



**आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
(THROUGH VIDEO CONFERENCING MODE)**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 1917/Mum/2019

(निर्धारण वर्ष / Assessment Years 2015-16)

Akshar Commercial Complex Ltd. (Erstwhile M/s. Akshar Commercial Complex Pvt. Ltd.) 203, Big Splash, plot No.78 & 79, Sector 17, Vashi, navi Mumbai-400 703	बनाम/ Vs.	Dy. Commissioner of Income Tax, Circle 15(1)(1), Mumbai Room No. 517, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. ABNFA9846Q		

अपीलार्थी की ओर से/ Appellant by	:	Shri Ritika Agarwal, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Michael Jerald, DR

सुनवाई की तारीख / Date of hearing:	07.07.2020
घोषणा की तारीख / Date of pronouncement:	07.07.2020

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष /

**PER MAHAVIR SINGH, VP:**

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-24, Mumbai, [in short



CIT(A)], in ITA No. 24/DCIT-15(1)(1)/IT-318/2017-18. The assessment was framed vide order dated 22.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) in confirming the addition made by the Assessing Officer in regard to notional rental income on commercial property under section 23(1)(a) of the Act. For this assessee has raised the following 2 grounds: -

*"1. Because, the CIT(A) has erred in law and on facts confirming the addition of ₹56,66,976 on account of notional rental income on unsold stock u/s 23(1)(a) made by the Assessing Officer by following the decision of the Hon'ble Delhi High Court in the case of CIT v. Ansal Housing Finance & Leasing Ltd. 354 TR 180 (Delhi).*

*2. Because, the CIT has failed to appreciate that calculation of notional rental income on commercial property is outside the scope of section 24 of the Act."*

3. Brief facts are that the assessee constructed a commercial building name 'Proxima' at Vashi, Navi Mumbai under a



development agreement dated 29.10.2007 with US Roof Limited and developed total area of 6500 Sq. ft. This property was originally given to Andhra Pradesh Industrial Development Corporation in short (APIDC) and the remaining area was shared between the assessee and US Roof Ltd. in the ratio of 60:40. The total area developed was 39,567 sq. ft. out of which 6500 sq. ft. was given to original lessor, APIDC. Out of the balance area of 33,061 sq. ft., the assessee was entitled to 60%, which worked to 19,840 sq. ft. The assessee has leased out these area to M/s Kalyan Jewellers and Red Consulting i.e. 8,596 sq. ft. The balance area of 11,244 sq. ft. remains unoccupied and no rental receipt was declared. The Assessing Officer as in Assessment Year 2014-15 computed the ALV under the provision of section 23(1)(a) of the Act and he made addition of the rental income ad deemed income from house property of ₹56,66,976/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the Assessing Officer. The CIT(A) relied on the Delhi High court decision in the case of CIT v Ansal Housing Finance & Leasing Co. Ltd. (2013) 354 ITR 180 (Delhi).

4. At the outset, the learned Counsel for the assessee Ms. Ritika Aggarwal stated that the issue is squarely covered in favour of assessee by the Tribunal's decision in assessee's own case for Assessment Year 2014-15 in ITA No.666/Mum/2019 vide order dated 28.01.2020, wherein Tribunal has considered this issue vide Para 10 to 13 as under: -



"10. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. There is no dispute that the assessee has undertaken development/construction of commercial building namely 'Proxima' at plot No. 19, sector 30A, Vashi. Project was undertaken by the assessee on 'assignment cum development' agreement dated 29.10.2007 with M/s. U.S. Roof Limited. Under the agreement the assessee was entitled to retain an area of 19,840 square feet of developed area. There is no dispute that the assessee let out 8170 square feet to M/s. Kalyan Jewellers India Pvt. Ltd. in the same developed complex. During the assessment the Assessing Officer asked the assessee as to why remaining unoccupied commercial area should not be considered for deeming let out purposes u/s. 23(1)(a) of the Act. On the basis of decision of Hon'ble Delhi High Court in the case of CIT Vs. Ansal Housing Finance & Leasing Co. Ltd. (supra). The assessee in its reply dated 24.12.2016 has stated that the SLP had been



*admitted by Hon'ble Apex Court against the decision of Hon'ble Delhi High Court. The Assessing Officer not accepted the contention of the assessee and worked out deemed letting out value of unoccupied area and worked out the gross rental income and after allowing 30% deduction made addition of Rs. 5,81,176/- to the total income of the assessee under the head 'income from house property'.*

*11. Before learned CIT(A) the assessee urged that the property/vacant portion is stock-in-trade, the same would partake character of stock in trade and any income derived therefrom would be income from business and not income from house property. It was also urged that the business of the assessee was to construct property and sale it and not to let out. Submission of the assessee was not accepted by learned CIT(A) as the assessee had leased out part of unsold property on commercial to M/s. Kalyan Jewellers India Pvt. Ltd., and learned CIT(A) affirmed the action of the Assessing Officer.*



12. Before us learned AR of the assessee vehemently argued that lease of the plot on which assessee developed project for APIDC has been cancelled by lessor CIDCO vide order dated 31.12.2015. Before cancellation lease deed show-cause notice dated 25.8.2013 was issued to APIDC as to why lease should not be cancelled as the development of leased plot was not in accordance with condition of lease. Learned AR of the assessee has strongly relied upon the decision of Hon'ble Jurisdictional High Court in the case of Sharan Hospitality Pvt Ltd. (supra) wherein Hon'ble Court while considering the question of law "whether on the facts and circumstances of the case Income Tax Appellate Tribunal was right in law in holding the annual letting value of the property is question for relevant previous year can be determined u/s. 23(1)(a)". Hon'ble Court after considering the contention of the party held that the assessee let out property w.e.f. 1.4.2018 without waiting for occupation certificate, entire property during which the assessee could have let this property, tax on



*notional basis should be charged. It was further held that between 1.1.2009 up to 31.3.2009 property was legally not occupyable and not occupied. Under such circumstances charging of tax on notional rental basis and the question of interpretation of section 23(1)(a) did not arise at all. 13. In the case in hand a show-cause notice for cancellation of lease was issued on 25.8.2013 and ultimately lease of plot was cancelled vide order dated 31.12.2015, therefore, we find force in the submission of learned AR of the assessee that after issuance of show-cause notice for cancellation of lease on which building was developed, the assessee was not entitled to let out occupied/constructed portion. Therefore, we find force in the submission of the learned AR that after issuance of show-cause notice the assessee was not entitled to let out the property. Hence, taxing notional income of unoccupied portion of building on the basis of deemed annual letting value is not justified by the Assessing Officer. Hence, we direct the Assessing Officer to delete the*



*disallowance. Considering the fact that we have accepted the contention of learned AR that the assessee was legally not entitled to let out the property. Therefore, adjudication on other submissions of learned AR has become academic.”*

5. The learned Sr. Departmental Representative Shri Michael Jerald contested the issue but we noted that the issue is already been adjudicated by Tribunal in earlier year, wherein it is held that once, there is show cause notice issued to the assessee for cancellation of lease and finally the lease was cancelled vide order dated 31.12.2015 and the same was served to assessee on 01.01.2016. This being impossibility of renting out the property, the Assessing Officer is not justified to charge notional rent from this property and assess the same as income from house property as deemed income. We respectfully following the view taken by the co-ordinate Bench in assessee's own case for earlier year delete the impugned addition as confirmed by the learned CIT(A) and allow this appeal of assessee.

**6. In the Result, the appeal of assessee is allowed.**

Order pronounced in the open court on 07.07. 2020

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 07.07.2020

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)



सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति **//True Copy//**

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**