

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 5010/DEL/2017 [A.Y 2013-14]

ITA No. 5011/DEL/2017 [A.Y 2014-15]

M/s Ansal Properties & Infrastructure Ltd Vs. The Addl. C.I.T
115, Ansal Bhawan, 16. K.G. Marg Range - 2
New Delhi New Delhi

PAN: AAACA 0006 D

ITA No. 5679/DEL/2017 [A.Y 2013-14]

ITA No. 5680/DEL/2017 [A.Y 2014-15]

The Addl. C.I.T Vs. M/s Ansal Properties & Infrastructure Ltd
Range - 2 115, Ansal Bhawan, 16. K.G. Marg
New Delhi. New Delhi

PAN: AAACA 0006 D

(Applicant)

(Respondent)

Assessee By : Shri Atra Tara Panda, Adv
Department By : Shri Kumar Hrishikesh, CIT- DR

Date of Hearing : 23.02.2022
Date of Pronouncement : 23.02.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by the assessee and the Revenue are preferred against the order of the Id. CIT(A)-1, New Delhi dated 09.06.2017 pertaining to Assessment Year 2013-14 and the Id. CIT(A)-1, New Delhi dated 12.06.2017 pertaining to Assessment Year 2014-15.

2. Since common issues are involved in all these cross appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

ITA No. 5010/DEL/2017 [Assessment Year 2013-14]
Assessee's appeal

3. Ground No. 1 relates to the Annual Letting Value [ALV] of unsold flats shown as stock in trade.

4. This issue is no more integra as the same has been decided against the assessee by the Hon'ble Jurisdictional High Court in the

case of Ansal Housing and Leasing Finance 354 ITR 180. Accordingly, Ground No. 1 and 1.2 stand dismissed.

5. Ground No. 2 of assessee's appeal relates to the non-exclusion of ALV of spaces/flats under litigation/disputes admeasuring 7511 sq. ft in Jyoti Shikar Building.

6. Briefly stated, the facts of the case are that the Assessing Officer has included ALV in respect of 23 spaces/flats measuring 7511 sq ft in Jyot Shikar Building, Janakpuri which was completed 20 years back but was not approved by the Municipal Corporation of Delhi for occupation on the ground that the same were not as per the actual plan.

7. The assessee strongly contended that notional ALV in respect of such spaces needs to be excluded, as the same has not been approved by the MCD for occupation.

8. The Id. CIT(A) dismissed this ground of the assessee following the findings given in earlier assessment years.

9. Before us, the ld. counsel for the assessee prayed for restoration of this grievance to the Assessing Officer as the assessee is now in a position to furnish necessary documentary evidences in support of its claim.

10. We find that since the evidences have not been submitted before the lower authorities, this grievance has been decided against the assessee. In the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The assessee is directed to furnish necessary documentary evidences to justify its claim of non inclusion of ALV of storage spaces of 7511 sq. ft in Jyoti Shikar, Janakpuri. The Assessing Officer is directed to examine the evidences and decide the issue afresh. Ground No. 2 is allowed for statistical purposes.

11. Ground No. 3 relates to the addition notional ALV taking market value which is not comparable to closing stock.

12. This ground was not seriously contested by the ld. counsel for the assessee and the same is accordingly dismissed.

13. In the result, the appeal of the assessee is allowed in part for statistical purposes.

ITA No. 5679/DEL/2017 [Assessment Year 2013-14]
Revenue's appeal

14. Ground No. 1 has three sub grounds:

- | | | |
|------|--|-----------------|
| i) | ALV of properties | Rs. 28,61,269/- |
| ii) | Considered by the Id. CIT(A) as occupied for business purposes | |
| iii) | 5% increase on ALV | Rs. 45,56,555/- |

15. Facts on record show that the Assessing Officer has included ALV of certain properties which have been claimed by the assessee to be occupied for its own business purposes. These properties have been claimed to have been used for storage purposes or for office purposes. The Assessing Officer has not accepted the claim of the assessee and made addition in respect of notional value of the ALV.

16. Before the Id. CIT(A), the assessee contended that it has filed evidences in support of usage of spaces by the assessee alongwith copies of property tax, bills issued by the NDMC, New Delhi.

17. After considering the evidences and after perusing the decision given in Assessment Year 2010-11, 2011-12 and 2012-13, the Id. CIT(A) directed the Assessing Officer to exclude the ALV of the said 12 properties.

18. Before us, the Id. DR strongly supported the findings of the Assessing Officer.

19. Per contra, the Id. counsel for the assessee relied upon the decision of the Id. CIT(A).

20. In our considered opinion, section 22 of the Act itself excludes ALV of such properties of which the assessee is owner and has occupied for the purpose of any business or profession carried on by him. Since the assessee has furnished necessary evidences which have been duly verified by the Id. CIT(A), we decline to interfere with the findings of the Id. CIT(A). Ground No. 1(a) is dismissed.

21. Ground No. 1(b) relates to ALV of properties where rent has been considered as business income.

22. Facts on record show that the assessee has shown certain spaces/units which are given on rent and has been declared under the Schedule Sales and other income of the accounts. Copy of such account was filed before the Assessing Officer. Since no findings have been given in the assessment order by the Assessing Officer, the issue was raised by the assessee before the Id. CIT(A).

23. Before the Id. CIT(A), the assessee furnished assessment orders for Assessment Year 2011-12 and 2012-13 wherein the Assessing Officer has excluded the properties which have been given on rent for calculation of notional rental value. Following the findings given in Assessment Years 2011-12 and 2012-13, the Id. CIT(A) directed to exclude such properties.

24. Since the Id. CIT(A) has followed the findings of the Assessing Officer himself given in Assessment Years 2011-12 and 2012-13, we do not find any merit in this grievance of the Revenue. Ground No. 1(b) is dismissed.

25. Ground No. 1(c) relates to deletion of 5% increase per annum on ALV.

26. We find that the Assessing Officer has increased the notional value by 5% on estimated basis without bringing any evidence on record.

27. Before the Id. CIT(A), the assessee contended that such unsold spaces lying in closing stock are in the areas which are not easily saleable and most of the spaces are basement areas and in distant localities for which the assessee could not find any suitable market.

28. After considering these facts, the Id. CIT(A) directed the Assessing Officer to delete the impugned addition.

29. Before us, the Id. DR strongly supported the findings of the Assessing Officer.

30. Per contra, the Id. counsel for the assessee relied upon the findings of the Id. CIT(A).

31. It is a fact that for increase by 5%, the Assessing Officer has neither brought any comparable case on record nor there is any evidence to justify such increase. In the absence of any evidence, we

decline to interfere with the findings of the ld. CIT(A). Ground No. 1(c) is dismissed.

32. Ground No. 2 relates to the deletion of addition of Rs. 6,46,77,024/- made by the Assessing Officer on account of disallowance u/s 14A r.,w.r 8D of the Rules.

33. A perusal of the assessment order shows that the Assessing Officer has made disallowance u/s 14A r.w.r 8D on a dividend income of Rs. 10,200/-. Disallowance has been computed at Rs. 6,46,77,024/.

34. Before the ld. CIT(A), it was strongly contended that the assessee has sufficient own funds to make investment.

35. The ld. CIT(A) was convinced after verification and deleted the disallowance.

36. Before us, the ld. DR strongly supported the findings of the ld. CIT(A).

37. On the other hand, the ld. counsel for the assessee relied upon the orders of the ld. CIT(A).

38. The Hon'ble Supreme Court in the case of South India Bank Ltd 130 Taxmann.com 178 has held that where the assessee has sufficient own funds, it will be presumed that the investments are made from own funds available with the assessee.

39. As the assessee has own sufficient own funds, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 2 is accordingly dismissed.

40. Ground No. 3 relates to allowing claim of the assessee which was claimed for the first time before the ld. CIT(A).

41. Facts on record show that the assessee has claimed deduction of Rs. 5,16,000/- being advance lease rent money. This claim of the assessee was rejected by the Assessing Officer on the ground that since it was not claimed in the original return of income, the Assessing Officer is not empowered to reduce the returned income. The

Assessing Officer also did not entertain the claim of the assessee stating that the assessee has not filed any revised return of income.

42. Before the ld. CIT(A), it was claimed that the assessee has made lease payment to M/s Suzlon Gujarat Wind Park Ltd for a period of 20 years and the assessee has been given land on sub lease which Suzlon Gujarat Wind Park Ltd has taken from the Government of Gujarat for its development of Wind Farm and installation of wind turbine generators.

43. In support of its claim, strong reliance was placed on the decision of the Hon'ble Gujarat High Court in the case of Sun Pharmaceutical Industries Limited 329 ITR 479.

44. After considering the facts and submissions, the ld. CIT(A), following the earlier years findings, allowed the claim of deduction.

45. The ld. DR strongly contended that this claim was made for the first time before the ld. CIT(A) and without giving any opportunity to the Assessing Officer, the ld. CIT(A) has deleted the disallowance.

46. Per contra, the ld. counsel for the assessee strongly relied upon the findings of the ld. CIT(A).

47. We have carefully perused the orders of the authorities below. There is no dispute that the claim was made for the first time before the ld. CIT(A). It is also not in dispute that neither the ld. CIT(A) called for any remand report nor he has given any opportunity to the Assessing Officer to examine the claim as per the evidences furnished before him. Therefore, in the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The assessee is directed to furnish necessary evidence in support of its claim and the Assessing Officer is directed to examine the same and decide the issue afresh. Ground No. 3 is allowed for statistical purposes.

48. In the result, the appeal of the Revenue is allowed in part for statistical purposes.

ITA No. 5011/DEL/2017 [Assessment Year 2014-15]
Assessee's appeal

49. Ground No. 1 alongwith its sub-grounds is identical to Ground No. 1 with sub-ground No. 1 in ITA No. ITA No. 5010/DEL/2017 of

assessee's appeal. For the reasons given therein, this ground is dismissed.

50. Ground No. 2 is identical to Ground No. 2 in ITA No. 5010/DEL/2017 of assessee's appeal. For the reasons given therein, this ground is allowed for statistical purposes.

51. Ground No. 3 is same as Ground No. 3 in ITA No. 5010/DEL/2017 of assessee's appeal. For the reasons given therein, this ground is allowed for statistical purposes.

52. In the result, the appeal of the assessee is allowed in part for statistical purposes.

ITA No. 5680/DEL/2017 [Assessment Year 2014-15]
Revenue's appeal

53. Ground No. 1 alongwith its sub-grounds is identical to Ground No. 1 with sub-ground No. 1 in ITA No. 5679/DEL/2017 of Revenue's appeal. For the reasons given therein, this ground is dismissed.

54. Ground No. 3 is identical to Ground No. 2 in ITA No. 5679/DEL/2017 [supra]. For the reasons given therein, this ground is allowed for statistical purposes.

55. Ground No. 4 relates to deletion of disallowance of Rs. 26,76,056/- made by the Assessing Officer on account of employee's contribution to PF.

56. During the course of scrutiny assessment proceedings, the Assessing Officer found that the employee's contribution of Rs. 26,76,056/- which was supposed to be deposited on 15.11.2013 has actually be deposited on 23.11.2013. The Assessing Officer, accordingly, made disallowance.

57. Before the ld. CIT(A), it was strongly contended that the amount has been deposited before filing return of income and, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Alome Extrusions 319 ITR 366 squarely apply.

58. The ld. CIT(A) was convinced with the contention of the assessee and deleted the disallowance.

59. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

60. Per contra, the ld. counsel for the assessee relied upon the decision of the ld. CIT(A).

61. We have carefully perused the orders of the authorities below. There is no dispute that there was a delay in depositing the employee's PF. It is also not in dispute that the same has been deposited before filing return of income. The Hon'ble High Court of Delhi in the case of AMIL Ltd 321 ITR 508 has held that if the employee's contribution is deposited before filing return of income, no disallowance could be made. Respectfully following the decision of the Hon'ble Jurisdictional High Court of Delhi [supra], we decline to the interfere with the findings of the ld. CIT(A). Ground No. 4 is dismissed.

62. Ground No. 5 relates to the claim of lease rent of Rs. 5.16 lakhs.

63. An identical issue has been considered by us in ITA No. 5679/DEL/2017 vide Ground No. 3. For our detailed reasons given therein, this ground is allowed for statistical purposes.

64. In the result, the appeal of the Revenue is allowed in part for statistical purposes.

65. To sum up:

- (i) Assessee's appeals in ITA No. 5010/DEL/2017 for A.Y 2013-14 and ITA No. 5011/DEL/2017 for A.Y 2014-15 are allowed in part for statistical purposes.
- (ii) Revenue's appeals in ITA No. 5679/DEL/2017 for [A.Y 2013-14 are partly allowed for statistical purposes.

The order is pronounced in the open court on 23.02.2022.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 23rd February, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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