

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER,
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 9831/Del/2019
निर्धारणवर्ष/Assessment Year: 2015-16.

ALM Infotech City Pvt. Ltd., B-418, New Friends Colony, New Delhi - 110 025.	<u>बनाम</u> Vs.	DCIT, Circle : 2 (1) New Delhi.
PAN No. AACCA4886B		
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	N o n e.
राजस्वकीओरसे / Department by :	Shri Kanv Bali, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	26/09/2023
उद्घोषणाकीतारीख/Pronouncement on :	14/12/2023

आदेश / O R D E R

PER C. N. PRASAD, J.M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1 [hereinafter

referred to CIT (Appeals)] New Delhi dated 15.10.2019 for assessment year 2015-16.

2. The assessee in its appeal has raised the following substantive grounds of appeal:-

“1. The order passed u/s. 143(3) by the Id. Assessing Officer is invalid, bad in law and against the principles of natural justice.

2. (a) The Id. CIT (A) erred in facts and law in confirming the action of the Id. Assessing Officer by invoking the provisions of section 22 and 23 of the Act in respect of the unsold stock held by the assessee as stock in trade thereby computing the ALV and making addition of Rs.38,04,862/- under the head income from house property.

(b) The Id. CIT (A) erred in facts and law in not appreciating the fact that the provision of section 22 and 23 ought not be invoked as the unsold stock was held by the appellant in the course of its business.

(c) The Id. CIT (A) failed to appreciate the ratio/ principle laid down in the decision of the Hon'ble Apex Court in the case of M/s. Chennai Properties & Investments Ltd (2015) 42 SCD 651.

3. (a) The Id. CIT (A) erred in facts and law in confirming the action of the Id. Assessing Officer in disallowing the claim of interest expense of Rs.26,79,107/- paid as per the terms of Assured Return Plan of the company.

(b) The Id. CIT (A) erred in facts and law in confirming the action of the Id. Assessing Officer to capitalise the interest cost of Rs.26,79,107/- to the project cost of ILD Grand without appreciating the fact that his predecessor has already held in his order for AY 2012-13 that the said interest cost is incurred for the project- ILD Trade Centre which is already completed and hence allowable as revenue expense.

4. All the above grounds of appeal are independent and without prejudice to each other.”

3. In spite of issue of notices none appeared on behalf of the assessee nor any adjournment was moved. Therefore, we proceed to dispose of this appeal on hearing the ld. DR.

4. Perusal of the assessment order shows that the Assessing Officer while completing the assessment computed the ALV of the un-sold commercial space under the head income from house property following the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Ansal Housing Finance & Leasing Co. Ltd. 29 taxmann.com 303 rejecting the contention of the assessee that it is into the business of real estate and the property i.e. commercial spaces are stock-in-trade and, therefore, notional ALV cannot be assessed on such stock-in-trade of the assessee.

5. We further observe that the Assessing Officer disallowed the interest paid to Assured Return Plan (ARP) which was transferred to project cost of ILD Grand is disallowed from the expenses.

6.1 The assessee preferred appeal before the ld. CIT (Appeals) and the ld. CIT (Appeals) sustained both the above additions/disallowances observing as under:-

“ 7.5 Decision:

I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the appellant. In the assessment order the AO has observed that the total area of commercial space lying unsold at the end of the year has been shown at 7478 sq. ft. at 1st floor of the completed project. The AO has also noted that Ld. CIT (A) vide his order in appeal no. 362/16-17 dated 27.06.2017 has upheld the stand of the AO with a slight modification. In

the said order the CIT (A) has directed to calculate rent @ Rs. 60/- per sq.ft. per month for the ground floor and Rs. 45/- per sq.ft. per month for the first floor. In the assessment order the AO noted that the above decision of Ld. CIT (A) has been accepted by the department. Accordingly, the AO has held that the ALV of the commercial space lying unsold for the period under consideration would also be taxed @ 60 for the first floor and @ 45 for the ninth floor. In view thereof, the AO has determined the deemed rent from the unsold stock. at Rs. 51,36,000/-[(Rs. 60/- *1940.83 sq. ft. 12 months Rs. 13,97,398/-) + (Rs.45/- *7478 ft 12 months 40,38,120/-)] for which the property might reasonably be expected to let from year to year and would be taxable u/s 22 of the Income tax Act, 1961. Accordingly, the AO has taken the ALV of the commercial space lying unsold at Rs 54,35,518/- and added the sum of Rs. 38,04,862/- after allowing 30% of Rs. 54,35,518/- as deduction u/s 24(a) as the income of the appellant under the head "income from house property. In the present case the AO has followed the decision of my predecessor for computing income under the head income from house property". Respectfully following decision of Hon'ble Delhi High Court in the case of CIT Vs Ansal Housing Finance and Leasing Co. Ltd and the decision of my predecessor in the appellant's own case for AY 2014-15 the addition of Rs. 38,04,862/- as the income of the appellant under the head "income from house property is upheld. These grounds of appeal are decided against the appellant.”

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“ 8.3 Decision:

In the assessment order the Assessing Officer has noted that as per the terms & conditions of the agreement furnished by the appellant with the customers of ARP scheme, in case of allottees making payment of 95% of total sales consideration, the developer shall pay to such allottees on agreed sum as assured return on the amount so received by the developers

from the date of receipt of payment till the completion of construction which shall be paid on monthly basis. This clause clarifies that -

- i. Undisputedly, the 95% of the sale consideration so received has been directly incurred in relation to the project.
- ii. Any cost or interest paid on such amount will therefore, be borrowing cost with regard to the amount received and directly incurred in relation to the project.
- iii. Generally, the sale consideration of any unit is paid by the buyer/allottee in the instalment as per the construction/ agreed plan.
- iv. Whereas, the 95% of total sale consideration is paid by the allottee/ buyer of the unit the assessee has agreed to return an amount as assured return on the amount so received from the buyer.

The duration of this payment is from the date of receipt of payment till the completion of construction.

- V. The amount returned to the allottee/buyer which has been termed as interest paid on ARP (Assured Return Plan) is nothing else but an expenditure incurred towards interest on the funds so used in relation to the project.

The Assessing Officer further noted that the amount claimed as interest on Assured Return Pan (ARP) is nothing else but a cost of fund which the appellant has procured by way of advance payment made by the allottee buyer of the unit. The AO noted that the interest paid on ARP is a borrowing cost incurred by appellant directly in relation to the project and accordingly, needs to be apportioned to such project. The AO further noted that the duration of the payment of interest on ARP is only from the period of receipt and till the time of the completion of project The AO has held that the appellant is paying interest on the funds so utilized for the

purpose of a particular project and only nomenclature of such amount has been changed as advance received. In no way, this amount is different from the borrowing, interest on which needs to be apportioned towards the project cost. The AO has further noted that clause 2 d provides that in the event of completion of construction earlier than the scheduled date, the proposed payment for the earlier period of construction is required to be refunded by the allottee / buyer to the appellant company. Accordingly, the AO has held that the utilization of such advance is towards the cost of construction of the project and as such, any interest paid on such advance by whatever name is called is nothing else but borrowing cost. In the assessment order the AO has noted that in relation to the cases where POCM is followed, the expenses which can be charged to the P&L A/c being those should not be considered towards part of construction & development cost, payment of interest on the advance money received from allottee/buyer is not included. The AO has also noted that as per para 2.4 of the guidance note, the expenses of interest on ARP is not covered in any of the items mentioned in clause (a) to (f) as such are not an item/expenditure which can be directly charged to the P &L. In view of it, the AO has treated the interest paid on ARP as a borrowing cost and is being apportioned towards the project cost in accordance to the accounting standard as explained by the guidance note. Accordingly, the claim of appellant for expense towards interest on ARP amounting to 26,79,107/- has been transferred by the Assessing Officer to the project cost of ILD Grand. Accordingly, the AO has disallowed it from the claim of expenses. Considering the facts of the case, I am of the view that the Assessing Officer is justified in treating the interest paid on ARP as a borrowing cost and apportioning it towards the project cost in accordance with the accounting standard as explained by the guidance note. Accordingly, it is held that expenses towards interest on ARP amounting to Rs.26,79,107/- have been correctly transferred by the Assessing Officer to the project cost of ILD Grand. The disallowance of Rs.26,79,107/- on account of ARP is upheld. This ground of appeal is decided against the appellant.”

6.2 None of the above findings have been rebutted by the assessee with evidences.

7. On a careful perusal of the observations of the Id. CIT (Appeals) we do not see any valid reason to interfere with the findings of the Id. CIT (Appeals). Accordingly the order of the Id. CIT (Appeals) is sustained. We reject the grounds raised by the assessee.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on : 14/12/2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 14/12/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee.
2. राजस्व / Revenue.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /

DR, ITAT, DELHI

6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	12.12.2023
Date on which the typed draft is placed before the dictating Member	13.12.2023
Date on which the typed draft is placed before the Other Member	14.12.2023
Date on which the approved draft comes to the Sr. PS/PS	14.12.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	14.12.2023
Date on which the fair order comes back to the Sr. PS/PS	14.12.2023
Date on which the final order is uploaded on the website of ITAT	14.12.2023
Date on which the file goes to the Bench Clerk	14.12.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	