

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PANAJI BENCH, PANAJI**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 75/PAN/2018**

Assessment Year: 2014-15

Asstt. Commissioner of Income Tax, Circle 1(1), Panaji, Goa	Vs.	Prateek Alloys Pvt. Ltd. T-6/7, Sandeep Apartments, Dada Vaidya Road, Panaji, Goa [PAN: AAACP 1598D]
<b>(Appellant)</b>		<b>(Respondent)</b>

**C.O. No. 13/PAN/2018**

(In I.T.A. No. 75/PAN/2018)

Assessment Year: 2014-15

Prateek Alloys Pvt. Ltd. T-6/7, Sandeep Apartments, Dada Vaidya Road, Panaji, Goa [PAN: AAACP 1598D]	Vs.	Asstt. Commissioner of Income Tax, Circle 1(1), Aayakar Bhawan, EDC Complex, Patto Plaza, Panaji, Goa
<b>(Appellant)</b>		<b>(Respondent)</b>

**I.T.A. No. 279/PAN/2019**

Assessment Year: 2015-16

Prateek Alloys Pvt. Ltd. T-6/7, Sandeep Apartments, Dada Vaidya Road, Panaji, Goa [PAN: AAACP 1598D]	Vs.	Asstt. Commissioner of Income Tax, Circle 1(1), Panaji, Goa
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri. Shrinivas Nayak, CA &  
Smt. Girija Agarwal, Director

Respondent by: Sh. Ranjan Kumar, CIT, DR

Date of Hearing: 04.04.2022

Date of Pronouncement: 29.04.2022

### **ORDER**

#### **Per Anikesh Banerjee, JM:**

The instant all three appeals were filed by the Assessee and Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, Panaji [in brevity the CIT(A)], passed u/s 250(6) of the Income Tax Act, 1961 [in brevity the Act], for Assessment Years 2014-15 and 2015-16.

2. All three appeals have common issue. So all three appeals are taken together for sake of brevity.

3. Here, ITA No. 75/PAN/2018 for assessment year 2014-15 was filed by the Revenue related to disallowance of addition of Rs.14 crores and cash sale of Rs. 1,18,66,076/- by the Ld. CIT(A) and the Cross Objection (CO) was filed by the assessee bearing CO No. 13/PAN/2018 for AY 2014-15 related to sustaining disallowance of business expenditure amounting to Rs. 60,7500/-.

4. ITA No. 279/PAN/2019 was filed by the assessee against the order of appeal on the ground of addition of Rs. 14 crores and disallowance of Rs.4 lacs for business expenditure which was rejected by the Ld. CIT(A).

5. Brief fact is that the assessee is a company. A search was conducted u/s 132 of the Income Tax Act, 1961, on M/s Vedarambh Properties LLP (Omkar Group). A subsequent survey proceeding u/s 133A of the Act was carried out on assessee on 03.06.2015. During the assessment year 2015-16, the assessee has entered into Memorandum of Understanding (MOU) with M/s Vedarambh Property LLP dated 16.01.2015 towards liasoning, assisting & negotiating and getting surrendered of all rights so created due to negotiations in the land consisted of clearing the tenants and organizing and ensuring vacant and peaceful possession of the property for Vedarambh Group. As a result, the assessee had received Rs.14 crores, towards the services to Vedarambh Property LLP (Omkar Group). This income has declared in its income for assessment year 2015-16. The copy of the Memorandum of Understanding (MOU) is annexed here:

*“This Memorandum of Understanding-cum-Agreement is made entered into at Mumbai this 16<sup>th</sup> day of January in the year Two Thousand Fifteen;*

***Between***

*Vedarambh Properties LLP, a Limited Liability Partnership incorporated and registered under the provisions of Limited Liability Partnership Act, 2008 and having its registered office at Omkar House, Off Eastern Express Highway, opposite Sion-Chunabhatti signal, Sion (E), Mumbai- 400 002 hereinafter called “the Developer” (which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the First Part;*

***And***

*Prateek Alloya Private Limited PAN no. AAACP 1598D at Plot no. 108, kundaim Industrial Estate Kundaim, Panda, Punji, Goa 403115 hereinafter referred to as "the*

*Claimant" (which expression shall unless it be repugnant to the content or meaning thereof be deemed to mean and include its successors and assigne) of the **Other Part**;*

**Whereas**

- (a) *The Developer is in the field of redevelopment of Slum and Old Buildings in the City of Mumbai and its Suburbs:*
- (b) *The Developer is desirous of implementing Slum Rehabilitation Scheme on all that piece and parcel of land admeasuring 64219.67 square metres or thereabouts bearing C.TS No. 1 (part) of Village Ghatkopar, Taluka Kurta situated at Vikhroli Parksite, Vikhroli (West), Mumbai-400 079 alongwith all the structures standing thereon*  
  
*("said Property");*
- (c) *The Developer has accordingly taken the steps inter alia, negotiations with the Owners, Kabjedars, Imlamalik amongst others;*
- (d) *The Claimant has approached the Developer and claimed that the Claimant has also initiated steps and entered into understanding with the Owners and/or Kabjedar in respect of land encumbered with structures/huts standing on the said property*
- (e) *The Claimant approached the Developer and agreed to surrender and relinquish all the claims/rights as purportedly claimed by them in respect of the said property after series of corresponding/meeting and the Developer with the larger objective agreed to acquire and/or settle all such claims/rights for the consideration and on terms and conditions hereinafter appearing."*

6. For the assessment year 2014-15, the Ld. AO made his observations as follows vide the copy of page 6 of the assessment order:

*“From the above it is clear that the said immovable property which has been transferred/relinquished/surrendered on the date. 16.01.2015 vide MoU-cum Agreement dtd. 16.01.2015, to Vedarambh Properties LLP, Mumbai, was in "possession" of assessee before the said date but was not shown in the balance sheet of the assessee as at 31.3.2014, as it was not recorded in the books of account of the assessee. The assessee could not substantiate the date and value of said property with any kind of documentary evidence, which is necessary in property deals. Therefore, the same is treated as unrecorded investment and the value thereof is deemed to be the income of the assessee at Rs.14,00,00,000. Therefore, the same is being added back to the total income declared by the assessee.*

**ADD : Rs.14,00,00,000/-**

7. This particular addition was rejected by the Ld. CIT(A) as there is no concept of the “deemed to the income”. Against the order of the Ld. CIT(A) the Revenue filed an appeal before us. Observation of the ld. CIT(A) is reproduced as under:

*“3.3 I have gone through the Assessment Order and the submissions made by the AR of the appellant. It is a fact that the AO does not have any evidence in his possession to prove that the rights/title in the property transferred during F.Y. 2014-15 was acquired by the appellant in F.Y. 2013-14. There is every possibility that the appellant acquired the rights/title in the property in F.Y. 2014-15 and sold in the same financial year. In-fact, the appellant in its submission before AO has admitted that the rights/title in the property in question were acquired in F.Y. 2014-15 itself, and in the same year they were transferred. Thus, in absence of any specific document or evidence, the addition towards the expenditure on acquiring rights/title should not have been made in the impugned A.Y. As the appellant has transferred the rights/title in the property during FY. 2014-15, it can be reasonably presumed that appellant acquired the said rights/title in the property in the same F.Y. otherwise, the appellant could not have transferred it. Therefore, drawing a presumption that the appellant would have acquired the rights/title in the property during the P.Y. relevant to the impugned A.Y. was not the correct presumption and hence, the addition made by the AO towards unexplained investment in acquiring the rights/title cannot be sustained. Accordingly, the addition made by the AO of Rs. 14,00,00,000/- is hereby deleted. Ground No. 1,2 and 3 are treated to have been allowed.”*

8. The Ld. DR, vehemently argued and relied on the order of the Ld. AO.
9. Further for the assessment year 2015-16, the assessee declared this 14 crores income in its return, for assessment year 2015-16. In this respect, the Ld. counsel of the assessee filed two paper books which are kept in the record. The copy of the ITR, computation and balance-sheet are filed by the assessee with the profit and loss account. The assessee declared this amount in the head of the other income and no deduction was claimed for Ay 2015-16. The amount was declared as income in the head other income, vide page no. 28 of the paper book related assessment year 2015-16. The copy of the ledger and computation is also annexed in page no. 22 to 25 of the paper book for the assessment year 2015-16.
10. The amount was declared by the AO in its return of immovable property. The Ld. AO further added this amount with the total income of the assessee. The Ld. CIT(A) is uphold the order of the Ld. AO. The Ld. counsel of the assessee filed the appeal before the ITAT.
11. We heard the rival submission and considered the relevant documents which are filed during the hearing. For assessment year 2014-15, the amount was added back by the AO on the basis of the “deemed income” which was deleted by the Ld. CIT(A). We are inclining in the view of the Ld. CIT(A) and the order of the Ld. CIT(A) is upheld and the appeal of the Revenue is dismissed.
12. For the assessment year 2015-16, the assessee already offered tax on income & declared amount of Rs. 14 crores in its profit & loss account in the head of other income. This income was adjusted with its business loss as per the provision of the Act. This amount was already offered for tax during filing of return under the Act.

So, the same income cannot be taxed twice. The addition made for assessment year 2015-16 amount of Rs. 14 crores is deleted.

Accordingly, this ground of appeal of the assessee is allowed.

13. Another issue raised by the Revenue in ITA No. 75/PAN/2018 that the Ld. CIT(A) disallowed the cash sale amount of Rs. 1,18,66,076/- related to sales of Burnt Refractory Powder (BRP). The grievance of the Ld. AO was that this sale was made by cash and the assessee not able to given the satisfied explanation regarding the nature and source of the cash sales of BRP.

14. The Ld. counsel pointed out that this particular sale was declared in the profit and loss account and this sale included in the turnover. Hence, the same amount should not be taxed doubly.

15. We heard the rival submissions and considered the documents available in the record. The particular sale was declared in page no. 36 of the paper book related to assessment year 2014-15. The assessee declared the sale in its profit and loss account. So, the same amount cannot be taxed double.

Accordingly we upheld the order of the Ld. CIT(A).

In this regard this ground of appeal of the Revenue is dismissed.

16. The next issue is related to disallowance of business expenses amount of Rs.6,07,500/- by the Ld. AO for Ay 14-15. The Ld. CIT(A) upheld the order of the Ld. AO and confirmed the disallowance of business expenses amount of Rs. 6,07,500/-.

17. In this regard, the assessee filed CO No. 13/PAN/2018 for Ay 14-15 for further adjudication before us.

18. The same issue is evolved for the assessment year 2015-16. The Ld. AO disallowed the expenses amount of Rs.4 lacs and the same addition was upheld by the Ld. CIT(A). Accordingly, the assessee filed appeal before us bearing ITA No. 279/PAN/2019 for Ay 15-16.

19. We are adjudicating both the appeals together as both the issues are common. The Ld. AO had examined the expenditure of Rs.10,35,963/- and accordingly the Ld. AO added back the adhoc expenditure amount of Rs.4 lacs for assessment year 2015-16.

For assessment year 2014-15, the assessee disallowed Rs.6,07,500/- related to wages to labours, freight on stores and consumables, freight on raw material.

The Ld. DR relied on the both the orders of the Revenue authorities.

20. During hearing the Ld. counsel submitted the judgment in the case of Shanker Gauri Agro Product Pvt. Ltd. V. Asstt. CIT in ITA No. 367/JP/2018 dated 02.09.2019. As per the order, the disallowance cannot be done only on the basis of the cash payment and there should be specific conclusive findings for disallowance the same.

21. We heard the rival submissions and considered the documents with the file, the Ld. counsel filed a list of expenses for all the years. The lists are containing

identity of person to` whom the payment was made. Some payments are made through bank account and identity of the parties is also submitted in the list. The finding of the Ld. AO is not proper. The addition of business expenditure cannot be done on adhoc basis. The ld AO did not find out the specific lacuna related expenditure of assessee for both the year.

Accordingly this grounds of appeals for AY 14-15 & 15-16 of the assessee are allowed.

22. In the result, the appeals of the assessee are allowed and the appeal of the Revenue is dismissed.

*Order pronounced in the open court on 29.04.2022*

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

Date: 29.04.2022

*\*GP/Sr. PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

True Copy

By Order

Sr. Private Secretary  
Income Tax Appellate Tribunal