

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 982/Mum/2016
(Assessment Year: 2009-10)

Sanjay Badani Unit No. 405, Hind Rajasthan Centre, D. S. Phalke Road, Dadar (E) Mumbai-400 014	Vs.	ACIT – 10(3) Now known as 15(2)(1), Mumbai
PAN/GIR No. AABPB 9926 B		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Margav Shukla
Respondent by	:	Shri Hoshang B Irani

Date of Hearing	:	25.08.2022
Date of Pronouncement	:	22.11.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-24, Mumbai ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2009-10.

2. The grounds of appeal filed by the assessee are as below:

1. *On the given facts, circumstances and judicial pronouncements Learned Commissioner of Income Tax Appeals, erred in directing Ld. AO to verify and treat property at Clover regency, Ghatkopar under Construction if the letter of possession is found proper, and such direction is bad in law and erroneous in facts and suitably be modified.*

2. *On the given facts, circumstances and judicial pronouncements; Learned Commissioner of Income Tax Appeals erred in not passing any direction as regards property at Vora Apt., Ghatkopar, even though the same was Self Occupied by the assessee.*

3. *Without prejudice to the above, On the given facts, circumstances and judicial pronouncements; when the order giving effect is passed by the Ld. AO the property at Vora Apartments should be treated as Self occupies Property and relief to that extent should be given.*
 4. *On the given facts, circumstances and judicial pronouncements; Learned Commissioner of Income Tax Appeals erred in not passing any direction as regards the property at Wanworie, Pune.*
 5. *Without prejudice to the above, On the given facts, circumstances and judicial pronouncements; the property at Wanworie Pune should be assessed to tax under the head Income from House Property as deemed let out on the basis of the municipal valuation.*
 6. *On the given facts, circumstances and judicial pronouncements; learned Commissioner of Income Tax Appeals erred in directing the Ld. AO to recomputed the unearned income from let out house property at Mahape, Navi Mumbai for four months, such direction be deleted.*
 7. *Without prejudice to the above, on the given facts, circumstances and judicial pronouncements; learned Commissioner of Income Tax Appeals erred in directing the Ld. AO to recomputed the unearned income from let out house property at Mahape, Navi Mumbai for four months, even though the said property was let out during the year and hence such addition is bad in law and erroneous in facts and liable to be deleted and provisions of Section 23(1) (c) should be applied to assessee.*
 8. *On the given facts, circumstances and judicial pronouncements; Ld. CIT (Appeals) erred in making addition of inter corporate deposits by treating the same as deemed dividend u/s 2(22)(e), such addition is bad in law and erroneous in facts and liable to be deleted.*
 9. *Without prejudice to above, on the given facts, circumstances and judicial pronouncements; Ld. CIT (Appeals) erred in making addition of inter corporate deposits by treating the same as deemed dividend u/s 2(22)(e), such addition is excessive and liable to be reduced.*
 10. *On the given facts, circumstances and judicial pronouncements; Ld. CIT (Appeals) erred in making addition of inter corporate deposits by treating the same as deemed dividend u/s 2(22)(e) by ignoring the fact that these deposits are in nature of non gratuitous deposits, such addition is bad in law and erroneous in facts and liable to be deleted.*
 11. *On the given facts circumstances and judicial pronouncements; Ld. CIT (Appeals) erred in framing the order in absence of reasonable opportunity of making the submissions to the assessee in principles of natural justice and such order is in violation of principles of natural justice and liable to be annulled.*
3. Briefly stated the assessee is a director of M/s. Nishotech Systems Pvt. Ltd. and M/s. Sanitech Engineering Private Limited. The assessee filed his return of income dated 20.07.2009, declaring the total income of Rs.48,29,390/-. The assessee's case was selected for scrutiny and assessment order dated 16.12.2011 was passed u/s. 143(3), determining the total income of Rs.66,87,703/-, by making various

additions/disallowances. It is observed that the assessee has shown salary income, income from house property, partner's remuneration from partnership firm, short term capital gain on sale of shares and income from other sources.

4. During the assessment proceeding, the Assessing Officer ('A.O.' for short) observed that the assessee owned three flats and one office premises and the assessee in his statement of computation of income has declared rental income of Rs.4,00,000/- only in respect of one property. The Id. A.O. treated the property at Vora Apartment, Ghatkopar as deemed let out under the head 'income from house property' and made addition on the same without considering the assessee's contention that it was self occupied by the assessee. The assessee challenged the rate of rent per square feet calculated by the A.O., pertaining to the said property. The A.O. also calculated fair rental value of other property at Wanworie, Pune on the ground that the assessee has failed to furnish the required documentary evidences to substantiate his claim. It is observed that the assessee has furnished the possession letter, pertaining to the property situated at Clover Regency, Ghatkopar before the Id. CIT(A) who then remanded the same to the file of the A.O. for verification. The assessee has challenged the order of the Id. CIT(A) in remanding back the said issue to the Id. A.O. without taking into consideration the possession letter filed before the Id. CIT(A). The assessee has also challenged the other grounds of addition made u/s.2(22)(e) of the Act as deemed dividend. The assessee has submitted that during the impugned year, the A.O. made an addition on the proportionate share holding of the assessee to the extent of 22.11% shares

of M/s. Nishotech Systems Pvt. Ltd. and 20% of total shares of M/s. Sanitech Engineers Pvt. Ltd.

5. Challenging the said addition, the assessee was in appeal before the Id. CIT(A), who deleted the said addition on the ground that the deemed dividend was to be taxed in the hands of the share holders by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of *Universal Medicare Pvt. Ltd.* [190 Taxmann 144 (Bom)] and the co-ordinate bench in the case of *Bhaumik Colour Pvt. Ltd.* [118 ITD 1 (Mum) (SB)].

6. Aggrieved by this, the assessee is in appeal before us on this ground.

7. The Id. Authorized Representative ('Id. AR' for short) for the assessee contended that the assessee proposed to file additional evidence in support of his claim pertaining to the additions made by the Id. A.O. The Id. AR prayed that the assessee may be given one last opportunity to furnish additional evidences before the Id. A.O.

8. The Id. Departmental Representative (Id. DR for short) had nothing adverse to controvert the same.

9. Having heard the rival submissions and perused the material on record, we are of the considered view that on the basis of the principle of natural justice, the assessee may be given one more opportunity to furnish additional evidences before the A.O. to substantiate his claim. In this observation, we direct that this may be remanded to the file of the A.O. and the A.O. is directed to consider the additional evidences that are proposed to be filed by the assessee and to decide all the issues on merits.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.11.2022.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 22.11.2022

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai