

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. AMIT SHUKLA, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.3644/Del/2016
Assessment Year: 2011-12

V3S Infratech Ltd. A-20, Naraina Industrial Area, Phase-I, Naraina, New Delhi -110028 PAN No. AABCG9474A	Vs	ACIT Central Circle -32 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Sanjay Kumar, CA
Respondent by	Sh. Mahesh Thakur, Sr. DR

Date of hearing:	08/07/2021
Date of Pronouncement:	08/07/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-30, New Delhi dated 28.03.2016 pertaining to A.Y. 2011-12.

2. The grievance of the assessee read as under :-

“1. That the “CIT(A)” has erred in law and on facts in holding that there is no provision under the Act, where claim of unrealized rent can be allowed as deduction in the A.Y.2011-12.”

3. Briefly stated that the facts of the case are that during the course of scrutiny assessment proceedings the AO noticed that as per computation of income against income from house property the assessee claimed Rs.1,71,51,481/- as deduction against unrealized rent. The assessee was asked to explain as to why disallowance should not be made against income from House property as it pertains to earlier years.

4. Vide letter dated 07.01.2014 assessee explained the provisions relating to the claim of unrealized rent as deduction. The contention of the assessee did not find favour with the AO who disallowed the claim of deduction of unrealized rent and made addition of Rs.17151481/-.

5. Assessee carried the matter before the CIT(A) but without any success.

6. Before us the counsel for the assessee referring to the provisions of section 23 stated that since the rents were included

in the taxable income in earlier assessment years and since during the year under consideration the tenants vacated the property without paying the rent, therefore, the assessee has rightly claimed the deduction of unreliazed rent. The counsel drew our attention to the relevant documentary evidences in the paper book.

7. Per contra the DR strongly supported the findings of the AO.

8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee has included the annual let out value of the let out property in earlier assessment years i.e. year ending 31.03.2007, 31.03.2008, 31.03.2009 and 31.03.2010. The details can be understood from the following chart :-

V3S Infratech Limited

Assessment Year : 2007-08

Accounting Year Ending: 31.03.2007

Deatil of Rent Received for the year ending 31.03.2007

SI. NO.	PLOT NO. (LAXMI NAGAR)	UNIT NO.	NAME	RENT P.M	PERIOD		AMOUNT (Rs.)
1	10	Multiplex	Fun Cinema	1000807	2 month	2001613	20,01,613
2	10	Kiosk	Hot & Juice	25000	7 month	175000	1,75,000
3	10	G-11	KFC	365000	5 month	1825000	18,25,000
4	10	Kiosk	King Kulfi	14400 18000	1month month	6 14400 108000	1,22,400
5	10	Kiosk	Kwality Waffle	24500	1 month	24500	24,500
6	10	Food Court	Mirchies	97500 225000	1month month	4 97500 900000	9,97,500
7	10	F-103	Moti Mahal	140000	6 mointh	840000	8,40,000
8	10	F-102	NJP	150000	6 mointh	900000	9,00,000
9	10	G-46	Pizza Hut	185000	4 mointh	740000	7,40,000
10	10	G-9 & 10	Yu-China	271000	6 month	1626000	16,26,000
Rent received (as shown in P & L Account) Rs.							92,52,013

V3S Infratech Limited
Assessment Year : 2008-09
Accounting Year Ending: 31.03.2008

Detail of Rent Received for the year ending 31.03.2008

Sl. NO.	PLOT NO. (LAXMI NAGAR)	UNIT NO.	NAME	RENT P.M	PERIOD		AMOUNT
1	10	G-11	KFC	365000	12 month	4380000	43,80,000
2	10	G-14	Kotak Mahindra Bank	35000 50000	1 month & 4 month	153094	1,53,094
3	10	Local Court	Mirchies	225000	12 month	2700000	27,00,000
4	10	F-103	Moti Mahal	140000 150000	11 month 1 month	1540000 150000	16,90,000
5	10	F-102	NJP	150000	12 month	1800000	18,00,000
6	10	G-16	Pizza Hut	185000	12 month	2220000	22,20,000
7	10	G-9 & 10	Yo-China	271000	12 month	3252000	32,52,000
8	12	G-131 & 132	Action Beon	545968	1 month	545968	5,45,968
9	12	G-79	Archies	188800	6 month	1132800	11,32,800
10	12	G-2,3,95 & 96	Black Berry	320606	1 month	320606	3,20,606
11	12	F-37-33	Bombay Dying	201400	2 month	402800	4,02,800
12	12	G-117-118	Bosini	319200	1 month	319200	3,19,200
13	12	G-34-35	Caiman Shoes	185535 371070	1 month 3 month	185535 1113210	12,98,745
14	12	F-91-91	Catmoss	156666 235000	1 month 4 month	156666 940000	10,96,666
15	12	G-120-121-122	FI	383050	2 month	766100	7,66,100
16	12	Entertainment Zone	Funcity	355600 240000	1 month 6 month	355600 1440000	17,95,600
17	12	F-81 & S-60-61	Home Solutions	466185 2797115	1 month 6 month	466185 16782690	172,48,875
18	12	F-29	Jean Paul Jean	40788	1 month	40788	40,788
19	12	F-53-51	Jockey	62775 125550	1 month 1 month	62775 125550	1,88,325
20	12	F-101-102	Johan Player	118455 236910	1 month 3 month	118455 710730	8,29,185
21	12	S-106	Jumbo Ele	303940	1 month	303940	3,03,940
22	12	F-18-19-20	Koutons	236919 37120	1 month 1 month	236919 37120	2,74,039
23	12	F-73-74	Lee Cooper	270000	2 month	540000	5,40,000
24	12	F-52	Leemasole	51680 103360	1 month 1 month	51680 103360	1,55,040
25	12	F-48-49	Levis Signature	80195	1 month	80195	80,195

Detail of Rent Received for the year ending 31.03.2008

Sl. NO.	PLOT NO. (LAXMI NAGAR)	UNIT NO.	NAME	RENT P.M	PERIOD		AMOUNT
26	12	G-01,92,93,94	Levi Strauss	661107 88245	1 month 6 month	661107 529470	11,90,577
27	12	F-71/1	Life Style	1192013 1375400	1 month 6 month	1192013 8252400	94,44,113
28	12	S-114-115	Looks Salon	280800 76800 63600	2 month 1 month 1 month	561600 76800 63600	7,04,000
29	12	G-116	Nakshatra	197224	1 month	197224	1,97,224
30	12	F-46	Numero uno	48750	1 month	48750	48,750
31	12	F-39	Nzyme	50063 79587	1 month 1 month	50063 79587	1,29,650
32	12	F-47	Octave	44221	1 month	44221	44,221
33	12	G-81,82,87 & 88	Park Avenue	310104	1 month	310104	3,10,104
34	12	F-75 & 76	Parx	270000	1 month	270000	2,70,000
35	12	G-134	Penny Lane	225165	1 month	225165	2,25,165
36	12	F-40	Pepe Jeans	202599	1 month	202599	2,02,599
37	12	Food Court	Polynation	112000 762000	1 month 6 month	112000 4572000	46,84,000
38	12	G-26-27	Reebok	265785 211265	1 month 2 month	265785 422530	6,88,315
39	12	F-12 & S-1 & S-12	Relaince Retail	2166578	8 month	17332624	173,32,624
40	12	F 77 78	Shiva Out Fit	104040	1 month	104040	1,04,040
41	12	G-137	Spykar Jeans	225000	2 month	450000	4,50,000
42	12	G-73	Standard Max	1587600 1070464	2 month 2 month	3175200 2140928	53,16,128
43	12	G-4-5,108-109	Store 99	463741 368400	1 month 4 month	463741 1473600	19,37,341
44	12	F-68,69 & 70	Time Watch	123580	1 month	123580	1,23,580
45	12	G-33	Tippy	209520	1 month	209520	2,09,520
46	12	F-92	Tycon	134550	1 month	134550	1,34,550
47	12	G-47,49,50,51	Straps	212676	1 month	212676	2,12,676
48	12	G-77	Unitstyle	217350 159390	1 month 1 month	217350 159390	3,76,740
49	12	F-94	VIP	135022 107325	1 month 2 month	135022 214650	3,49,672
50	12	Car Parking	Endless Maint.	115500	6 month	693000	6,93,000
Rent received (as shown in P & L Account) Rs.							889,10,855

V3S Infratech Limited
Assessment Year : 2009-10
Accounting Year Ending : 31.03.2009

Detail of Rent Received for the year ending 31.03.2009

Sl. NO.	PLOT NO. (LAXMI NAGAR)	UNIT NO.	NAME	RENT P.M	PERIOD	AMOUNT	
1	12	Food	Chocolate Founttain	35000 105000	3 month & 1 month	105000 103000	2,08,000
2	12	G-100,101& 105	Fast Trex	368550	4 month	1474200	14,74,200
3	12	G-80	FCM Travels	195075 74925	2 month 2 month	390150 149850	5,40,000
4	12	Entertainment Zone	Funcity	144000 71856 27199	9 month 3 month 3 month	820400 215568 81597	10,35,968
5	12	Kiosk	Gagan Enterprises	26700 95197	1 month 1 month	26700 95197	2,03,494
6	12	F-52	Leemasole	103360	1 month	103360	1,03,360
7	12	G-92	Levis Struss	49950	2 month	99900	99,900
8	12	F-71/1	Lifestyle	1375400 748475	3 month 2 month	4126200 1496950	56,23,150
9	12	S-116	Loirel	63600	2 month	127200	1,27,200
10	12	Kiosk	Mark & Moddy	20000	4 month	80000	80,000
11	12	Kiosk	Midisch Biju	25000 175000	4 month 1 month	100000 175000	2,75,000
12	12	Kiosk	MX Corn	17000	12 month	204000	2,04,000
13	12	Food Court	Polynation	457200 228144	9 month & 3 month	4002800 684432	46,87,232
14	12	S-07	Rellance Retail	202306 1108485	5 month 6 month	1011530 6650910	76,62,440
15	12	Kiosk	S.R.Foods	13393 25000	1 month 1 month	13393 25000	40,193
16	12	G-108-109	Store 99	276300 184200	1 month 2 month	276300 368400	6,44,700
17	12	Kiosk	Tie Bar	26613 33000	1 month & 2 month	26613 23387	50,000
18	12	Kiosk	Virgin Mobile	20645 32000	1 month 5 month	20645 160000	1,80,645
19	12	G-137	Spyler Jeans	225000	1 month	225000	2,25,000
20	10 & 12	Car Parking	Endless Maint..services	133940	11 month	1473342	1473342
21	10 & 12	Signage	Endless Maint..services	56900	7 month	398300	398300
22	10	G-11	KFC	365000	12 month	2732500	27,37,500
23	10	Kiosk	ASA Enterprises	25000 35000	8 month 4 month	200000 140000	3,40,000
24	10	F-104	Chatneez	83667 251000	1 month 6 month	83667 1506000	15,89,667
25	10	Kiosk	Cricket Zone	200000	1 month	200000	2,00,000
26	10	Kiosk	King Kulfi	18000	12 month	180000	1,80,000
27	10	Food Court	Mirchies	225000	12 month	2700000	27,00,000

Detail of Rent Received for the year ending 31.03.2009							
NO.	PLOT NO. (I AXMI NAGAR)	UNIT NO.	NAME	RENT P.M	PERIOD		AMOUNT
38	10	F-103	Motr Mahal	150000 110000	9 month & 1 month	1350000 68430	14,18,430
39	10	F-102	NJP	150000	11 month	1248868	12,48,868
40	10	G-16	Pizza Hut	185000	12 month	2220000	22,20,000
41	10	G-9 & 10	Yo-China	271000	12 month	3252000	32,52,000
42	10	Kiosk	MX Cron	7000	4 month	28000	28,000
33	10	G-12 & G-12A	Red Cap	60000 75000 62903 50323	8 month 3 month 1 month 1 month	480000 225000 62903 50323	8,18,226
34	NDM Plot No.B-2,3,4	B-207		2122785 707595	1 month 4 month	4266531	34,79,419
35	NDM Plot No.D-1,2,3	D-207		560828 186943 75116 225347	4 month 4 month 3 month 3 month	3205839	37,92,473
36	NDM Plot No.D-1,2,3	D-408-409		428890	3 month	1286670	12,86,670
Rent received (as shown in P & L Account) Rs.							506,27,377

V3S Infratech Limited
Assessment Year : 2010-11
Accounting Year Ending: 31.03.2010

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Detail of Rent Received for the year ending 31.03.2010							
Sl. NO.	PLOT NO. (LAXMI NAGAR)	UNIT NO.	NAME	RENT P.M	PERIOD		AMOUNT
1	12	Food	Afsana	7896 20399 22665	1 month 2 month 5 month	7896 40798 113325	1,62,019
2	12	Food	Alex IL Sarto	20000	12 month	240000	2,40,000
3	12	Food	Chocolate Founttain	21360 24000	3 month 9 month	259911	2,59,911
4	12	Kiosk	Cricate Zone		8 month	66330	66,330
5	12	G-24	Fly Machine	52097	1 month	52097	52,097
6	12	Entertainment Zone	Funcity	71856 102580 118183 106518 92602 113435 157289 135519	3 month 1 month 1 month 1 month 1 month 1 month 1 month 3 month	215568 102580 118183 106518 92602 113435 157289 406557	13,12,732
7	12	Koisk	Gagan Enterprises	27199 28558	4 month 8 month	108796 228464	3,37,260
8	12	S-55,56,57	Gold Gym	570000	12 month	6840000	68,40,000
9	12	Koisk	Mark & Moddy	20000	3 month	60000	60,000
10	12	Koisk	Modisch Biju	53090 25000 27500	1 month 3 month 8 month	3,01,250	3,01,250
11	12	Koisk	MX Corn	17000	12 month	204000	2,04,000
12	12	Food Court	Polynation	228144 344158 370959 321657 317840 300108 341620 351314	3 month 1 month 1 month 1 month 1 month 1 month 1 month 3 month	684432 344158 370959 321657 317840 300108 341620 1053942	37,34,716
13	12	Koisk	Rohit Foods	18000	2 month	36000	36,000
14	12	S-41,42,43	Scary House	112667 130000	1 month 7 month	112667 910000	10,22,667
15	12	Koisk	S.R.Foods	18000	10 month	1,69,250	1,69,250
16	12	G-111	Subway	69715 34858	1 month 1 month	69715 34858	1,04,573
17	12	Koisk	Tie Bar	20000	5 month	90,380	90,380
18	12	Koisk	Virgin Mobile (Impact)	32000 25600	3 month 2 month	140800	1,40,800
19	12	Koisk	Virgin Mobile	26000	7 month	182000	1,82,000
20	12	Kiosk	Kulfi Veriats	25000	1 month	25000	25,000
21	12	G-129	Monte Carlo	78494	1 month	78494	78,494
22	10 & 12	Car Parking	Endless Maint..services	140000	12 month	1680000	1680000

Detail of Rent Received for the year ending 31.03.2010						
Sl No.	Plot No. (TAXMI NAGAR)	Unit No.	NAME	RENT P.M	PERIOD	AMOUNT
			Endless Maint. services	151933	12 month	1851730
24	10	G-11	KFC	365000	4 month	1460000
25	10	F-01	ASA Enterprises	35000	3 month	105000
				40000	4 month	360000
26	10	F-02	King Kufi	18000	12 month	1,95,828
27	10	Food Court	Mirchies	225000	8 month	1800000
28	10	G-16	Pizza Hut	185000	3 month	5,55,000
29	10	G-9 & 10	Yo-China	271000	12 month	3252000
30	10	G-12 & G-12A	Red Cap	60000	4 month	240000
31	NDM Plot No.B-2,3,4	B-201,202 & 205		39474	1month	129014
				44770	2 month	1,29,014
32	NDM Plot No.D-1,2,3	D-207		300463	8 month	2403704
Rent received (as shown in P & L Account) Rs.						294,51,755

9. A perusal of the aforementioned charts clearly show that the assessee has shown the annual let out value on accrued basis in the earlier assessment years.

10. The provisions of section 23 (1) r.w. the first explanation which is :-

“For the purposes of clause –b or clause c of this sub section, the amount of actual rent received or receivable by the owner was not included, subject to such rules as may be made in this behalf the amount of rent which the owner cannot realized” and the relevant rule prescribed is rule 4 of the income tax rules 1962 which reads as under :-

“4. For the purposes of the Explanation below subsection (1) of section 23, the amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where –

- (a) the tenancy is bona fide;*
- (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;*
- (c) the defaulting tenant is not in occupation of any other property of the assessee;*
- (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfied the Assessing Officer that legal proceedings would be useless].”*

11. A perusal of the relevant provisions read with aforesaid rules clearly show that the assessee is eligible for the deduction of unrealized rent. We, therefore, direct the AO to allow deduction unrealized rent as claimed by the assessee.

12. In the result, the appeal filed by the assessee is allowed.

13. Decision announced in the open court in the presence of both the representatives on 08.07.2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-08.07.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	08.07.2021
Date on which the typed draft is placed before the dictating Member	08.07.2021
Date on which the typed draft is placed before the Other member	08.07.2021
Date on which the approved draft comes to the Sr.PS/PS	08.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	08.07.2021
Date on which the final order is uploaded on the website of ITAT	08.07.2021
Date on which the file goes to the Bench Clerk	
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	

