

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 6852/MUM/2019  
(ASSESSMENT YEAR: 2013-14)

&

ITA No. 6853/MUM/2019  
(ASSESSMENT YEAR: 2014-15)

Aveo Real Estate Holdings Pvt. Ltd.  
211, Sona Udyog Premises,  
Parsi Panchayat Road,  
Andheri (East),  
Mumbai - 400069  
[PAN: AAGCA4346Q]

..... Appellant

**Vs**

Income Tax Officer 2(1)(4),  
Room No. 553,  
Aaykar Bhavan, M.K. Road,  
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : Shri Soumen Adak  
For the Respondent/Department : Shri Mehul Jain

Date of conclusion of hearing : 01.03.2022  
Date of pronouncement of order : 27.05.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. These are two appeals which were heard together on account of commonality of underline facts and identical grounds raised in appeals and are, therefore, being disposed of by way of a common order.

2. The brief facts of the case are that during the relevant previous year the appellant, inter-alia, was engaged in the business of investing in real estate projects. The appellant entered into participation and development agreement to provide fund and strategic inputs for the development of the commercial property and in consideration, the appellant became entitled to get 4,05,355 Sq. Ft. area in the property named "Einstein".
3. Thus, the Appellant acquired possession of bare shell structure of the properties comprising of 4<sup>th</sup> 5<sup>th</sup> 8<sup>th</sup> , 9<sup>th</sup> & 10<sup>th</sup> floor vide respective agreements all dated 19<sup>th</sup> October, 2012. The Appellant wanted to lease the entire property to earn rental income. However, during the relevant previous year, despite best effort, the Appellant was not able to lease out the entire property. Area comprising of 2,17,320 sq. Ft. remained vacant during the relevant previous. Only area comprising of 1,88,035 sq. ft. (i.e. 4th, 5th, 8th, 9th 10th Floors of Towers C) was leased out to Schneider Electric Pvt. Ltd. (hereinafter referred to as 'the Lessee') for a period of 10 years commencing from 01.01.2013 and ending on 31.12.2022. Since the property was a bare shell structure, the parties agreed for a rent free period of five months commencing 01.01.2013 to 31.05.2013 so as to enable Lessee to carry out the necessary changes to make it usable.
4. The issue before us in appeal for the Assessment Year 2013-14 (ITA No. 6852/Mum/2019) pertains to the notional rental income assessed in the hands of Appellant by the Assessing Officer in respect of area of 1,88,035 sq. ft leased out by the Appellant to the Lessee for (a) the period commencing from the date on which the possession was taken by the Appellant (i.e. 19.10.2012) till the date the aforesaid area was leased out (i.e. 31.12.2012) and (b) the period of 3 months commencing from 01.01.2013 to 31.03.2013

forming part of the rent free period of five months. Whereas in appeal for Assessment Year 2014-15 (ITA No. 6853/Mum/2019), the issue raised pertains to notional rent income assessed in the hands of the Appellant for a period of two months commencing from 01.04.2013 to 31.05.2013 being balance period of two months of the rent free period of five months.

5. We would first take up appeal for the Assessment Year 2013-14 (ITA No. 6852/Mum/2019), wherein following grounds have been raised:

- 1.1 On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) -4 (hereinafter referred to as "the Ld. CIT(A") erred in not applying the provisions of section 23(1)(c) of the Act to the property comprised of area 1,88,035 sq.Ft.) 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> floor of Tower A & B and 10<sup>th</sup> floor of Tower C), which has been let out to Schneider Electric India Private Limited w.e.f. 1<sup>st</sup> January, 2013. The property was a bare shell structure and unfit for occupation.*
- 1.2 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that property comprising of area 1,88,035 Sq.Ft. let out to Schneider Electric India Pvt. Ltd. w.e.f. 1<sup>st</sup> January 2013 was for a period of 10 years, with a rent free period of initial 5 months to undertake major repairs and renovations to the property. Schneider Electric India Pvt. Ltd. wanted to build largest research and development hub in the world for Schneider Electric, France.*
- 1.3 Based on the facts and circumstances of the case, the Ld. CIT(A) erred in not considering the fact that the property being leased out to Schneider was a bare shell structure and was unfit for occupation.*

*1.4 The Ld. CIT(A) erred in not considering the judicial precedents as laid down by the jurisdictional Hon'ble Mumbai Tribunal in the case of Premsudha Exports P. Ltd. Vs. ACIT(2008) (110 ITD 158) and Hon'ble Bangalore Tribunal in case of S.M. Chandrashekhar Vs. Income Tax Officer (2016) (76 taxmann.com 278), which squarely applies to the Appellant's case."*

6. The Ld. Authorised Representative for the Appellant appearing before us submitted that the property comprising of the area of 1,88,035 Sq. Ft. (hereinafter referred to as 'the Leased Property') was acquired by the Appellant on 19.10.2012 as bare shell structure that was unfit for occupation. Despite best efforts the Appellant could not the Leased Property could not be rented out till 31.12.2012. W.e.f. 01.01.2013 the Leased Property was rented out for a period of 10 years. However, as per the agreement the period commencing from 01.01.2013 to 31.05.2013 was to be a rent free period wherein the Lessee would take necessary steps to make the Leased Property fit for occupation. The Assessing Officer without appreciating the facts invoked provisions of Section 23(1)(a) and added notional rental income in the hands of the Appellant by taking rate of INR 35.67 per Sq. Ft. per month as average rent for the period commencing from 19.10.2012 to 31.03.2013. In appeal before CIT(A), the Appellant, relying upon copy of approvals granted by Government Department/Authorities, the Appellant pointed out that the Lessee had obtained approval for commissioning drawings pertaining to electronic installations, and commissioning electronic installations before getting approval for electrical safety on 18.09.2014. Thus, establishing that the Leased Property was not fit for occupation by the Lessee. He further submitted that the Appellant had also filed a copy of sample contract for carrying out civil interior works during the rent free period. However, the CIT(A) ignoring the aforesaid confirmed the order passed by Assessing

Officer by holding that since the Occupancy Certificate was issued on 02.06.2012 the lease premises were fit for occupation and the Appellant had itself let go of rent for a period of five months. The Ld. Authorised Representative for the Appellant submitted that despite making all efforts the Leased Property was vacant from 19.10.2012 to 31.12.2012 and therefore, the Appellant is entitled to the benefit of vacancy allowance in terms of Section 23(1)(c) of the Act. Thereafter, for a period of 3 months commencing from 01.01.2013 to 31.03.2013 'Nil' rent was received by the Appellant and therefore, the Assessing Officer/CIT(A) were not justifying attributing notional rent for the aforesaid period. The Ld. Authorised Representative for the Appellant referred to the synopsis and relied upon the following decisions of the Tribunal:

- (i) *Premisudha Exports (P.) Ltd. vs. ACIT (2008) (110) ITD 158) (Mum)*
- (ii) *DCIT vs. M.s Manas Properties Pvt. Ltd. (ITA No. 768/Mum/2018 order dated 13.03.2019)*
- (iii) *ITO vs. M.s Manas Properties Pvt. Ltd. (ITA No. 6987/Mum/2016 order dated 11.10.2018)*
- (iv) *M/s Vishwaroop Infotech Pvt. Ltd. (2020) ITA No. 633/Mum/2019 order dated 06.11.2010 (Mum)*

7. Per contra, Ld. Departmental Representative supported the assessment order and relied upon the order passed by CIT(A). He submitted that the occupation certificate was issued to the Appellant and therefore it cannot be said that the Leased Property was not fit for occupation. Further, the fact that the Appellant had agreed not to charge rent for a period of five months would not result in reduction of the rental income.
8. We have heard the rival contentions and perused the material on record. We note that the Appellant had acquired area of 4,05,355 Sq. Ft. on 19.10.2012. Out of the aforesaid, an area comprising of

2,17,320 Sq. Ft. remained vacant throughout the year. The CIT(A), in appeal filed by the Appellant, granted the benefit of vacancy allowance in terms of Section 23(1)(c) of the Act. However, when it came to the Leased Property, the CIT(A) did not grant benefit of vacancy allowance for the period commencing from 19.10.2012 to 31.12.2012. It is the case of the Appellant that during the aforesaid period, despite making best efforts, the Leased Property could not be rented. In the case of Premsudha Exports (P) Ltd. vs. ACIT (supra) it has been held by the Tribunal that even the intention to let out the property would be sufficient to invoke provisions of Section 23(1)(c) of the Act. The relevant extract of the aforesaid decision of the Tribunal is as under:

*"16. From the above, we find that here, the Legislatures in their wisdom have used the words 'house is actually let'. This shows us that the words 'property is let' cannot mean actual letting out of the property because had it been so, there was no need to use the word 'actually' in sub-section (3) of the same section 23. Regarding the scope of referring to actual let out in preceding period, we find no force in the contention of the DR, as the Legislature has used the present tense. Even if we interpret it so, it may lead to undesirable result because in some cases, if the owner has let out a property for one month or for even one day, that property will acquire the status of let out property for the purpose of this clause for the entire life of the property even without any intention to let it out in the relevant year. Not only that, even if the property was let out at any point of time even by any previous owner, it can be claimed that the property is let out property because the clause talks about the property and not about the present owner and since the property was let out in past, it is a let out property although, the present owner never intended to let out the same. In our considered opinion, it is not at all relevant as to whether the property was let out in past or not. According to us, these words do*

*not talk of actual let out also but talk about the intention to let out. If the property is held by the owner for letting out and efforts were made to let it out, that property is covered by this clause and this requirement has to be satisfied in each year that the property was being held to let out but remained vacant for whole or part of the year. We feel that the words 'property is let' are used in this clause to take out those properties from the ambit of the clause in which property are held by the owner for self-occupation i.e., self-occupied property (i.e. SOP) because even income on account of SOP, excluding one such SOP of which annual value is to be adopted at nil, is also to be computed under this head as per clause (a) of section 23(1) if we see the combined reading of sub-sections (2) and (4) of section 23. One thing is more important because we find that where the Legislatures have considered that actual letting out is required, they have used the words 'house is actually let'. This can be seen in sub-section (3) of same section 23. But in clause (c) above, 'actually let' words are not used and this also shows that meaning and interpretation of the words 'property is let' cannot be 'property actually let out'. In our opinion, it talks of properties, which are held for letting out having intention to let out in the relevant year coupled with efforts made for letting it out. If these conditions are satisfied, it has to be held that the property is let and the same will fall within the purview of this clause." (Emphasis Supplied)*

9. The fact that Appellant intended to rent the Leased Property and made efforts for the same has not been doubted by the Assessing Officer or by the CIT(A). Accordingly, in view of the above, we hold that the Appellant is entitled to benefit of vacancy allowance in terms of Section 23(1)(c) of the Act for the period commencing from 19.10.2012 to 31.12.2012 during which the Leased Property was actually vacant.

10. As regards notional interest charged for the period commencing from 01.01.2013 to 31.03.2013 forming part of the rent free period of five months, we note that it is not the case of the Revenue that the agreement entered into between the Appellant and the Lessee is sham. The Assessing Officer and the CIT(A) have rejected the contentions of the Appellant that the Leased Property was not fit for occupation by the Lessee only on the basis of the fact that Occupation Certificate was issued on 02.06.2012. It has not been disputed by the Revenue that the Leased Properties was acquired as bare shell structure. A perusal order passed by the CIT(A), wherein Appellant's submissions made before CIT(A) have been reproduced, it is clear that the Appellant documentary evidence in the forms of approvals obtained by the Lessee from the Electrical Department, Bangalore, Govt. of Karnataka and the civil & interior works contract entered by the Lessee for making the Leased Property fit for occupation. However, the same were simply brushed aside by the CIT(A). Further, it is admitted facts that no rent has actually been received by the Appellant for the period of three months commencing from 01.01.2013 to 31.03.2013. In absence of any allegations by the Revenue regarding the bonafides of the transactions, the agreement between the parties is to be accepted. In our view, the Assessing Officer erred in attributing a notional rent for a period of three months without appreciating the nature of transactions. Further, no efforts were made by the Assessing Officer to determine the monthly rental/rate at which the Leased Property might have been reasonably expected to be let out in terms of Section 23(1)(a) of the Act. The actual annual rent received by the Appellant cannot be substituted by a notional rent without the Assessing Officer arriving at a finding that the Leased Property is can be reasonably expected to be let out for a higher sum. In view of the aforesaid, we delete the addition of notional rent made by the

Assessing Officer for the period of three months commencing from 01.01.2013 to 31.03.2013.

11. Accordingly, the present appeal is allowed in terms of paragraph 9 and 10 above.

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12. Are above adjudication applied mutatis mutandis to the Assessment Year 2014-15. The addition of notional rent made by the Assessing Officer for the period of two months commencing from 01.04.2013 to 31.05.2013 stands deleted. Accordingly, the appeal is allowed.

In result, both the appeals are allowed.

Order Pronounced on 27.05.2022.

*Sd/-*  
(Pramod Kumar)  
Vice President

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.05.2022  
*Alindra, PS*

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai