugar Mills Ltd. vs. CIT” by way of a common order dated 30.04.1992 (1993) 199 ITR 351 has observed that the basic purpose of an appeal procedure in an income tax matter is to ascertain the correct tax liability of the assessee in accordance with law. Therefore, at both the stages, either by the Appellate Assistant Commissioner or before the Appellate Tribunal, the appellate authority can consider the proceedings before it and the material on record before it for the purpose of determining the correct tax liability of the assessee. The appellate authorities, of course, cannot travel beyond the proceedings and examine new source of income, for that purpose other separate remedies are provided to the department under the Income Tax*

Act. The Hon'ble full bench of the Bombay High Court observed that apart from the above, there was nothing in section 254 or section 251 which would indicate that the appellate authorities are confined to considering only the objections raised before them or allowed to be raised before them either by the assessee or by the department, as the case may be. They can consider the entire proceedings to determine the tax liability of the assessee.

The Hon'ble Bombay High Court in the case of "CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd." (2012) 349 ITR 336 (Bom.) has observed that the assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The words 'could not have been raised' must be construed liberally and not strictly. There may be several factors justifying the raising of a new plea in an appeal and each case must be considered on its own facts. The co-ordinate bench of the Tribunal in the case of "Shri Chandrashekhar Bahirwani" ITA No.7810/M/2010 and 6599/M/2011 vide order dated 17.06.2015 while deciding the question as to whether the income cannot be assessed less than the returned income has observed as under:

"5. Now coming to the finding of the Ld. CIT(A), that income cannot be assessed less than the returned income, the Ld. A.R. of the assessee has submitted before us that the action of the Ld. CIT(A) in rejecting the claim of the assessee on this ground was not justified. He has further relied upon the decision of the Hon'ble Gujarat High Court in the case of "Gujarat Gas Ltd. vs. JCIT" (2000) 245 ITR 84. In the said case, the words of the Circular No.549, para 5.12, dt. 31st October, 1989, providing that the assessed income under section 143(3) shall not be less than the returned income was considered by the Hon'ble High Court and it was held that as per proviso to section 119 of

the Act, the Board cannot issue instructions to the Income Tax Authority to make a particular assessment or to dispose of a particular case in a particular manner as well as not to interfere with the discretion of the Commissioner in exercise of his appellate functions. It was further held that the AO, while exercising his quasi judicial powers, was not bound by the said circular and should have exercised his powers independently. The Hon'ble High Court, therefore, directed the AO to make the assessment without keeping in mind the said circular. It may be further observed that the Hon'ble Bombay High Court in the case of 'Pruthvi Brokers & Shareholders Pvt. Ltd.' ITA No.3908 of 2010 decided on 21.06.12, while relying upon the various decisions of the Hon'ble Supreme Court and other Hon'ble High Courts has held that even if a claim is not made before the AO, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim is not barred. The Hon'ble High Court has further observed that the decision of the Hon'ble Supreme Court in the case of 'Goetze (India) Limited v. CIT' (2006) 157 Taxman 1, relating to the restriction of making the claim through a revised return was limited to the powers of the Assessing Authority and the said judgment does not impinge on the power or negate the powers of the appellate authorities to entertain such claim by way of additional ground. Even otherwise, the Ld. CIT(A) ought to have considered the claim of the assessee in exercise of his appellate jurisdiction under section 250 of the Act. Moreover, if the assessee is, otherwise, entitled to a claim of deduction but due to his ignorance or for some other reason could not claim the same in the return of income, but has raised his claim before the appellate authority, the appellate authority should have looked into the same. The assessee cannot be burdened with the taxes which he otherwise is not liable to pay under the law. Even a duty has also been cast upon the Income Tax Authorities to charge the legitimate tax from the tax payers. They are not there to punish the tax payers for their bonafide

mistakes. In view of our above observations, it is held that the assessee is not liable to pay Capital Gains Tax, though originally he had subjected himself to the said tax as per his return of income. The AO is directed to process the claim of refund in this respect as per provisions of the law.”

21. In view of the above observation, we hold that the Ld. CIT(A) though, rightly admitted the question of law as to whether the income offered by the assessee in the return of income consequent to offer made in his statement recorded during the survey action can be challenged before the appellate authority, but wrongly decided the same in favour of revenue. In view of our findings given above and in view of the various case laws as discussed above, we have no hesitation to hold that the additional income was returned by the assessee perhaps under force, pressure, threat or coercion and under the mistaken belief. The assessee, in our view, was not liable to pay tax on the said additional income returned. We accordingly direct the Department to refund the taxes, if any, paid by the assessee in respect of additional income offered during the survey action.”

Even as per the provisions of sub section (4) and sub section (5) of section 250 of the Act, it was required of the CIT(A) to look into grounds taken by the assessee which were based on documentary evidence in the shape of Court orders and adjudicate upon them so as to determine the correct tax liability of the assessee.

In view of this, the impugned orders of the CIT(A) which have been passed without considering the pleas taken by the assessee are not sustainable in the eye of law. However, the issue is required to be

restored to the file of the CIT(A) for decision afresh. We order accordingly.

9. Since the appeals have been disposed off, hence, the Stay applications have become infructuous at this stage.

All the appeals of the assessee are treated as allowed for statistical purposes.

In the result, the appeals are of the assessee are treated as allowed, whereas, the Stay Applications filed by the assessee have become infructuous and are accordingly dismissed. .

Order pronounced in the Open Court on 06.05.2020.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated :

“आर.के.” 06.05.2020

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

SA-13 to 16-Chd-2020 & ITA Nos. 194 to 197/Chd/2020
M/s Khandhari Infrastructure Pvt Limited.