

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 743/MUM/2021
Assessment Year: 2015-16

Pegasus Properties Private
Limited,
2413 1st floor, Kumar Capital, East
Street, Camp,
Pune-411 001.
PAN No. AAACP 1420 E
Appellant

Deputy Commissioner of Income
Tax Central Circle-2(3),
8th floor, Old CGO Annexe Building,
M.K. Road, Marine Lines,
Mumbai-400020.

Respondent

Assessee by : Mr. Nikhil Tiwari, AR
Revenue by : Mr. C.T. Mathews, DR

Date of Hearing : 04/04/2022
Date of pronouncement : 04/04/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 16.03.2021 passed by the Ld. Commissioner of Income Tax (Appeals)-48, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2015-16 raising following grounds :

"General:

1. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the learned AO to the extent of additions made of Rs1,66,26,648 to the total income of the Appellant;*

Addition on account of deemed rental income of Rs 92,09,165 on unsold flats/units held by the Appellant as stock in trade

2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the learned AO in making notional addition to the income of the Appellant under the head Income from House Property (IFHP) of ₹92,09,165 under section 23(4) of the Act, on account of deemed rental income on unsold flats held as stock in trade;*
3. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding that, deemed rental income would be chargeable to tax as IFHP (irrespective of the nature of business of the Appellant), on the basis of ownership, even if no rental income is earned on the same;*
4. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has failed to appreciate that, the unsold flats which are held as inventory in the business of construction, would amount to flats occupied for the purpose of Appellant's business and therefore by virtue of exemption given in section 22 of the Act, annual value of such flats cannot be brought to tax under the head IFHP;*
5. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not appreciating that, income if any, on account of sale of stock in trade or exploitation of stock in trade would always resemble to and chargeable to tax under the head income from Business and Profession (IFBP), and thereby notional income cannot be charged on the same, as there is no concept of notional income in IFBP;*
6. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the learned A in bringing*

notional rent on stock-in-trade under IFHP, without being there any corresponding section and legislative intention to tax the same as income from such sources during the year under appeal;

7. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the learned AO of not taking the assessable value (i.e. rateable value) as per Municipal Authority for the purpose of computing deemed notional rent as per section 23 of the Act;*
8. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not following the decision of Hon'ble Tribunal in assessee's own case against the 143(3) proceedings for AY 2013-14 and AY 2014-15 and incorrectly relying on the decision of Hon'ble Bombay High Court in case of Mangla Homes P Ltd (325 ITR 281) without appreciating the fact that in the case of said assessee, it was in the business of letting out of house property and therefore income earned was taxed as IFHP, whereas the assessee is in the business of builders and developers of residential property and income earned is taxable as IFBP;*
9. **Without prejudice to the above**, *erred in upholding the action of the learned AO of considering the fair market rent at ₹12 per square feet as deemed rent from such house property without bringing any cogent material on record;*
10. **Without prejudice to the above**, *erred in upholding the action of the learned AO of not granting vacancy allowance with respect to the unsold stock in trade, as the entire stock in trade were vacant during the year under appeal;*
11. *Without prejudice to the above, erred in not appreciating that, the entire stock in trade was not in habitable condition, and hence, the very existence of property which could be given on rent is not present, and therefore, no addition on account of deemed rental income should be made;*
12. *Without prejudice to the above, erred in making notional addition of rental income for one month without appreciating the fact that*

completion certificate was obtained in between the month and the flat cannot be let out for the part of the month of its immediate completion.

Deduction under section 80G of R 31,00,000 not granted in respect of eligible donations of ₹62,00,000 made from the SR expenses

13. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not allowing deduction under section 80G of the act on eligible donations made out of the CSR expenses debited to the Profit and Loss account.

Ad-hoc disallowance of advertisement and sales promotion expenses amounting to ₹9,71,368

14. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of learned AO of disallowing 2% of the total advertisement and sales promotion expenses debited Profit and Loss account which comes to ₹9,71,368 holding that, the same has not been fully substantiated through supporting;
15. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of learned AO of making Ad-hoc disallowance without appreciating that books of accounts are audited and accepted without any variation and hence, adjustment is not sustainable in the eyes of law.

Addition of R 2,46,115 under section 69C of the Act

16. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in law in upholding the action of the learned AO in disallowing a sum of ₹2,46,115 on account of alleged unexplained expenditure (i.e. difference in cash as per books vis-à-vis physical cash) u/s. 69C of the Act.

Initiation of penalty under section 271(1)(c) of the Act

17. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the initiation of penalty proceedings on the above u/s 271(1) (c).*

Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted."

2. At the outset, the Ld. counsel of the assessee submitted that assessee had e-filed its appeal on 07.05.2021 which was instituted and registered as ITA No. 743/M/2021 by the ITAT. The assessee had also filed a physical copy of the said appeal on 27.05.2021, which was also instituted and registered as ITA No. 943/M/2021. (i.e. another number)

3. Before us, the Ld. counsel of the assessee has submitted that appeal against the physical copy i.e. ITA No. 943/M/2021 has been heard by the Bench on 23.02.2022 and order is awaited and therefore, he sought to treat this appeal as infructuous. The action of the Registry of instituting two appeals against the same impugned order is not correct.

3.1 In view of the submission of the Ld. counsel of the assessee that appeal filed physically has already been heard by the Tribunal, therefore, the appeal filed electronically is being treated as infructuous and accordingly dismissed.

4. In the result, this appeal is dismissed as infructuous.

Order pronounced in the open Court on 04/04/2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: **04/04/2022**

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai