

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 833/Mum/2022 (A.Y. 2014-15)

ACIT-15(1)(2),

Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Appellant

Vs.

Haware Constructions Pvt. Ltd.
413-416, Vardhaman Market,
Sector-17, Vashi,
Navi Mumbai-400705.

PAN: AABCH3858F

..... Respondent

Appellant by	:	Sh. Tejinder Pal Singh, Sr. DR
Respondent by	:	Sh. Devendra Jain, Adv.
Date of hearing	:	11/07/2022
Date of pronouncement	:	06/10/2022

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by the Revenue is directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ['NFAC'] dated 24.11.2021 passed under section 250 of the Income Tax Act, 1961 (hereinafter

referred to as [‘the Act’] for the Assessment Year (AY) 2014-15. The Revenue has raised the following grounds of appeal:

“(i) "Whether on the facts and circumstances of the case and in law, the Id. CIT(A) erred in delaying the deemed income from house property held as stock in trade, which is not let out for the whole or part of the year, by considering the amendment made vide sub-section (5) inserted after sub-section (4) of Section 23 by the Finance Act, 2017 w.e.f. 01.04.2018, without appreciating that the amendment is applicable from the A.Y. 2018-19 and is not retrospective?"

(ii) "Whether on facts and circumstances of the case and in law, the Id. CIT (A) erred in deleting the disallowance made by the AO u/s 14A r.w.s 8D without appreciating that CBDT vide Circular No. 5/2014 has clarified that rule 8D r.w.s 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income?"

(iii) The appellant prays that the order of the CIT (Appeals) on the above ground be set aside and that of the AO be restored."

2. Brief facts of the case are that the assessee-company is engaged in the business activities of building, developing and civil construction e-filed its return of income on 28.11.2014 declaring total loss of Rs. (-) 3, 64, 67,270/- . During the year assessee has derived income from house property, business and profession and income from other sources.

3. During the year under consideration AO observed that assessee company has declared income from the business of building and developing by following completed project method. For the year under consideration the assessee company has offered income from projects completed during the year as well as income arising from the sale of unsold flats and shops of projects completed on the previous year. Consequently, the flats and shops which remained unsold at

the end of the FY were shown under the head inventory as closing stock. The details of the same are as under:

Unsold Flats/Shops	Amount in Rs.
Kharghar – 56/20 Splendor (GHL & Comm)	37,95,421/-
Kharghar – 56/20 Splendor (IJKM Res.)	29,13,320/-
Kharghar – 56/20 Glory	56,08,861/-
Airoli 1/19 Nilambari	69,86,300/-
184/13 Tiara Residential	3,13,88,618/-
88-91/19A Nerul Centurian	17,65,68,305/-
Total	22,72,60,825/-

AO issued a show cause notice to the assessee for applying section 22 r.w.s. 24(b) i.e. deemed annual value @8.5% of the cost of construction of the property as per Bombay rent control act after deduction u/s 24b @30% on the annual value.

4. The deemed annual value u/s 22 on the cost of construction of Rs 22,72,60,825/- comes to Rs 1,93,17,170/-. Standard deduction u/s 24b @30% comes to Rs. 57, 95,151/-. Accordingly, the total income from house property as per AO is Rs. 1, 35, 22,019/-(Rs.193, 17,170- Rs. 57, 95,151). In response to this show cause assessee filed its reply but not found to be satisfactory by the AO and he made an addition of Rs 1, 35, 22,019/-.

5. During the year under consideration AO examined the applicability of Sec. 14A. In response to AO's query assessee filed its reply but the same was not accepted by the AO and he made an addition of Rs 31,80,888/- u/s 14A r.w.r

8D(1)(iii). Aggrieved with this order of AO assessee preferred an appeal to the Ld. CIT (A)-24 Mumbai.

6. Ld. CIT(A) (NFAC) vide his order dated 24.11.2021 deleted both the additions made by the AO. While deciding the matter relating to addition under section 22 amounting to Rs. 1,35,22,019/-, Ld. CIT(A) considered ITA No. 3172/Mum/2016 and ITA No. 4539/Mum/2017 in assessee's own case for AY 2009-10 and 2010-11 respectively.

7. As far as addition under section 14A is concerned, Ld. CIT(A) followed the decision of Hon'ble Jurisdictional High Court in the case of Kohinoor Projects Pvt. Ltd. (2020) 121 taxmann.com 177 (BOM) & PCIT vs. Man Infra Projects Ltd. ITA No. 259 of 2017 dated 09.10.2019, High Court of Delhi.

8. Relying upon assessee's own appeal in ITAT with reference to addition made under section 22 of the Act and Kohinoor Projects Pvt. Ltd. (supra) with reference to addition made under section 14A, Ld. CIT(A) deleted both the additions. We have gone through the order of AO, order of Ld. CIT(A), case laws cited by the assessee and relied upon by the Ld. CIT(A) while deciding the issue. We did not find any perversity in the order of Ld. CIT(A), hence, we are not inclined to interfere with the same.

9. Further, we have gone through the **CIRCULAR NO.3/2018 dated 20.08.2018 [F.NO.279/MISC.142/2007-ITJ (PT)]**. As the tax effect involved is below the monetary limit prescribed by the CBDT as mentioned in Circular (supra) and also since the issues involved are not covered under any of the exceptions under para-

10 of clause (a) to (f), further appeal by Revenue is not admissible. On this ground also appeal of Revenue is not maintainable, hence dismissed.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 6th day of October, 2022.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 06/10/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai