

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D', NEW DELHI
(Through Video Conferencing)**

**BEFORE, SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1933/Del/2016
(ASSESSMENT YEAR-2010-11)**

Late Shri Anurag Birla L/H Shri Rishabh Birla C-37, Hauz Khas New Delhi. PAN:AADPB 3556B (Appellant)	Vs.	Jt. CIT, Range-24, New Delhi (Respondent)
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Appellant By	Sh. Sandeep Sapra, Adv.
Respondent by	Sh. C.P. Singh, Sr. Dr
Date of Hearing	14.08.2020
Date of Pronouncement	30.09.2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal has been preferred by the assessee against order dated 01.01.2016 passed by the Ld. Commissioner of Income Tax (Appeals)-34, New Delhi {CIT(A)} for Assessment Year 2010-11.

2.0 The brief facts of the case are that the return of income was filed declaring an income of Rs.81,80,294/-. During the year under consideration, the assessee enjoyed income from business of

Air Transportation of Goods, Hotel Bookings and Aircrafts Handling Charges. The assessee also enjoyed income from house property. The assessee's case was selected for scrutiny under CASS and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') at a total income of Rs.1,34,09,780/- after making the following additions/disallowances:

- (i) Disallowance of interest u/s 36(1)(iii)
in respect of property at Saket and Gurgaon- Rs.26,05,634/-.
- (ii) Disallowances of security charges- Rs. 4,79,431/-
- (iii) Addition on account of house property- Rs.2,69,500/-
- (iv) Disallowances of Vehicle Expenses- Rs.1,22,742/-
- (v) Notional rental income in respect of
Shop At Grand Mall, Gurgaon- Rs.16,80,000/-

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging these additions. The appeal of the assessee was partly allowed wherein the Ld. CIT (A) upheld a part of disallowance on account of interest and restored a part to the Assessing officer to recalculate the disallowance. With respect to the disallowance relating to security charges, the Ld. CIT (A) again

allowed a partial relief and confirmed the rest. With respect to the addition on account of income from house property amounting to Rs.2,69,500/-, the Ld. CIT (A) directed the entire addition to be deleted. Similarly, the Ld. CIT (A) also directed complete deletion of disallowances out of vehicle running expenses and telephone expenses. With respect to the addition on account of notional rent from shop at Grand Mall Gurgaon, the Ld. CIT (A) upheld the addition.

2.2 Aggrieved with the order of the Ld. CIT (A), the assessee is now before this Tribunal challenging the order of the Ld. CIT(A) by raising the following grounds of appeal:

“1. That the Ld. CIT(A) has erred on facts and under the law in confirming disallowance of Rs.9,83,879/- on account of interest attributable to amount of Rs.68,00,000/- utilized for purchase of property at Grand Mall, G.S. 0122, Gurgaon allegedly not used for business purposes.

2. That the Ld. CIT(A) has erred on facts and under the law in sustaining disallowance of Rs.4,02,396/- out of total security charges claimed at Rs.5,56,466/-.

3. That the Ld. CIT(A) has erred on facts and under the law in confirming the addition of Rs. 16,80,000/- under the head ‘income from house property’ in respect of property situated on

1st Floor, DLF Grand Mall, Gurgaon by estimating notional rental income @Rs.2,00,000/- per month.

4. That without prejudice to above grounds, the disallowances/addition as confirmed are very excessive.

5. That without prejudice to Ground No. 1 & 3 above, the disallowance/addition, if any maintained by the Hon'ble ITAT, deserve to be telescoped with each other.

6. That the Appellant reserves his right to add, amend/modify the grounds of appeal.”

3.0 The Ld. Authorized Representative (AR) submitted that in Ground No.1, the assessee is challenging the confirmation of disallowance of Rs.9,83,879/- on account of interest attributable to Rs.68.00 lacs utilized for the purchase of property at Grand Mall, Gurgaon for allegedly not being for business purposes. It was submitted that an identical issue had arisen in Assessment Year 2008-09 in assessee's own case and the matter had travelled up to the Tribunal and the issue was restored back to the file of the Assessing Officer by the Tribunal for the purpose of re-computing the disallowance of interest attributable to Rs.68.00 lacs utilized for the purchase of property at Grand Mall, Gurgaon. It was further submitted that again in Assessment Year 2009-10, similar issue arose and the ITAT, following its order of Assessment Year 2008-09,

restored the issue to the file of the Ld. CIT (A) for dealing with the issue in accordance with view taken by the Tribunal in the assessee's own case in Assessment Year 2008-09. It was submitted that an identical direction may be given for this year also.

3.1 With respect to Ground No.2, it was submitted that this ground challenges the sustenance of disallowance of Rs.4,02,396/- out of the total security charges claimed at Rs.5,56,466/- . It was submitted that the assessee had carried business activity from the basement of premises situated at C-37, Hauz Khas, New Delhi for which security charges of Rs.1,54,070/- had been paid. It was submitted that this amount deserves to be allowed in full. With respect to the balance disallowance in respect of security charges, it was submitted that the security charges were paid for different premises utilized by the assessee for business purposes only. On a query from the Bench, the Ld. Authorized Representative agreed that the issue can be re-examined by the Assessing Officer and the assessee shall substantiate before the Assessing Officer that the security charges were incurred for premises which were being used for business purposes.

3.2 With respect to Ground No.3, it was submitted that this ground challenges the action of the Ld. CIT (A) in confirming the addition of Rs.16,80,000/- under the head income from the house property by estimating notional rental income at Rs.2 lacs per month in respect of property situated in DLF Grand Mall, Gurgaon. It was submitted that earlier, vide letter dated 04.03.2013, the assessee had inadvertently mentioned before the AO that this property was let out but subsequently the assessee had time and again communicated through various letters and submissions both before the Assessing Officer as well as Ld. CIT (A) that the said property was lying vacant. It was further submitted that the fact remained that despite the best efforts of the assessee, the premises could not be leased out. Reliance was placed on order of the ITAT in the case of ITO vs. Sh. Anil Kumar Gupta reported in ITA No.5911/Del/2014 for the proposition that the annual value determined u/s 23 (1) (a) will become Nil in accordance with the provisions of Sec.23 (1) (c) of the Act if the property is lying vacant for the entire year.

3.3 With respect to Ground No.4, it was submitted that this ground is without prejudice to Ground Nos.1 & 3. It was submitted that if the additions are to be sustained by the Tribunal, the benefit of telescoping should be given to the assessee.

4.0 In response, the Ld. Sr. Departmental Representative submitted that with respect to Ground Nos.1 & 2, reliance was being placed on the orders of the Lower Authorities but all the same the Department had no objection to the issues were being restored to the file of the Assessing Officer for reconsideration.

4.1 With respect to Ground No.3 regarding notional rent, it was submitted that vacancy allowance is available only if the property is let out and since there is no proof of the said property having ever been let out, the provisions of Sec. 23(1) (a) of the Act would be attracted and the assessee will be liable to pay tax on the notional rent.

4.2 The Ld. Sr. DR also opposed the assessee's plea raised in Ground No.4 for telescoping the various disallowances and submitted that each disallowance has been made on the peculiar facts and circumstances pertaining to such disallowance and,

therefore, the benefit of telescoping should not be extended in this case.

5.0 We have heard the rival submissions and have also perused the material on record. As far as ground No.1 of the assessee's appeal is concerned, it is seen that the total disallowance of interest made by the Assessing Officer was to the tune of Rs.26,05,634/- being interest in respect of properties at Saket and Gurgaon. When the matter came in appeal before the Ld. CIT (A), the Ld. CIT (A) deleted the disallowance to the tune of Rs.16,21,755/- in respect of the Saket Property. However, with respect to the interest disallowance pertaining to the Gurgaon property, the Assessing Officer was directed to re-calculate the disallowance by restricting it to interest portion related to Rs.68.00 lacs. It has been brought to our notice that in Assessment Years 2008-09 and 2009-10, the issue was restored to the file of the Assessing Officer and the Ld. CIT (A) respectively with the direction to re-compute the interest attributable to Rs.68.00 lacs. We find that a similar direction has been given by the Ld. CIT (A) in this year also wherein the Ld. CIT (A) has directed the Assessing Officer

to re-compute the interest attributable to Rs.68.00 lacs. Thus, there is no error in the finding of the Ld. CIT (A). In fact this is the relief which the assessee has also prayed for in its Ground No.1 and has also argued before us. Therefore, we uphold the finding of the Ld. CIT (A) in giving such direction to the Assessing Officer.

5.1 With respect to the disallowance made out of security charges, the Ld. Authorized Representative has stated that he is willing to establish with proof before the Assessing Officer that the security charges were paid for different premises utilized by assessee for business purposes. Accordingly, this issue is restored to the file of the Assessing Officer with the direction to re-examine this issue afresh after giving proper opportunity to the assessee to present his case.

5.2 In respect of Ground No.3, it is the assessee's contention that he has consistently being submitting before the Lower Authorities that the property at Grand Mall, Gurgaon was lying vacant during the entire Assessment Year and, therefore, no notional rent can be brought to tax on such vacant premises. A perusal of the assessment order shows that this plea of the

assessee has not been considered while making the addition on account of notional rent. We also note that the Ld. CIT (A) has also not considered this stand of the assessee while upholding the disallowance. Both the Lower Authorities have placed reliance on assessee's communication dated 04.03.2013 wherein the assessee is stated to have submitted that this property was let out. Thus, to our mind, factual verification needs to be carried out on the issue. Therefore, we deem it appropriate to restore this issue to the file of Assessing Officer to decide the issue as per law after recording a clear cut finding as to whether at any point of time either during earlier Assessment Years or during the year under consideration, the property was let out or not. While adjudicating the issue, the Assessing Officer is advised to consider ratio of order of the Tribunal in the case of Sh. Anil Kumar Gupta in ITA 5911/Del/2014.

5.3 Since, we have restored issues raised in Ground nos. 1-3 before us to the file of Assessing Officer for fresh consideration, ground No.4 of the assessee's appeal becomes *in fructuous* and dismissed as such.

5.4 Before parting, we would reiterate that the Assessing Officer shall adjudicate all the issues being restored to him after giving adequate opportunity to the assessee to present its case.

6.0 In the final result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced on 30/09/2020.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

Dated: 30/09/2020

PK/Ps

Copy forwarded to:

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

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI