

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2797/Mum/2016

(A.Y: 2007-08)

The Joint Lessees of Industrial Estate, 1 st Floor, Estate Bldg Lalbaug Industrial Estate, Dr B.A. Road, Mumbai – 400012	Vs.	ITO – 20(2)(1), Piramal Chambers, II Floor, Lalbaug, Mumbai – 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAJ7202Q		
Appellant	..	Respondent

ITA No. 3203/Mum/2016

(A.Y: 2007-08)

ITO – 20(2)(1) Piramal Chambers, II Floor, Lalbaug, Mumbai – 400012	Vs.	The Joint Lessees of Industrial Estate, 1 st Floor, Estate Bldg Lalbaug Industrial Estate, Dr B.A. Road, Mumbai – 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAJ7202Q		
Appellant	..	Respondent

Appellant /Respondent by :	Shri G.P Mehta.AR
Respondent/Appellant by :	Shri T. Shankar.DR

Date of Hearing	11.02.2022
Date of Pronouncement	09.05.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The cross appeal is filed by the assessee and revenue against the order of the CIT(A)-32, Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act.

In ITA No.2797/Mum/2016 the assessee has challenged the validity of reassessment proceedings, being the legal & jurisdictional issue. The assessee has raised the following grounds of appeal.

- 1. The orders passed by the learned lower authorities are bad in law and bad in facts.*
- 2. The notice issued u/s 148 of the I.T.Act,1961, by the learned Assessing Officer and upheld by the learned CIT(A) is ab-initio void, inasmuch as, no material having live link with the formation of belief, was available on record, prior to issue of impugned notice. Consequently the assessment order passed in pursuance of aforesaid notice is also void ab-initio.*
- 3. The learned lower authorities have grossly erred in construing the general observation of the Honble Income Tax Appellate Tribunal in another assessee's case as findings or directions, though there was neither a finding nor a direction given by the Honble Tribunal in the appellate order of another assessee.*
- 4. The assessment order passed by the learned Assessing Officer by recourse to sec 147 r.w.s 150 of the I.T.Act,1961 and upheld by the learned CIT(A) is ab-initio void, inasmuch as, no opportunity of being heard, in terms of Explanation 3 below section 153 of*

the I.T.Act,1961 was granted.

5. The notice issued under section 148 is void ab-initio, inasmuch as no satisfaction of the Jt CIT in terms of sec 151(2) of the I.T.Act,1961, was obtained prior to issue of notice u/s 148 of the I. T. Act, 1961.

6. The Learned lower authorities have grossly erred in holding that the status of the appellant was that of an " Association of Persons instead of Joint Owners' of separately and distinctly identifiable properties, and have further erred in framing the impugned assessment order.

7. The learned lower authorities have grossly erred in making! upholding an addition of Rs 13,39,433/- in the hands of the appellant, inasmuch as , the appellant was neither a legal owner nor a beneficial owner of the leased properties. The reasons assigned for the impugned additions are wrong and contrary to accepted factual position.

8. The learned lower authorities have grossly erred in making/ upholding an addition of Rs 25.00.015/- in the hands of the appellant even though the learned CIT(A), has categorically held that the appellant was neither a legal owner nor a beneficial owner of the leasehold property. Thus any income accruing or arising in relation to said properties could not have been taxed in the hands of the appellant.

2. The brief facts of the case are that, the assessee is assessed as AOP. The Assessing officer(A.O) has received the information from ITO-6(1)(4), Mumbai, that the Hon'ble ITAT in the case of M/s Industrial Estate Pvt Ltd has passed the order for A.Y 2005-06,

2006-07 & 2007-08 and upheld the CIT(A) decision and dismissed the revenue appeal. The A.O. is of the opinion that, as per the observations of the ITAT, the addition in the hands of M/s Industrial Estate Pvt Ltd is deleted and is taxable in the hands of joint lessees of Industrial Estates(assessee). Whereas, in the assessment of Industrial Estate Pvt Ltd for the A.Y 2007-08, the A.O. has held the following incomes belong to the assessee and not to the joint lessees as under:

1.	<i>Income from house property as reduced by the amount of Rs. 36,733/- shown by one entity</i>	<i>Rs. 2,82,966/- After allowing only deduction u/s 24(1)(a) as details of Municipal Taxes paid were not furnished</i>
2	<i>STCG from receipt of transfer fees compensation of Tenancy Rights Rs. 13,30,000/- as reduced by Rs. 1,10,789/- and Rs. 1,66,250/- declared by two entities.</i>	<i>Rs. 10,52,961/-</i>
3	<i>U/s. 50C Rs. 2,91,20,000/- being the difference of the market value of Rs. 5,63,20,000 and sale consideration of RS. 2,72,00,000</i>	<i>Rs. 2,91,20,000/-</i>
4	<i>LTCG on sale of properties as disclosed by the amounts disclosed by 3 entities</i>	<i>Rs. 2,23,28,938/-</i>
5.	<i>Investment of Rs. 86 lakhs in mutual funds not proved to be reflected in the returns of the Joint</i>	<i>Rs. 86,00,000</i>

	<i>Lessees and added u/s 69</i>	
6.	<i>Income from other sources not proved to be transferred to the joint lessees or individuals thereof</i>	20,25,422/-
	<i>Total</i>	Rs. 6,34,10,287/-

3. The Hon'ble ITAT has deleted the additions in the hands of the company treating the same as income of the joint lessee of Industrial Estate(assessee) who have filed the return of income for the A.Y 2008-09 and 2009-10 in the status of AOP. The A.O. find that the assessee for the A.Y 2007-08 has not filed the return of income and the A.O. has reason to believe that there is a income escaped the assessment and issued the notice u/s 148 of the Act on 27.03.2014 after obtaining the sanction u/s 151 of the Act. Subsequently the notice u/s 143(2) and 142(1) of the Act are issued. In compliance to notice, the assessee has filed the return of income on 02.06.2014. Subsequently, the Ld. AR of the assessee appeared from time to time and submitted the details as called for and the case was discussed. The assessee has filed the objections on the initiation of reassessment proceedings vide letter dated 13.02.2015 and the

reply to the objections was provided to the assessee on 18.02.2015.

4. The assessee is a AOP and having income from house property, capital gains and other sources. The assessee has submitted the details by letter dated 10.10.2014 referred at Para 4 of the order read as under:

4. In response to the details called for, assessee's representative has vide letter dated 10.10.2014 received in this office on 29.12.2014, furnished the following details which is reproduced as under;

(a) The assessee joint Lessees of Industrial Estates, have Rent Income as the main source of income. Apart from this they have income from Capital Gains as well as Income from Other Sources. The assessee's are lease holders of a property at Lalbaug, Mumbai. The brief facts of the case are that the trustees of the N.M. Petit Charity Fund under a Head-Lease agreement dated 14.04.1950, leased out a piece of land admeasuring about 1.02,242 Sq.yards situated at Lalbaug, Parel, Mumbai, along with various establishments thereon;

(1) The National Electrical Industries Limited

(2) New India Mosaic & Marble Co., Pvt. Ltd.,

(3) The Bombay Silk Mills Ltd.

(4) Shri Chandulal Kothari & Manilal Parekh representing Calico Dyeing & Printing Works.

(5) Shri M.J. Vaidya & Others representing M/s. Anandji Naranji & Co.

(6) Dr. L.C. jariwala

(7) Shri Akalchand G. Shah & Others representing M/s. Sakalchand G. Shah & Company.

All collectively called "The Joint Lessees". The lease was for a period of 99 years w.e.f.03.01.1948 to 02.01.2047 on the basis of Lease rent @ 11,666.67 per month as per "Head Lease Agreement".

Later on parties No.4, 6 & 7 above, terminated themselves from the agreement and assigned their rights in lease to the other Joint Lessees and the party No.(1) merged into Voltas Ltd., Accordingly, the Joint Lessees comprised the following members :

SNo.	Name of the Joint lessees	Share
1	Voltas Ltd	25.00%
2	The New India Mosaic & Marble Co. Pvt Ltd	25.00%
3	The Bombay Silk Mills Ltd.,	16.665%
4	Ashok K Kothari	12.50%
5	Manoj C. Chokshi	12.50%
6	Anandji Narangji & Co.	8.335%

The joint lessees formed a company Industrial Estate Pvt Ltd with the sole purpose of management of the said piece of plots on behalf of the joint lessees.

The business of the said company was to manage and look after exclusively the estate and property and to collect Rent on behalf of the joint Lessees from the tenants of various establishments on the Land. For these services the Company charged service charges to the Joint Lessees.

For the better control & management, the joint Lessees did not have any separate bank account in respect of transactions relating to the said estate property. And

therefore, all the transactions of the Joint Lessees were made by the Company on behalf of the Joint Lessees through the bank account of the said Company, under the said Power of attorney.

Year to Year, the rent collected by the Company on behalf of the joint Lessees and other receipts received on behalf of the Joint Lessees were credited by the company to the ledger account in Company's books of account and all payments made by the Company on behalf of the joint Lessees were debited to the said account. Likewise, the Company made investments on behalf of the said joint Lessees under the Power of Attorney as above out of the funds belonging to the joint lessees.

5. Whereas, the A.O. has considered the facts of rental income from property/other incomes and observed as under:

'During the course of assessment proceedings, the assessee has claimed loss from house property and declared income from transfer of tenancy right & long term capital gains on sale of property and their distribution among the members of the AOP, vide chart reproduced below:

Income from house property as per computation filed on 05.03.2015- Loss Rs. 5,88,542/-, This loss distributed as under:

Sno	Name of the Member	Share	Income/loss	Income declared by the members
1	Voltas Ltd	25%	147135.50	-
2	New India Mosaic & Marble Co. P Ltd	25%	147135.50	75,935.00
3	Bombay Silk Mills	16.665%	98,090.34	47,170.00

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	<i>Ltd</i>			
4	<i>Ashok K. Kothari</i>	12.5%	73,567.75	-
5	<i>Manoj C. Chokshi</i>	12.5%	73,567.75	-
6	<i>Anandji Naranji & Co</i>	8.335	49,045.16	17,711.00
	<i>Income-Loss</i>	100%	5,88,542.00	140,816.00

Short term capital gain from receipt of transfer fees /compensation of tenancy rights Rs. 13,30,000:

<i>Sno</i>	<i>Name of the Member</i>	<i>Share</i>	<i>Income/loss</i>	<i>Income declared by the members</i>
1	<i>Voltas Ltd</i>	25%	332,500.00	266,328.00
2	<i>New India Mosaic & Marble Co. P Ltd</i>	25%	332,500.00	266,328.00
3	<i>Bombay Silk Mills Ltd</i>	16.665%	221,711.00	-
4	<i>Ashok K. Kothari</i>	12.5%	166,250.00	166,250.00
5	<i>Manoj C. Chokshi</i>	12.5%	166,250.00	-
6	<i>Anandji Naranji & Co</i>	8.335	110,789.00	110,789.00
	<i>Income-Loss</i>	100%	13,30,000	875,867.0

Long term capital gain on sale of property as per computation filed on 05.03.2015 Income Rs. 1,16,27,778/-. The total income distributed as under:

<i>Sno</i>	<i>Name of the Member</i>	<i>Share</i>	<i>Income/loss</i>	<i>Income declared by the members</i>
1	<i>Voltas Ltd</i>	25%	29,06,944.5	95,53,824.0
2	<i>New India Mosaic & Marble Co. P Ltd</i>	25%	29,06,944.5	29,06,944.0
3	<i>Bombay Silk Mills Ltd</i>	16.665%	19,37,963.0	-
4	<i>Ashok K. Kothari</i>	12.5%	14,53,472.25	50,36,200.0
5	<i>Manoj C. Chokshi</i>	12.5%	14,53,472.25	-
6	<i>Anandji Naranji</i>	8.335	968,981.50	33,70.638.0

	& Co			
	Income-Loss	100%	1,16,27,778	2,08,67,606

In order to quantify the exact share of income of each joint lessees for income tax purpose, the return of joint lessees was filed for the first time for A.Y 2008-09 NIL income of AOP since the income is distributed among joint lessees accordingly to their respective shares.

6. On the disputed issue (i) with respect to income from house property, the assessee has disclosed the loss from house property of Rs. 5,88,542/- in respect of payment of land revenue tax, property tax and bad debts. Whereas, the assessee has submitted the details of land revenue tax and therefore the A.O has considered the deduction of land revenue tax on the house property income and assessed the income from house property of Rs. 3,22,080/- as against the loss of Rs. 5,88,542/- claimed by the assessee. (ii) The A.O has made an addition of long term capital gains Rs.13,30,000/- from receipt of transfer fees/ compensation of tenancy rights and short term capital gains of Rs.9,433/- under the head income from capital gains.(iii) on applicability of provisions of Sec. 50C of the Act, the A.O. observed that in the assessee's case the market value exceeded the sale consideration. The property value is less than the

stamp duty value of S.R.O disclosed by the assessee and made an addition of differential value of Rs.2,91,20,000/-.(iv) the A.O. observed that the assessee has not offered the long term capital gains on sale of property and made addition of Rs. 4,02,89,600/-.(v) the A.O. find that the assessee has received the consideration towards the improvement and up gradation of amenities along with the other income and is taxed under income from other sources Rs. 25,11,248/-.Finally the A.O. has assessed the total income of Rs.11,34,85,740/- and passed the order 143(3) r.w.s 147 of the Act dated 31.03.2015.

7. Aggrieved by the order, the assessee has filed the appeal before the CIT(A) challenging the validity of reassessment proceedings and treat the assessment as illegal and void and additions made by the A.O. Whereas the CIT(A) has considered the facts of the case referred at page 4 of the CIT(A) order. Further, on the issue of validity of reassessment proceedings, the assessee has filed the submissions, agreements and relied on the judicial decisions. The CIT(A) has dealt on the issue referred at Para 5 page 19 to 21 of the order and also relied on the observations of the

Honble Tribunal in M/s Industrial Estates Pvt Limited and has up held the Validity of reassessment proceedings.

8. Whereas in respect of grounds of appeal no.3,4& 5, the CIT(A) considering the merits of case in respect of income from house property, capital gains, income from other sources has dealt on the facts, provisions and the judicial decisions and granted partial relief and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

9. At the time of hearing, the Ld. AR has submitted that the CIT(A) has erred in confirming the validity of reassessment proceedings. The Ld.AR has restricted his arguments to the extent of validity of reassessment proceedings and emphasized that the A.O. based on the observations of the Honble ITAT in other assessee case and without conducting the independent enquiry of facts / opinion has issued notice and passed the assessee order. The Ld. AR has substantiated the arguments/ submissions with the paper book and judicial decisions and prayed for

allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A) on the validity of re-assessment.

10. We heard the rival submissions and perused the material on record and judicial decisions. The assessee has filed the grounds of appeal on legal issue of validity of assessment u/s 147 of the Act and on the merits of the case. The Ld. AR emphasized that the A.O has issued the notice based on the observations of the Honble ITAT in the case of M/s industrial estates Pvt Ltd and no independent enquiry was conducted for recording the reasons and purely relied on the findings of the other assessing officer. The Ld. AR has demonstrated the reasons recorded for the reopening of assessment at page 9 of the paper book. The Ld. AR submitted that the assessee is an AOP and has filed the return of income for the A.Y 2008-09 and 2009-10 in the status of AOP. Whereas for the A.Y 2007-08, the assessee has not filed the return of income and the A.O. has issued notice u/sec148 of the Act after recording the reasons based on the observations of the Honble Tribunal in ITO Vs. Industrial Estates Pvt Ltd in ITA No.4171,4920&4671/Mum/2009 for A.Y 2005-06,

206-07 & 2007-08. 2006-07 order dated 30-08-2013 at Page 5 Para 13 to 15 which is read as under:

13. We have considered the rival submissions and carefully perused the orders of the lower Authorities and the material evidences brought on record in the form of Paper Book. It is not in dispute that the assessee is managing the said piece of land on behalf of the Joint Lessees. It is also not in dispute that the Joint Lessees came into possession of the said piece of land by virtue of Lease Agreement with the Trustees of the N.M. Petit Charity Fund. It is also not in dispute that the assessee was holding a Power of Attorney for collecting rent on behalf of the Joint Lessees. It is also not in dispute that the assessee was operating the Bank Account by virtue of this Power of Attorney on behalf of the Joint Lessees. For all the services provided by the assessee to the Joint Lessees, the assessee was receiving management charges which have rightly been declared in its return of income. We find force in the contention of the Counsel that the assessee cannot be held responsible for the failure of returning income by the Joint Lessees.

14. However, at the same time we find that in the Assessment Years 2008-09 in the case of the assessee while making the assessment u/s 143(3) of the Act. The AO has made the following observations at Para-4 of fresh order.

“In this case, in the Assessment Years 2005-06, 2006-07 & 2007-08 additions were made in the hands of the

assessee company as the Joint Lessees of Industrial Estates was not filing their Returns of Income for these Assessment Years. However, the Joint Lessees of Industrial Estates has filed its return of income for A.Y.2008-09 and shown the investments and other income in their return. Therefore, no addition on the issues involved in the earlier years is made in the hands of the assessee- company.”

15. A perusal of the above findings made by the AO in assessee's own case clearly show that the liability of filing the return clearly laid upon the Joint Lessees. We also find that the Joint Lessees have filed the return as "Joint Lessees of Industrial Estates" in the status of AOP for Assessment Year 2008-09 and 2009-2010. If the Joint Lessees did not file return for Assessment Year 2005-06, 2006-07 & 2007-08, it was for the Revenue Authorities to explore other possible ways as per the provisions of law to assess the income in the hands of the Joint Lessees. Be that as it may, these incomes cannot be taxed in the hands of the assessee by any stretch of imagination. The CIT(A) has rightly deleted the addition from the hands of the assessee and we do not find any reason to interfere with the finding of the CIT(A). The Order of the CIT(A) for all these three Assessment Years i.e. 2005-06, 2006-07 & 2007-08 are confirmed.

11. The Ld. AR contentions are that the A.O. has issued notice based on the findings of the Hon'ble Tribunal in particular at Para 15 of the order. Further

the time limit for issuing notice u/s 148 of the Act has to be considered before any decision is taken by the A.O. The Ld. AR demonstrated the notice issued u/s 148 of the Act dated 27.03.2014 at page 8 of the paper book served on 16-04-2014 and read the specific Para on reasons recorded placed at page 9 for issuing notice as under:

“The ITAT deleted the additions made in the hands of the company saying they are income of the joint lessees who have filed returns for income for A.Y 2008-09 & 2009-10 in the status AOP.

The assessee has not filed return of income as AOP for A.Y 2007-08. The failure on the part of the assessee has resulted in escapement of income of Rs. 6,34,10,287/- as discussed above. Therefore I have reason to believe that income amounting to Rs. 6,34,10,287/- has escaped income on account of failure of the assessee to file return of income.”

12. The Ld.AR made submissions on the applicability of provisions and the time limit for completion of assessee u/s 153(1) & 153(3) of the Act read with explanation 2(b) of the Act, were any income is

excluded from total income of one person and held to be the income of the other person. The A.O. has considered/formed a belief that the income which is excluded in the hands of M/s Industrial Estates Pvt Ltd has to be taxed as income of the assessee.

13. We on perusal of the notice issued u/s 148 of the Act find that the A.O has recorded the reasons for reopening purely based on the observations of the Tribunal. Where the Honble ITAT has deleted the addition in the hands of the appellant before the Tribunal. Since the assessee has not filed the return of income for the A.Y 2007-08, the A.O has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. The sole crux of the issue was pointed out on the validity of assessment where the notice was issued without independent enquiry of the information or formation of belief available on record. The Ld.AR explained the facts with voluminous information in paper book and relied on the judicial decisions as under:

1. *Rajinder Nath Vs. CIT, 120 ITR 14(SC)*
2. *CIT Vs Homi Mehta & Sons Pvt Ltd 137 ITR 213(Bom).*
3. *Rakesh Dutt Vs. ACIT & Ors, 311 ITR 247 (Bom).*

4. *Lotus Investment Ltd. V GYWagh ACIT &Ors, 288 ITR 459(Bom).*

5. *AB Parikh V. ITO 203 ITR 186 (Guj.)*

14. We considering the facts, information and interpretation on the provisions of law, find reasonableness in the submissions of the Ld.AR duly supported with judicial decisions and provisions of law and the discussions held in the above paragraphs on the facts with respect to issue of notice u/s 148 of the Act and the provisions of Sec. 153(1) and 153(3) of the Act. The Ld.AR has empathetically dealt on each aspect of provisions of Act relating to reassessment and duly supported with the judicial decisions and is appreciated.

15. Whereas in the present case, the A.O. has issued the notice in the year 2014 and the Ld.AR has raised one of the objections that no satisfaction of the Jt.CIT was obtained u/sec151 of the Act before the issue of impugned notice and the prior sanction of appropriate authority. Since the issue pertains to A.Y 2007-08, the revenue has expressed the difficulty in providing the records/material to verify the factual aspects on sanctioning authority. We find that the

assessee has filed the return of income for the A.Y.2007-08 in the status of A.O.P. with taxable income of Rs.Nil in compliance to notice u/sec148 of the Act. The Ld.AR demonstrated that the income is distributed among the six Joint Lessees with the percentages referred in the assessee order and the shares are determinate and known, which is not disputed by the revenue. Further they have offered the share of income of joint lessees in their hands/assessments with the jurisdictional income authorities. We considering the facts and circumstances are of the opinion that the reopening is on the wrong assumption of facts and the information received from another assessing officer would not by itself be the basis to have a belief that the income has escaped assessee . Accordingly, we find the reassessment is bad in law and quash the assessment order passed u/s 143(3) r.w.s 147 of the Act. Since the legal issue is decided in favour of the assessee and again adjudicating on merits becomes academic and are left open and we allow the grounds of appeal in favour of the assessee.

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16. Since the reassessment proceedings are invalid, and the Assessement order is quashed, therefore the appeal of the revenue becomes infructious and is dismissed.

17. In the result, the appeal filed by the revenue is dismissed and the assessee appeal is allowed.

Order pronounced in the open court on 09.05.2022.

Sd/-

(PRAMOD KUMAR)
ACCOUNTANT MEMBER

sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 09.05.2022

KRK, PS

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

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

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai

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