

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE**

**SHRI R.K. PANDA, VICE PRESIDENT  
AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.455/Hyd/2023**  
(निर्धारण वर्ष / Assessment Year: 2017-18)

|   |     |   |
|---|-----|---|
| Gonuguntla Nirmala Devi,<br>Anantapur.<br><br>PAN: AIBPD2345Q | Vs. | The Asst.Commissioner of<br>Income Tax,<br>Circle – 1, Anantapur. |
| अपीलार्थी / Assessee  |     | प्रत्यर्थी / Respondent   |

|                                   |                            |
|-----------------------------------|----------------------------|
| निर्धारिती द्वारा/Assessee<br>by: | Shri R. Venktaraman, C.A.  |
| राजस्व द्वारा/Revenue by:         | Shri Shakeer Ahamed, Sr.AR |

सुनवाई की तारीख/Date of hearing: 21.11.2023  
घोषणा की तारीख/Pronouncement on: 18.01.2024

**ORDER**

**PER LALIET KUMAR, J.M.**

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals), National Faceless Assessment Centre, Delhi dt. 26.07.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 for the assessment year 2017-18.

2. The grounds raised by assessee reads as under :

“1. That the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld.CIT(A)") is not justified in not giving an opportunity to the appellant to file rejoinder to the remand report submitted by the Assessing Officer.

*Without prejudice to the above ground*

2. That the Ld.CIT(A) is not justified in confirming the addition of Rs.68,70,717/- made by the Assessing Officer towards annual value of the vacant portions of the house property and consequently erred in confirming the addition of Rs.48,09,502/- made under the head 'Income from house property'.

3. That the Ld.CIT(A) erred in not appreciating that the addition of Rs.48,09,502/- made by the Assessing Officer was without considering the deduction towards vacancy allowance and ignoring the provisions of clause (c) of sub-section (1) of Section 23 of the Act.

4. Without prejudice to the above, that the Ld.CIT(A) erred in not appreciating that the sum of Rs.68,70,717/- taken by the Assessing Officer towards vacant portions cannot be regarded as the reasonable expected rent as per the provisions of section 23(1)(a) of the Act.

5. Without prejudice to the above grounds, that the Ld.CIT(A) ought to have directed the Assessing Officer to take Municipal Rentable Value as ALV of vacant portions.

6. That the Ld.CIT(A) erred in confirming the action of the Assessing Officer in treating the hire charges of Rs.1,68,000/- received on leasing of Plant & Machinery as income from house property instead of business income of the appellant.

7. That the Ld.CIT(A) is not justified in confirming the disallowance of Rs.1,14,809/- made by the Assessing Officer towards depreciation on Plant & Machinery claimed by the appellant.

8. That the Ld.CIT(A) is not justified in confirming the addition of Rs.32,00,000/- made by the Assessing Officer treating cash deposits in the bank account as unexplained cash credits u/s.68 of the Act.”

3. Before us, ld. AR for the assessee submitted that they are not pressing ground nos.6 and 7. The ld. DR has reported no objection. In view of submission of ld. AR and no objection for the ld. DR, grounds 6 and 7 are dismissed as not pressed.

4. Ground nos. 2 to 5 are with respect to the determination of annual letting value (ALV) of the of the vacant portion of the property situated at 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors of the premises of the assessee and ground no.8 is with respect to the addition of Rs.32,00,000/- made by the Assessing Officer u/s 68 of the Act.

5. Brief facts of the case are that the assessee is an individual, deriving income from partnership firm, property income and other sources. She filed her return of income on 31-03-2018, admitting an income of Rs.16,24,110/-. Thereafter, the case was taken up for scrutiny and notice were issued to the assessee. In response to the notices, the assessee filed the information called for. During the course of assessment for the A.Y. 2016-17, it was verified that the assessee had constructed a building by name Nithin Sai Complex. The total lettable area was 24,000 sq. ft. As per the details submitted, the assessee had not let out the full lettable area. The assessee in the computation has declared rent at Rs.4122430/- for a total of 9,000 sq. ft. let out and admitted in her letter dt. NIL that an area of 15,000 sq. ft. was still vacant. Assessing Officer had computed the ALV on a total area of 24,000 sq. ft. at Rs. 1,09,93,147/-. Hence, the ALV not declared by the assessee was Rs.68,70,717/- which was now brought to tax. Hence, the income from the House Property of Rs.66.36,2161/- was taken into account and brought to tax by the Assessing Officer.

5.2. The assessee during the said A.Y 2017-18 declared income from own business of Rs.53,191/-. During the course of assessment proceedings for the A.Y. 2012-13, in the letter dt NIL received in this office on 05.12.2019, the assessee submitted that she had "purchased Plant & Machinery for Rs. 17,25,000/- which was given on hire for a monthly rent. The allowable depreciation @ 15% on the same was claimed as business expenditure but was wrongly stated in the return of income under property instead of business head". When the assessee was asked to furnish the relevant bill for the purchase of the said Plant & Machinery, the assessee in her another letter dt. NIL submitted in this office on 12.12.2019, stated that "during the year Hot mix plant at factory building erected at Krishnareddy palls, Chiyvedu and the same was given on hire to Nitin Sai Constructions where the assessee was a partner and the same has been considered as income and admitted in the returns. Since it was already 8 years old, the concerned bills of the year have been misplaced and efforts are being made to find the same. The above submissions of the assessee were not accepted by the Assessing Officer. Hence the amount of depreciation claimed as deduction on the said property of Rs. 2,58,750/- was disallowed by the Assessing Officer and credit was not allowed in the income from house property.

5.3. Similarly, in the current assessment year also, the assessee has claimed the receipts of Rs.1,68,000/- purported to have been received on hire of Plant & Machinery to Nitin Sai Constructions as income from business. However, the Assessing Officer treated the same as income from property only as no fresh evidence has been submitted by the assessee regarding the purchase of the said of Plant & Machinery. Therefore, the depreciation of Rs. 1,14,809/- claimed by the assessee was also disallowed.

5.4 As per the information available, the assessee had entered into a property transaction to the tune of Rs. 54,54,000/- on 24.11.2016. As the assessee did not offer any explanation about the said property transaction and has categorically denied having entered into any property transaction vide her letter dt. NIL received in this on 12.12.2019, the entire transaction amount of Rs.54.54,000/- was brought to tax by the Assessing Officer as unexplained investment u/s.69C of the IT Act, 1961.

5.5. As per information available, the assessee had deposited cash of Rs. 32,00,000/- in her bank account in Axis bank. The assessee was asked to explain the sources for the same, for which, she replied that she had withdrawn cash from M/s. Nithin Sai Constructions, where she was a partner and the same was deposited into her bank account. However, the assessee failed to furnish any evidence in this regard. Hence, the Assessing Officer treated the entire cash deposits of Rs.32,00,000/- as unexplained cash credits u/s.68 of the Act. Finally, the Assessing Officer proceeded to determine the total income at Rs.1,51,52,019/-. While doing so, the AO has computed income from property at Rs.66,36,216/-, by taking gross income from house property at Rs1,11,61,147/- and net income at Rs. 66,36,216/- as against the income shown at Rs.17,09,114/-. The AO has also added an amount of Rs. 54,54,000/- as unexplained investment under section 69C of the Act. The AO has further added an amount of Rs. 32,00,000/- as unexplained cash credits under Section 68 of the Act. Thus, he completed the assessment u/s 143(3) of the Act and passed order on 25.12.2019 determining the total income at Rs.1,51,52,019/-.

6. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was subsequently, migrated to the Id.CIT(A), NFAC, Delhi, who partly allowed the appeal of the assessee.

7. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

8. **GROUND 2 TO 5**

In this regard, Id. AR had drawn our attention to Para 3.1 of the assessment order which is to the following effect :

*“3.1 During the course of assessment for the A.Y. 2016-17, it was verified that the assessee had constructed a building by name Nithin Sai Complex. The total lettable area is 24,000 sq. ft. As per the details submitted, the assessee had not let out the full lettable area. The assessee in the computation has declared rent received for a total of 9,000 sq. ft. let out and admitted in her letter dt. NIL, received in this office on 12.12.2019. that an area of 15,000 sq. ft. is still vacant. As per provisions of section 23, the ALV of property is higher of the following*

*1.The sum for which the property may reasonably be expected to be let out*

*2.Where property is actually let, the actual received or receivable*

*3.If any part of the property is vacant and owing to such vacancy the actual rent received or receivable by the owner is less than the sum referred in 1 and 2 above, the amount so received or receivable.*

*Therefore, the assessee is not eligible to claim any deduction towards amount of rent not realizable either under section 23 or section 24 of the Income Tax Act. As per provisions, if the assessee has not realized any rent, the same will be reduced from the ALV and lower ALV will be declared. Further the quantum of unrealized rent cannot be more than the ALV declared in the current year.”*

8.1. Thereafter, Id. AR has drawn our attention to Para 6.18 of the order of Id.CIT(A), wherein the remand report of the Assessing Officer was reproduced which is to the following effect :

*“6.1.8 In the Remand Report, the Assessing Officer (NFAC) has stated that-*

*'a) Addition of Rs. 48,09,502/- on account of ALV of vacant area :*

*The assessee admitted an income of Rs. 17,09,114/- as income from house properly towards letting out 9000 Sq. Ft in a property named ' Nithin Sai complex' It was noticed by the Assessing Officer during the course of assessment proceedings that out of the total area of 24000 Sqft in the said complex, the assessee has admitted income only on 9000 Sqft and income was not admitted for the rest of 15000 Sqft. Accordingly , as per the provisions of sec. 23(1)(a) of Income Tax Act,1961, the AO has arrived at ALV of Rs. 68,70,717/- for the area of 15000 Sqft and after allowing deductions, addition of Rs. 48,09,502/- was made towards income from house property.*

*The assessee has not responded to the notices issued during the course of assessment proceedings. The assessee has filed certain objections on the additions made by the AO before the National Faceless Appeal Centre and submitted certain documents in support of her contention. The assessee contention as that she has not let out the area of 15000 Sq Ft and the actual rent received is NIL owing to vacancy of said area and accordingly ALV of said area would be NIL as per the provisions of sec 23(1)(c ) of IT Act,1961. The assessee placed reliance on various judicial judgments in support of her contention. Alternatively, the assessee contended that Municipal Rentable Value (MRV) should be adopted to determine the Annual Value of the property with regard to claim that the property was vacant. The assessee filed affidavit from one Mr. Jaya Remota, Real Estate Broker and in support of MRV, assessee filed certificate from Registered Income Tax Valuer.*

*The information available and the documents filed by the assessee are considered. With due respect to the judicial pronouncements relied by the assessee, the judgement of Delhi Court in the case of Commissioner of Income Tax Vs M/s Ansal Housing Finance Ltd appears to be relevant to the facts of the case. In the instant case, the Hon'ble High Court held that Income Tax on property is levied not on actual receipt basis but on the basis of ALV. ALV is a method to arrive at a figure on the basis of which the impost is to be effectuated. The Assessing Officer has rightly invoked the provisions of sec. 23(1)(a) in arriving at ALV and the contention of the assessee that the ALV of the property has to be taken as NIL as it was vacant is not tenable. With regard to assessee contention that Municipal Rentable Value is to be adopted, the assessee has let out property at First Floor and the rent received from the said property will be the basis for calculating the ALV. If there is no*

*basis for calculating the ALV then any other parameter can be looked at for determining the ALV. Accordingly, the assessee contention to adopt Municipal Rental Value for determining the ALV is not acceptable. Further, the assessee has submitted documents which do not have any evidential value as per the statutory provisions."*

8.2. The submissions of the assessee are that the issue is covered in favour of the assessee by the decision of Hon'ble Bombay High Court in the case of CIT-12 Vs. Tip Top Typography reported in (2014) 48 taxamnn.com 191 and also by the decision of Chennai Tribunal in the case of Asfa Technologies & BPO (P.) Ltd. Vs. ITO reported in (2022) 197 ITD 323, wherein the Hon'ble High Court and Tribunal have consistently held that the Annual Lettable Value (ALV) is required to be determined on the basis of Municipal Rental Value (MRV). It was further submitted that the assessee had let out the property to Mahiti Working Women and Girls Hostel represented by its Manager G. Mahesh wherein the assessee let out the property at Rs.10 per sft as compared to Rs.38/- per sft which has been disallowed and confirmed by the Id.CIT(A). The vacant portion is situated on the higher floors i.e., 3<sup>rd</sup> and 4<sup>th</sup> floors and therefore, the rate of sft would be lesser when compared to ground and first floors and hence, the rate of sft for ground and 1<sup>st</sup> floors should not be applied to the case in hand.

8.3. In support of the case of assessee, ld. AR filed Municipal Rentable Value Certificate dt.06.03.2021 (Page 3 of the paper book), Confirmation letter dt.19.02.2020 issued by M/s. Nithin Sai Constructions placed (page 5 of the paper book) along with cash book of assessee for the period from 01.04.2016 to 31.03.2017 and also the extract of cash book of M/s. Nithin Sai Constructions for 20.04.2016 (Pages 12 to 15 of the paper book). Ld. AR also produced the copy of capital account of the assessee in the books of account of M/s. Nithin Sai Constructions for the period from 01.04.2016 to 31.03.2017 (placed at page 17 of the paper book) and also copy of assessment order dt.27.12.2019

passed in the case of M/s. Nithin Sai Constructions for A.Y. 2017-18 (placed at pages 25-28 of the paper book). Further, ld. AR placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT-12 Vs. Tip Top Typography reported in (2014) 48 taxamnn.com 191.

8.4. Ld. DR on the other hand submitted that inspite of applying Rs.38 per sft, additional discount of 10% could be given i.e., only assuming the value of the property. He had also relied on the decision of the jurisdictional High Court, and he had also submitted that the decision referred to by the ld.CIT(A) i.e., Commissioner of Income Tax Vs M/s Ansal Housing Finance Ltd is required to be applied with all force in the present case. Ld. DR further relied on the decision of Hon'ble High Court of Andhra Pradesh Vs. ACIT reported in (2011) 14 taxmann.com 146.

9. We have heard the rival submissions and perused the material on record. Admittedly, the assessee is the owner of Nithin Complex, which is a commercial property, consisting of the ground and four floors, having the total vacant area of 24000 sft and out of the said 24000 sft, 9000 sft was let out by the assessee and the remaining area of 15,000 sft was lying vacant during the year under consideration. Out of the said 15000 sft, 12000 sft was on the 3<sup>rd</sup> and 4<sup>th</sup> floors wherein 3000 sft was on the first floor and 2<sup>nd</sup> floor. In our opinion, the area which was situated on the 1<sup>st</sup> and 2<sup>nd</sup> floors being situated on the same floor, the adjoining floors are required to fetch the similar rent which are being received by the assessee on the adjoining properties situated at ground, 1<sup>st</sup> and 2<sup>nd</sup> floors.

9.1. In our view, the ALV of 3000 sft of the area lying vacant on 1<sup>st</sup> and 2<sup>nd</sup> floors are required to be determined by applying the rate of Rs.38/- per sft. Having decided the issue with respect to 3000 sft situated on 1<sup>st</sup> and 2<sup>nd</sup> floors, now the question required to be answered is with respect to the remaining area of 12000 sft situated at 3<sup>rd</sup> and 4<sup>th</sup> floors of the property. In this regard, we noticed that Municipal Rental Value (MRV) as claimed by the assessee was in the range of Rs.5/- per sft whereas assessee has let out the portion to the Girls hostel @ Rs.10/- per sft and the Assessing Officer has claimed ALV @ Rs.38/- per sft. In our view, the properties situated on 3<sup>rd</sup> and 4<sup>th</sup> floors of the property will definitely fetch less rent when compared with ground and 1<sup>st</sup> floors of the property because 3<sup>rd</sup> and 4<sup>th</sup> floors are not connected with lift and the occupants have to climb three stairs to reach the point and even the 3<sup>rd</sup> and 4<sup>th</sup> floors of the property are not in use for so many years and are lying vacant for many years and therefore, the ALV taken by the Assessing Officer and confirmed by the Id.CIT(A) are, in our view, was on the higher side and are required to be estimated.

9.2. However, whether the MRV is required to be taken or the ALV, as the assessee is fetching rent from the Girls hostel, has to be taken into consideration or the lettable value of the properties situated in the adjoining areas are required to be taken, in our view, remanding the matter to the file of Assessing Officer to find out the lettable value of similar properties situated adjoining the property of assessee is difficult. However, since the property of the assessee is situated in a remote area of Anantapuram, it cannot be possible for the Assessing Officer to find out comparable premises which is situated at 3<sup>rd</sup> and 4<sup>th</sup> floors. In view of the

above, we have to estimate the ALV taking the question of the lettable value as taken by the municipal rental value of the Girls hostel and also the rent which was fetched by the assessee from the ground and 1<sup>st</sup> floor.

9.3. Having observed the above, it came to our notice that the Id.CIT(A) in Para 6.1.9 had noted that the assessee was asked to furnish the rejoinder to the comments of the Assessing Officer. However, the assessee has not given any reply to the rejoinder and only submitted that the appeal for A.Y. 2012-13 is pending for adjudication, raising the identical issue before the Tribunal and fixed for hearing on 25.07.2023. On perusal of page 28 of the paper book, we found that the Tribunal vide order dt.17.08.2023 had dismissed the appeal of the assessee. Against the dismissal of the appeal, the assessee has preferred the MA at page 42 of the paper book and it is stated that the same is pending for adjudication before the Tribunal. In our view, once the appeal of the assessee for A.Y. 2012-13 has been dismissed by the Tribunal for the reasons mentioned therein, we do not find any reason to give relief to the assessee on the grounds raised before us. In case, the Tribunal while hearing the M.A. filed by the assessee, recalls the order dt.17.08.2023, then the assessee may file the application to recall the present order on this issue. In view of the above, the grounds raised by the assessee are dismissed.

10. **GROUND NO.8**

With respect to cash deposits of Rs.32 lakhs, our attention was drawn to para 6.4.2 of the order of Id.CIT(A) wherein the Id.CIT(A) has reproduced the remand report of the Assessing Officer, which is to the following effect :

*“6.4.2 In the Remand Report, the Assessing Officer (NFAC) comments on the above issue, is reproduced hereunder:-*

*“d) Addition of Rs. 32,00,000/- as unexplained cash deposits u/s 68 :*

*During the course of assessment proceedings , the AO has noticed that the assessee has made cash deposits to the tune of Rs. 32,00,000/- in her Axis Bank. It was slated by the assessee that she has withdrawn cash from Firm M/s. Nithin Sai Constructions in which she is a partner. However, no evidences could be submitted by assessee. Accordingly, cash deposits were considered as unexplained cash deposits u/s 68.*

*The assessee has filed certain documents before the National Faceless Appeal Centre claiming that she has withdrawn cash from Firm M/s. Nithin Sai Constructions in which she is a partner. Copy of cash book of assessee , cash book of the said firm are submitted. The details submitted by the assessee are gone through. Though the cash book of assessee and firm are submitted the assessee could not submit any details as to why cash is withdrawn from Firm and deposited in her bank account. In one of the instance , the assessee is stated to have withdrawn cash of Rs 21,00,000/- from Firm on 20.04.2016 and deposited the same to her account on 22.04.2016. If the assessee has to deposit amount in to her account the same would have been conveniently transferred from the Firm bank account to her account. Also, on another instance also i.e on 25.05.2016 , the assessee is stated to have withdrawn cash of Rs. 11,00,000/- and deposited in to her account on the same day. The above stated facts equally applies in this instance also. In view of the same , the claim put forth by the assessee is not convincing and furthermore, as the transactions are carried out between related parties (Partner and Firm) the genuineness of the transaction has to be proved beyond doubt.*

*In view of the above stated facts, the assessee has failed to prove the genuineness of transaction involved and accordingly the addition of cash deposit made by the Assessing Officer needs to be upheld. Further, it appears that the assessee by not submitting documents during the course of assessment proceedings came with an afterthought by submitting documents as per her convenience.”*

10.1. It was submitted by the Id. AR before us that the assessee has discharged her onus as required under law by producing her cash book for the period from 01.04.2016 to 31.03.2017 as well as the extract of cash book of M/s. Nithin Sai Constructions for 20.04.2016 (placed at pages 12 to 15 of the paper book) before the Assessing Officer as well as the Id.CIT(A).

It was further submitted that the Assessing Officer has verified that the assessee has withdrawn the amounts from the bank account of M/s.Nithin Sai Constructions and had deposited the said amount on the same dates in her bank account. Once the assessee has proved that the cash withdrawn by her was deposited in her bank account on the same day, then it can be said that the assessee has discharged her onus by proving the identity, creditworthiness and source of cash deposits and therefore, no addition can be made in the hands of the assessee.

10.2. Per contra, the ld. DR has submitted that withdrawal of the amount from the bank account of M/s. Nithin Sai Constructions and depositing of the same by the assessee in her bank account on the same dates does not inspire confidence and it is against the human probabilities.

10.3. We have heard the rival submissions and perused the material on record. Admittedly, the Assessing Officer as well as the ld.CIT(A) acknowledged that the cash deposits were withdrawn by the assessee from the bank account of M/s. Nithin Sai Constructions and thereafter, the same were deposited in her bank account on the same dates.

10.4. From the perusal of the remand report of the Assessing Officer which was reproduced by the ld.CIT(A) at para 6.4.2. of the order of ld.CIT(A), it is clear that the Assessing Officer has not disputed either withdrawal of the cash from the account of M/s. Nithin Sai Constructions by the assessee and again depositing of the same in her bank account on the same dates. Thus, the assessee was able to discharge her onus.

10.5. The Assessing Officer made addition the in the hands of the assessee for the cash deposited in her account, amounting to Rs.32 lakhs. However, in the appellate proceedings and in the remand report, it was admitted by the Assessing Officer that the assessee had withdrawn the amount from the firm, namely, M/s. Nitin Sai Constructions (the Assessing Officer of the said M/s. Nitin Sai Constructions and assessee are same) and deposited the said amount in her bank account. Thus, the assessee was able to demonstrate the availability of cash and the source thereof. The Assessing Officer has not doubted the availability of the cash or its source. Therefore, in our view, no addition can be made in the hands of the assessee, more particularly, when the assessee has withdrawn the amount from the partnership firm in which she was a partner and deposited the withdrawn amount on the same date in her bank account. In view of the above, the ground no.8 is allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 18<sup>th</sup> January, 2024.

**Sd/-**

**Sd/-**

|  |   |
|--|---|
| <b>(R.K. PANDA)</b><br><b>VICE PRESIDENT</b> | <b>(LALIET KUMAR)</b><br><b>JUDICIAL MEMBER</b> |
|--|---|

Hyderabad, dated 18<sup>th</sup> January, 2024.

***TYNM/sps***

Copy to:

| S.No | Addresses   |
|------|---|
| 1    | Gonuguntla Nirmala Devi, Anantapur, R/o. 12-640-C15-D69, Vidyuth Nagar, New Town, Andhra Pradesh. |
| 2    | Assistant Commissioner of Income Tax, Circle 1, Ananthapur.                                       |
| 3    | PCIT, Kurnool.  |
| 4    | DR, ITAT Hyderabad Benches  |
| 5    | Guard File  |

*By Order*