

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 1023/MUM/2023 (A.Y: 2014-15)**

M/s. K Lalchand Private Ltd 1017/18, Dalamal Tower 10 <sup>th</sup> Floor, Nariman Point Mumbai - 400021  <b>PAN: AABCK2480Q</b> <b>(Appellant)</b>	v.	Commissioner of Income Tax (Appeals) National Faceless Appeal Centre  <b>(Respondent)</b>
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<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Satish Mody</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Brajendra Kumar</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>22.06.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>08.09.2023</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** This appeal is filed by assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 30.01.2023 for the A.Y.2014-15.

**2.** Brief facts of the case are, Assessee filed its return of income on 25.09.2014 declaring total income at ₹.1,94,860. The return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was selected for scrutiny under CASS. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response, Ld. AR of the assessee attended and furnished the relevant information as called for.

**3.** The assessee is engaged in the business of dealing in shares & securities and renting of immovable properties. During the year, assessee has declared rental income of ₹.76,01,000/-, dividend of ₹.1,61,600/- and share of profit from M/s Lalco Services Apartments, LLP Mumbai of (₹.14,98,991/-). The Assessing Officer observed that assessee has computed rental income at ₹.45,66,730/- under the head income from house property and business loss at ₹.43,71,875/ which were set off against rental income, thereby determining total income at ₹.1,94,855/- The Assessing Officer observed that assessee has given on rent its 24 flats owned by it, located at Kalpataru Estate Building Off village Majas, Jogeshwar-Vikhroli Link Road, Andheri(E), Mumbai. Assessee claimed that it has rented out one furnished flat to M/s. Anmol rice Mills Pvt Ltd., (not a related party) and the rent received from them is ₹.60,000/- per

month. Further, Assessing Officer observed that assessee given on rent 23 unfurnished flats at same location to its related sister concern M/s Lalco Services Apartment LLP at the rate of ₹.25,000/- per month.

**4.** The Assessing Officer observed that assessee has received rent from unrelated entity at a higher rate vis-à-vis rent received from its related sister concern lesser than the rent collected from unrelated parties. Accordingly, assessee was asked to substantiate the difference in rent as well as the details of the information relating to furnished apartment. In response, assessee has submitted as under: -

*"The assessee possesses residential flats in 2 Building namely 1A & 1B in Kalpataru Estate, Jogeshwari Whereby flats owned in 1A Building are let-out to Lalco Service Apartment-LLP and flats owned in 1B Building are for self.*

*1. Assessee Company has entered income Limited Liability Partnership in the name and patter of Lalco Serviced Apartment-LLP, in order to earn regular and consistent income due to market inconsistencies in fetching regular income. In addition to the regular income the Assessee company is entitled to earn a share of profit or loss from LLP business, making it eligible for fetching more income per flat. Assessee Company has thereby let-out 23 owned flats namely 71,72,73,74,81,83,84,91,92,93,94, 101, 102, 103, 104, 111, 112, 113, 114, 121, 122, 123, 124 in Building -1A to LLP and same 25,000 per flat, plus the proportionate income fetched by LLP through subletting.*

*ii. 1A Apartment are unfurnished flats and are let-out to Lalco Serviced Apartment-LLP as compared to 1B Apartment wherein Assessee has let out furnished apartment. Further LLP sub-lets Furnished Apartment wherein furniture belongs to V.K. Lalco Pvt. Ltd.*

*Please refer LLP agreement, specifically mentioning clause 6(a) for Rs.25,000/- per month per flat and Clause 7 for Furniture & Fixture belonging to M/s. V. K. Lalco Pvt. Ltd..."*

**5.** After considering the above submissions of the assessee, Assessing Officer listed out the rent received from 23 flats, rent received from M/s.Anmol rice Mills Pvt. Ltd., @ ₹.60,000/- per month and rent from M/s.Hover India Automotive at ₹.1,50,000/- per month. The rent received from M/s.Anmol rice Mills Pvt. Ltd., and M/s.Hover India Automotive are claimed to be on furnished flats. Further, he observed that the Directors of the assessee and the assessee are partners in M/s Lalco Service Apartment LLP. The 2 Directors of the assessee company Shri Harish Nanwani and Anita Nanwani have 10% and 5.14% substantial interest in the partnership firm M/s Lalco service Apartment LLP respectively. Further, the assessee company is also the partner in the said partnership firm. From the above relationship, it can be safely concluded without any doubt that the rent received for 23 flats given to sister concern's are at lower value than the market value/fair value.

**6.** Further, Assessing Officer observed that related sister concern M/s.Lalco Service Apartment LLP has sub-letted the above properties to the non-related entities at the higher rate and offered its income under the head 'Business Income. Assessing Officer observed from the balance sheet, profit & loss account and income tax return of Ms. Lalco Service Apartment LLP, that turnover is reported at ₹.9.72 crore against which

expenses have been claimed at ₹.9.58 crore and other income is reported at ₹.32.73 lakhs. It is taken on record that the partnership firm M/s. Lalco Service Apartment LLP has claimed loss of ₹.50,69,297/- during the FY 2013-14.

**7.** The Assessing Officer observed that vide order sheet noting dated 28.12.2016, the assessee was asked to submit details of actual value of furniture so that the actual value of unfurnished flats can be determined. However, he observed that assessee has not furnished any information. Further, he observed that the difference between rent received from M/s.Anmol rice Mills Pvt. Ltd., is ₹.35,000/- and rent received from M/s.Hover India Automotive is ₹. 1,25,000/- to the rent from related concern. The above two flats are claimed to be furnished apartments the difference between both the rents are huge and it cannot be true considering cost of the furniture. Therefore, he came to the conclusion that the assessee has given 23 flats to its sister concerns which is nothing but a colorable devise and shifted its additional rental income to its sister concern. Accordingly, he determined the difference of rent of ₹.5,37,5000/- per annum and made the addition to the total income of the assessee at ₹.1,23,62,500/-.

**8.** Further, Assessing Officer observed that assessee has claimed municipal tax of ₹.10,77,100/- before claiming the deduction u/s 24 of the Act. Further, he observed that the above property taxes have not been paid by the assessee, however, the same has been paid by M/s.Lalco Pvt. Ltd. on behalf of the assessee. It was observed that municipal tax receipts ledger account, as per which the entries of property taxes have reflected the names of the sister concern M/s. Lalco Pvt. Ltd. and M/s. Tyabji Estate Pvt. Ltd. The Assessing Officer observed that the municipal taxes are deductible only if the taxes are borne by the owner and are actually paid by it during the year. Therefore, the taxes are not paid by the assessee during the previous year are not deductible. Accordingly, he disallowed the same.

**9.** Aggrieved with the above order, assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A) assessee has submitted with regard to Ground No. 1 as under: -

*"Grounds of Appeal No. 1*

*Assessing Officer's Contention viz-a-viz Appellant's reply*

*1) The Ld AO, for various reasons, has made an addition of ₹.5,37,500/- per flat on annual basis. Thus the total addition for the rental income work Flats out by Ld AO is Rs 5.37,500 X 23 = ₹.1,23,62,500/*

*2) Ld AO was of the view that appellant has received rent form no-related entities at the higher rate vis-a-vis rent received from its related sister concern M/s Lalco Service Apartment LLP. Ld AO asked to furnish the*

*justification for lower rent from related entities vis-vis higher rent from non related entities of the leased flats.*

*3) In response to above, Assessee submitted vide letter dated 29-12-2016 that Assessee company possesses residential flats in 2 Buildings namely 1A & 1B in Kalpataru Estate, Jogeshwari. Out of which are bare shell flats are given to its partnership firm "Lalco Service Apartment LLP" to run its business of renting out service apartments for which Lalco Service Apartment LLP pays Rs 25,000/- per month towards rent. Flats in 1B building are let out by the Appellant itself, The flats in 1A are unfurnished and let out to Lalco Service Apartment LLP for which it earns consistent income of Rs 25000/- per month and 1B are furnished apartment let out. Appellant has entered into Limited Liability Partnership in the name and pattern of Lalco Serviced Apartment LLP, in order to earn regular and consistent income due to market inconsistencies in fetching regular income. In addition to the regular income. The Appellant is entitled to earn a share of Profit or Loss from LLP Business, making it eligible for fetching more income per flat. Appellant has thereby let-out 23 owned Flats in building 1A to LLP and earns 25,000/- per month per flat, plus the proportionate income fetched by LLP through subletting Further LLP sub-lets Furnished Apartment wherein Furniture belongs to VK Lalco Pvt Ltd. Please refer LLP Agreement attached herewith marked as Annexure G, specifically mentioning Clause 6 (a) for 25,000/- per month per flat and Clause 7 for Furniture & Fixture belonging to M/s VK Lalco Pvt Ltd.*

*4) it is to be noted that the purpose giving these premises to LLP was not to earn rental income but a contribution to the firm of which the assessee is a partner to earn profit. The base rent was only to cover the shell apartment, but the real income was to come from service apartment. If the rent would have been 70000/- per month, the LLP would have been in a loss Besides the present order is disadvantageous to the department. Had the Rent been as per the AO's addition Rs 1,23,62,500 The LLP would have saved tax @30% Rs 37,08,750 And the Assessee would have paid tax of Rs. 1,23,62,500- 30% Std Ded 86,53,750 and the tax liability would have been Rs. 25,95,125/- Loss to the Revenue Rs. 11,12,625/ Since this would have resulted in a loss to revenue, the notional addition may please be deleted. Hence, we request your honour to kindly take into consideration above points for fetching lesser income in 1A Apartments as compared to 1B Apartments*

*5) Further in this matter the comparison between the flats rented for Rs. 69,000/- is for long term basis from company and for larger flats, On considering this fact, the AO ought to have made adjustment of rental of Furniture for which the LLP paid concessional rent of Rs, 13,000/- per month per flat. The fair market value would have been Rs. 20,000/- A discount for long term rental and short term arrangement. Say 10% Rs. 6,900/- The AO has not considered that one flat given on rent and several flats there would be a discount as the risk of uncertainty of rental is passed on to LLP The LLP would pay tax on the profit earned at the same rate as the assessee, During the year appellant had given their flat in 1B building*

namely 174-1B to unrelated entities "Anmol Rice Mills Pvt Ltd" for Rs 60,000 for duration of 6 Months The said flat was 74,75 Sqr Mtr fully furnished with all the amenities and one car parking.

....

6) We request Your Honour to refer comments of the AO on clause 4.4 of page 5 of the order which are reproduced as under:

*"based on the above facts, circumstances evidences and reply on record of the assessee company, I find that the above arrangement of the assessee company of leasing its 23 flats to sister concern Lalco Service Apartment LLP is solely and exclusively for the purposes of evasion of tax and thus, the same has been disregarded due to its sham nature and act of colourable device. In view of the above, the addition of Rs 5,37,500/- per flat on annual basis is made. Similar addition has been made by the AO in the case of the Assessee's sister concern M/s Lalco Textiles & Investment Co pvt Ltd for AY 2014-15 and facts of the case are exactly similar to the instant case. Thus, the Total addition for the under receipt of rental income by the assessee works out to Rs 5,37,500/- x 23= 1,23,62,500/-"*

*The above comments of the Ld AO are not tenable as per law and failed to provide the basis on which the addition has been made and calculated on adhoc basis. It is also to be noted that as per above para calculation of Fair rental by Ld AO computed based on the order passed in case of Lalco Textiles & Investment Co Pvt Ltd (Assessee's sister concern) Assessment Order of Lalco Textiles Investment Co Pvt Ltd is attached herewith marked as Annexure I. In view of the above we submit that the assessing officer was not justified in comparing rent received from Anmol Rice mills Pvt Ltd (Apt 1B-174) of Rs 60,000 per month with the rent received from Lalco Service Apartment LLP at Rs 25,000 per month, without prejudice to the above the appellant submits that & is well settled proposition as per the judgments of the High Court in the case of Commissioner of Income Tax-12 vs Tip Top Typography (Income Tax Appeal No 1213 of 2011) attached herewith and Marked as Annexure J that municipal ratable value is taken to be safe guide to ascertain the rent. Furthermore the AO in this case has not brought on record any proof that the transactions prevailing rate in the locality of a similar fat Hence the appellant submit the Assessing Officer was not justified in comparing the fully furnished flats with the unfurnished Rat given to Lalco Service Apartment LLP and adding the Income. Thus, in view of the above, we request Your Honour to kindly reverse the additions made in the Assessment order passed by the Ld. AO .....*"

**10.** After considering the submissions of the assessee, Ld.CIT(A) dismissed the appeal filed by the assessee with the following observation:-

*"5.3. The Grounds of appeal, statement of facts, submissions filed by the appellant and the assessment order are considered. The AO has added Rs. 1,23,62,500/- as additional fair rental value of rented flats. Out of total 24 flats owned, 2 furnished flats were given on rent to non-related parties and 23 unfurnished flats were given on rent to appellant's sister concern Lalco Service Apartment LLP. at fixed monthly/annual rent. The AO has observed that the appellant has received higher rent from non- related parties vis-a-vis related party. The AO has observed that the appellant despite being asked did not furnish the value of furniture so as to arrive at the actual value of unfurnished flats. The appellant has referred to the LLP agreement, specifically mentioning clause 6(a) for Rs 25,000/- per month per flat and Clause 7 for Furniture & Fixture belonging to M/s. V. K. Lalco Pvt. Ltd. The appellant has not given any amount related to the furniture. The appellant has argued that the addition of Rs.1,23,62,500/- (Rs.537,500/- annually x 23 Flats) being deemed rental income is determined by the AO on an estimated basis, without any justification. However, I find that the AO asked for the value of furniture and it is only because the appellant has not complied with the said detail that the AO was compelled to make an estimate. The AO has taken on record that the partnership firm M/s. Lalco Service Apartment LLP has claimed loss of Rs.50,69,297/- during the FY.2013-14. This is a very intricate planning, whereby, huge amount of rent is being earned but no taxes are being paid on the same, at any stage by any of the parties involved. The appellant company has rented out 23 flats to its sister concern, has claimed all benefits of Section 24 of the IT Act, the sister concern has further earned money on renting out in turn, showed huge business expenses and claimed loss, I do not find any reason to interfere with the AO's order on this issue. In view of the above discussion, appeal on Ground no.1 is dismissed."*

**11.** With regard to Ground No. 2, assessee has submitted before Ld.CIT(A) as under: -

*"Grounds of Appeal No. 2*

*Assessing Officer's Contention vis-a-viz Appellant's reply*

*7) The Ld AO disallowed the claim made by Appellant in respect of municipal taxes of Rs 10.77, 100% while computing the income under the head house property before claiming the deduction u/s 24 of the IT Act stating that property tax has not been paid by the appellant Ld AO failed to ascertain that some of the payments were actually made by the appellant itself.*

*Please find the attached herewith the property tax paid receipt and relevant maintenance bil received from "B & 1C Kalpataru Estate Co Op Hsg Pvt Ltd" attached herewith marked as Annexure K. The Ld.AO also contends that the Municipal Tax receipts submitted by the Assessee bears the name of Tyabji Estates Pvt Ltd. In this respect we submit that Tyabji estates pvt ltd being the owner & developer of the land bears to name in the property as conveyance has not been transferred to the owners of the properties and the Society on the basis of above two points. Appellants shall be allowed to take claim of Municipal taxes of Rs 4,65,229/- home by the appellant itself.*

*Accordingly, we request Your Honour to place the above submission on record. Further, in case Your Honour requires any further details and/or documents in respect of any of the above matters, kindly let us know and we shall be pleased to submit the same.*

**12.** After considering the submissions of the assessee Ld.CIT(A) dismissed the ground raised by the assessee with the following observations: -

*"6.2. The Grounds of appeal, statement of facts, submissions filed by the appellant and the assessment order are considered. All the bills submitted by the appellant have been examined. The bills are either in the name of Lalco Service Apartment LLP (LLP firm in which Appellant is Partner) and Tyabji Estate Pvt Ltd (Sister Company). The bills are not in the name of the appellant company, therefore, the same are not to be considered. In the light of the above discussion, the claim of Municipal taxes of Rs.4,65,229/- cannot be allowed in the hands of the appellant company. Appeal on ground No. 2 is dismissed."*

**13.** Aggrieved with the above order, assessee is in appeal before us raising following grounds in its appeal: -

*"1. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) was not justified in computing the Total Income at Rs. 96,43,258/- as against the total income of Rs. 1,94,855/- computed by the appellant and consequently by raising the demand of Rs. 33,98,870/- including interest Rs. 7,58,109/- under section 234B of the Income Tax Act 1961."*

**14.** At the time of hearing, Ld. AR of the assessee submitted that the issue involved in this case is estimation of rent u/s. 23(1a) of the Act and in this regard he submitted that assessee holds 23 flats in two societies and these flats were given on lease to sister concern LLP. He also submitted that the above LLP was formed by assessee and other relatives. Further, he submitted that assessee hold 24 flats out of which one flat was leased out to M/s.Anmol rice Mills Pvt. Ltd., and receives rent of ₹.60,000/- per month and submitted that this flat was furnished. In this regard Ld. AR of the assessee relied on the case of another shareholder i.e. Anita Nanvwani wherein the Coordinate Bench in ITA.No. 7410/Mum/2018 dated 20.01.2020 wherein in the similar circumstances the rental income at ₹. 35,000/- per month was held to be fair rent against the actual rent received by the assessee of ₹.25,000/- per month. Since facts are exactly similar he relied on this case.

**15.** In order to bring the facts are similar he brought to our notice Para No. 4.4 of the Assessment Order wherein the assessee is in receipt of ₹.25,000/- per month whereas Assessing Officer has estimated the same the difference of ₹.5,37,500/- per annum basis.

**16.** On the other hand, Ld. DR brought to our notice Para No. 4.3 of the Assessment Order wherein the Assessing Officer has brought on record the difference of rent received by the assessee for the unfurnished as well as furnished flats and further, he submitted that assessee failed to submit the relevant information as called for by the Assessing Officer to determine the actual rent on unfurnished flat based on the information of the value of furniture and fittings in the furnished flats. Since assessee has failed to submit the relevant information, he relied and supported the findings of the Assessing Officer and subsequently sustained by the Ld.CIT(A).

**17.** Considered the rival submissions and material placed on record, we observe from the record that assessee owns 24 flats and out of which one flat was leased out to M/s.Anmol rice Mills Pvt. Ltd., at ₹.60,000/- per month and it was claimed that it is furnished flat and balance 23 flats were given on lease to its sister concern i.e. M/s Lalco Services Apartment LLP and leased at ₹. 25,000/- per month per flat and the same are claimed to be unfurnished flats. It is fact on record that Assessing Officer has asked the assessee to submit the details of furniture and fittings made by the assessee on the flats rented to M/s.Anmol rice Mills Pvt. Ltd., Further, we observe that assessee also own flat No. 83-1A with the carpet area of

73.95 sq. Meter. which was leased out to M/s.Hover India Automotive at ₹.1,50,000/- per month and this also claimed to be furnished. Since there is a huge difference in the rent collected by the assessee from M/s.Hover India Automotive and M/s.Anmol rice Mills Pvt. Ltd., and both are claimed to be furnished apartment. We observe from the record that assessee has not submitted any information regarding the cost involved in furnishing of above flats to the tax authorities. Further, we also observe that during the hearing bench has asked the assessee to submit the balance sheet of assessee company as well as sister concern i.e., M/s Lalco Services Apartment LLP but no such information was submitted subsequently and till date. Since assessee has not submitted any information related to furnishing of flats which was leased out to unrelated parties and assessee has leased out majority of the flats i.e., 23 flats to its sister concern at ₹.25,000/- per month. In absence of any information we are not able to determine the expenditure of furnishing made by the assessee in furnishing of flats leased out to M/s.Hover India Automotive and M/s.Anmol rice Mills Pvt. Ltd., and we also observe that the carpet area of all the flats are more or less similar and from the record we observe that Assessing Officer has made an addition of ₹.69,790/- per month for each flat (₹.44,790/- + ₹.25,000/-). We observe that assessee has leased out ₹.1,50,000/- and ₹.60,000/-

respectively to the unrelated parties the average comes to ₹.1,05,000/-.

Since Assessing Officer has determined the monthly rent of ₹.69,790/- which is less than ₹.1,05,000/-, in our considered view which seems to be proper in absence of any information of furnishing of flats. The case of relative on which Ld. AR relied heavily are distinguishable as it is relating to individual and held only few flats. Whereas in this case, the assessee itself a company and the business carried on by the LLP can also be carried on by the assessee itself. Therefore, we are inclined to sustain the additions made by the Assessing Officer and accordingly, Ground No.1 raised by the assessee is dismissed.

**18.** With regard to Ground No. 2 which is in respect of municipal taxes, Ld. AR of the assessee submitted that the municipal tax was charged on the society. However, there is no specific name mentioned of the assessee on the face of the receipts, however, he submitted that in turn society will levy the proportionate municipal tax to the assessee and accordingly, assessee has paid through bank through one of the sister concern. He submitted that Ld.CIT(A) / Assessing Officer denied the deduction due to the fact that the name of the assessee is not mentioned in the tax receipt. In this regard he submitted that the municipal tax is borne by the land owner [i.e., Tyabji Estate Pvt Ltd.,] and the building is

owned by the society and the assessee is one of the shareholder. Therefore, he submitted that the municipal tax is quantified by the society and proportionate tax is collected from the assessee and the same was paid through bank. Therefore, the municipal tax is allowable expenditure u/s. 24 of the Act.

**19.** On the other hand, Ld.DR relied on the order of the lower authorities.

**20.** Considered the rival submissions and material placed on record, we observe from the record that the municipal tax receipts are issued in the name of the land lord i.e., Mr. Tyabji and the ownership of the flats are with Society. The taxes are borne by the society and collects the proportionate taxes from the flat owners. Accordingly, the assessee has paid the proportionate tax to the society. This system of collection of municipal taxes are common in the housing societies where the ownership of the building is with the society and the land belongs to 3<sup>rd</sup> parties as land owners. What is relevant is, whether the assessee has owned up the relevant taxes and remitted the same; in this case, the assessee has borne and paid the same through banking channels to the society. Therefore, the municipality register or receipt will not have the name of

the flat owners, but the name of the land owners. Accordingly, in our considered view, the claim of the assessee is proper in this case and we direct the Assessing Officer to allow the claim after verification. Accordingly, ground raised by the assessee is allowed.

**21.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 08<sup>th</sup> September, 2023.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 08/09/2023  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**