

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
डॉ. मनीष बोरोड, लेखा सदस्य  
के समक्ष

**Before  
SRI SANJAY GARG, JUDICIAL MEMBER  
&  
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 381/KOL/2023  
Assessment Year: 2017-18**

***Sugam Realty Limited.....Appellant  
[PAN: AADCS 8432 N]***

***Vs.***

***DCIT, Circle-11(1), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Sh. S.S. Gupta, A/R.***

***Department represented by: Sh. B.K. Singh, Sr. D/R.***

Date of concluding the hearing : September 4<sup>th</sup>, 2023

Date of pronouncing the order : October 16<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income Tax (Appeal)-NFAC, Delhi [in

short Id. 'CIT(A)'] dated 01.03.2023 arising out of the Assessment Order framed u/s 143(3) of the Act dated 23.12.2019.

2. The assessee has raised the following grounds of appeal:

*“1. That the Ld. AO, erred in law as well as in facts in making addition of Rs. 78,86,256/- on account of alleged Notional Rent computed u/s 23 of the Income Tax Act, 1961 and the Ld. CIT(A), Income Tax Department, NFAC erred in law as well in facts in confirming the said addition in as much as in view of the facts and circumstances of the case, no such Addition was at all called for.*

*2. That the Ld. AO, erred in law as well as in facts in not allowing the vacancy allowance while computing the Income from House Property as per the provisions of Section 23(l)(c) of the Income Tax Act, 1961 and the Ld. CIT(A), Income Tax Department, NFAC erred in law as well in facts in confirming the said addition in as much as in view of the facts and circumstances of the case, no such Addition was at all called for.*

*3. That the Ld. AO, erred in law as well as in facts in levying interest u/s 234B of the Income Tax Act, 1961 at Rs. 5,97,762/- in as much as in view of the facts and circumstances of the case, no such interest was at all liable to be levied.*

*4. That the Ld. AO, erred in law as well as in facts in initiating penalty proceedings u/s 270A of the Income Tax Act, 1961 for under Reporting of Income in as much as in view of the facts and circumstances of the case, no such initiation was at all called for.*

*5. That the appellant craves leave to add, alter, change and/or modify any of the grounds of appeal at or before hearing of the appeal and claim further relief or reliefs which is necessary for the ends of justice.”*

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in the business of construction of properties. Income of Rs. 28,30,580/- declared in the e-return for AY 2017-18 filed on 29.10.2017. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. AO noticed that the assessee

company owns various units as stock-in-trade and rent received from some of such flats has been offered to tax under the head 'income from house property'. Ld. AO noticed that there are certain units which remained vacant throughout the year but the assessee failed to declare notional rent on such vacant units. Ld. AO thereafter, mentioned the provisions of Section 23 of the Act and by applying Section 23(4) of the Act, computed the notional rent of the vacant units at Rs. 78,86,256/- [Notional Rent of Rs. 1,12,66,080/- (-) Standard Deduction of Rs. 33,79,824/-]. Income assessed at Rs. 1,07,16,838/-.

4. Aggrieved, the assessee preferred appeal before ld. CIT(A) and filed detailed written submission stating that Ld. AO erred in computing the notional rent even ignoring the fact that the assessee had not received any rent for such units during the year. It was further, submitted that in the past these units in question were given on rent and the same was duly offered to tax. However, Ld. CIT(A) was not convinced with the submissions filed by the assessee and placing reliance on various decisions, he confirmed the action of the AO.

5. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee reiterated the submissions filed before the lower authorities and also took us through the paperbook dated 24.05.2023 containing 31 pages and also made reference to various decisions mentioned in the case law paperbook containing 38 pages.

6. On the other hand, ld. D/R vehemently argued supporting the order of ld. CIT(A).

7. We have heard rival contentions and perused the records placed before us. The sole issue for our consideration is whether ld. CIT(A) erred in confirming the addition of notional rent of Rs. 78,86,256/- computed by the AO u/s 23 of the Act. We observe that the assessee is engaged in the real estate business and has various unsold units/flats which are held as stock-in-trade. It has been contended that as and when such unsold units are given on rent then the income so earned is offered to tax as income from house property. However, various unsold units remain vacant also. For the year under consideration, ld. AO has computed the notional rent for the vacant units/flats and after giving the benefit of standard deduction has computed the notional rent at Rs. 78,86,256/-. Now, the notional rent is computed on the basis of annual value which is to be determined as per provisions of Section 23 of the Act and the same is reproduced below:

*“23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be— (a) the sum for which the property might reasonably be expected to let from year to year; or*

*(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or*

*(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable:*

*Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining*

*the annual value of the property of that previous year in which such taxes are actually paid by him.*

*Explanation—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules<sup>89</sup> as may be made in this behalf, the amount of rent which the owner cannot realise.*

*(2) Where the property consists of a house or part of a house which—*

*(a) is in the occupation of the owner for the purposes of his own residence; or*

*(b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,*

*the annual value of such house or part of the house shall be taken to be nil.*

*(3) The provisions of sub-section (2) shall not apply if—*

*(a) the house or part of the house is actually let during the whole or any part of the previous year; or*

*(b) any other benefit therefrom is derived by the owner.*

*(4) Where the property referred to in sub-section (2) consists of more than two houses—*

*(a) the provisions of that sub-section shall apply only in respect of two of such houses, which the assessee may, at his option, specify in this behalf;*

*(b) the annual value of the house or houses, other than the house or houses in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.*

*(5) Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.”*

8. From perusal of the above provision, we find that sub-Section 5 of Section 23 of the Act has been inserted from 01.04.2018 which is specifically for those properties which are held as stock-in-trade and a moratorium period of two years is given from the end of the financial year in which certificate of completion of construction is obtained from the competent authority and if in these two years the property is vacant the annual value is to be taken at Rs. NIL and thereafter, annual value is to be determined. We find that the year under appeal is AY 2017-18 and though the assessee is also having the vacant units/flats as stock-in-trade but Section 23(5) of the Act will not be applicable on the assessee.

9. As far as remaining sub-Sections are concerned, in our considered view, the only relevant provision to be dealt in this case is sub-Section 1 of Section 23 of the Act. Where the annual lettable value (in short the 'ALV') of the property is to be determined and as per Section 23(1)(a) of the Act the ALV is the sum which the property might reasonably be accepted to let from year to year. But in case the property is let out then as per Section 23(1)(b) of the Act if the rent received or receivable is in excess of the sum referred in Section 23(1)(a) of the Act then the amount so received is to be treated as annual value.

10. However, Section 23(1)(c) of the Act provides the mechanism for computing the ALV of the property which are meant to be let out but are vacant during the whole or any part of the previous year then the vacancy allowance is to be given to the assessee. It provides that if the actual rent received or receivable is less than the annual lettable value as might reasonably be accepted to let

out as per Section 23(1)(a) of the Act then the amount so received or receivable is to be treated as ALV. In other words, if the property is vacant throughout the year and the assessee has not received any rent or no rent is receivable then the ALV of such vacant property would be computed as Rs. NIL.

11. Considering the above provisions of Section 23(1)(c) of the Act which in our considered view is applicable to the assessee, the annual lettable value of the vacant properties is to be treated as NIL as the assessee is eligible for vacancy allowance. Our view is further supported by the decision of Coordinate Bench Mumbai in the case of *Pegasus Properties (P.) Ltd. vs DCIT* reported in [2022] 135 taxmann.com 294 (Mumbai - Trib.) wherein the decision of the Tribunal can be summarised in the following manner:

*“■ It is not in dispute that the assessee is a builder or developer and had been showing the income derived from sale of flats as and when they are sold and the flats remaining unsold are shown as inventories in the balance sheet of the assessee as 'stock-in-trade'. These unsold stocks when it is sold subsequently would again get taxed only under the head 'income from business'. It is found that the assessee being a builder or developer would be interested in selling those flats and earn profits out of the same. No businessman would be interested in keeping the properties idle. Hence, the intention of the assessee company being a builder or developer was always to sell the same. [Para 5.11]*

*■ Since all the unsold flats are lying as 'stock-in-trade', the resultant income arising out of sale would only be income from business. It is found that amendment has been brought in the statute in section 23(5) where in respect of unsold stock of properties held as 'stock-in-trade' for a period of two years from the date of obtaining completion certificate from the competent authority, the annual value of such property would be determined as 'Nil'. In other words, there would be no addition towards deemed rental income in respect of unsold stock of properties held as 'stock-in-trade' for a period of two years from the date of obtaining the completion certificate from the competent*

*authority. This specific provision has been brought in the statute from assessment year 2018-19 onwards. Hence, prior to assessment year 2018-19, there is no provision provided in the Act to tax the deemed rental income on unsold stock of properties lying as 'stock-in-trade' under the head 'income from house property'. The provisions of section 23(4) are meant only for properties that are held as investments and not as stock-in-trade. It is also found that the charging provisions of section 22 specifically gives exemption from determination of actual value of the property which is used for the purpose of any business or provision carried on by the assessee. There is no dispute that the assessee had retained the unsold stock of flats as stock-in-trade in the capacity of builder. Hence there is no dispute that the unsold stock of flats were used only for the purpose of business of the assessee. The exception provided in charging section 22 seems to be indirectly taxed only from assessment year 2018-19 after providing the moratorium period of two years. Hence, upto assessment year 2017-18, no addition could be made in respect of deemed rental income on unsold stock of flats lying as stock-in-trade as they are used for the purpose of business of the assessee. [Para 5.12]*

■ *In view of the aforesaid observations, it is held that no addition on account of deemed rental income could be made in respect of unsold stock of flats held as 'stock-in-trade' upto assessment year 2017-18. However, the amendment has been brought in the statute in section 23(5) from assessment year 2018-19 providing a moratorium period of two years. Hence, no addition could be made even for assessment year 2018-19 also. [Para 5.14]*

■ *Accordingly, the ground raised by the assessee for all the three years in respect of addition made on account of deemed rental income of unsold stock of flats as 'stock-in-trade' are allowed. [Para 5.15]"*

12. Thus, respectfully following the above decision and also considering the discussion made herein above we are of the considered view that the annual lettable value of the vacant property in the form of unsold units/flats held as stock-in-trade by the assessee which were let out in the past but remained vacant during the year is to be computed at Rs. NIL. Thus, the finding of Id. CIT(A) is set aside and the ground nos. 1 & 2 raised by the assessee are allowed.

13. Ground nos. 3 & 4 are consequential in nature which need no adjudication.

14. Ground no. 5 is general in nature which needs no adjudication.

15. In the result, the appeal filed by the assessee is allowed.

**Kolkata, the 16<sup>th</sup> October, 2023**

Sd/-  
[Sanjay Garg]  
Judicial Member

Sd/-  
[Manish Borad]  
Accountant Member

Dated: 16.10.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Sugam Realty Limited, 2/5, Sarat Bose Road, Minto Park, Sukh Sagar, Unit-1F, Kolkata-700 020.**
- 2. DCIT, Circle-11(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(D/R), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata