

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH "A", CHANDIGARH**

HEARING THROUGH: PHYSICAL MODE

**BEFORE: JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA NO. 710/Chd/2024
Assessment Year : 2013-14**

Kandhari Infrastructures Private Limited C/o Tejmohan Singh, Advocate #527, Sector 10-D, Chandigarh	Vs.	The Asst. CIT Circle-2(1), Chandigarh
PAN NO: AACCK7075L		
Appellant		Respondent

Assessee by : Shri Tejmohan Singh, Advocate
Revenue by : Smt. Amanpreet Kaur, Sr. DR

Date of Hearing : 12/07/2024
Date of Pronouncement : 12/07/2024

Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), Addl/JCIT(A)-12, Mumbai dt. 26/04/2024 pertaining to Assessment Year 2013-14.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

1. "That the Ld. Commissioner of Income Tax (Appeals) has erred in passing an ex-parte order without affording a proper opportunity of hearing which is against the Principles of Natural Justice and as such the order passed is arbitrary and unjustified.

2. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs. 39,23,316/- made on account of notional rent in respect of property no. 13, Lajpat Nagar-IV, Ring Road, New Delhi which is not chargeable and as such upholding of the addition is arbitrary and unjustified.

3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
4. *That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to the facts of the case and thus untenable."*

3. Briefly the facts of the case are that the assessment in this case was completed under section 143(3) dt. 30/11/2015 wherein the AO has brought to tax, a sum of Rs. 39,23,316/- under the head "Income from House Property" towards deemed rent in respect of Property No. 13, Lajpat Nagar-IV, New Delhi.

3.1 As per the AO, the assessee had two properties which were not used for the purpose of business but were held for the purpose of investment. As per the AO, only one property which the assessee may specify can be treated as self occupied and other is to be treated as deemed to be let out. Accordingly, a show cause was issued as to why the one of the two properties should not be subjected to application of deemed rent under the head "Income from House Property".

3.2 In response, the assessee filed its submission which were considered but not found acceptable to the AO and the AO determined the deemed let out value of the property no. 13 Lajpat Nagar IV for the period of nine months (excluding the month in which it was sold) at Rs. 139.95 Lacs. Thereafter, after allowing the deduction under section 24A amounting to Rs. 41,68,015/- and under section 24B amounting to Rs. 56,52,053/- determined income from House Property at Rs. 40,73,316/- and the net income, after the set off of other house property income under the head income from House Property, was determined at Rs. 39,23,316/-.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since confirmed the addition and the appeal filed by the assessee was dismissed.

5. Against the said findings and the order of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the order has been passed by the Ld CIT(A) *ex parte qua* the assessee stating that the appellant is not interested in replying on merits of the case and is simply seeking adjournment one after the another. In this regard, our reference was drawn to the affidavit submitted by the Counsel of the Assessee which is available at the assessee's paper book page 1 to 4 wherein it has been submitted that the written submission were filed before the Hon'ble CIT-1, Chandigarh initially on 10/02/2020 and thereafter, in the faceless appellate proceedings, it was again submitted that the complete written submission alongwith Annexure have already been duly submitted earlier and a copy thereof was again submitted vide submission dt. 10/01/2023

6.1 It was further submitted that in response to the specific notice dt. 22/02/2024, the assessee moved an adjournment application stating that the Counsel of the assessee is unable to attend the proceedings due to reoccurrence of COVID and wherein the Doctor had advised complete isolation and rest and copy of the Doctor prescription alongwith lab reports were also duly submitted which the Ld. CIT(A) has failed to take cognizance. It was further submitted that in response to notice dt. 18/04/2024, it was again submitted that the assessee is unable to attend the proceedings due to his medical condition however the Ld. CIT(A) dismissed the appeal of the assessee without considering the medical grounds as so stated by the Counsel of the assessee and without going into written submission available on record.

6.2 It was accordingly submitted that the assessee be allowed an opportunity to represent its matter on merits of the case and the matter may be set aside to

the file of the Ld. CIT(A) to decide the same afresh on merits after providing reasonable opportunity to the assessee.

7. Per contra the Ld. DR submitted that the assessee has been issued number of notices by the Ld. CIT(A) and even on merits, in absence of any cogent proof and documentary evidence in support of the facts and the background specifying the terms of agreement to sell Property No. 13 alongwith Court cases filed by Mr. Subhash Arora, Ld. CIT(A) has rightly dismissed the appeal of the assessee.

8. In his rejoinder, the Id AR submitted that in his written submission filed during the appellate proceedings, the assessee has clearly stated that from 01/04/2012 till 11/10/2012, Property No. 13 was under the agreement to sell and had to be specifically kept vacant as per the original terms of the agreement to sell and Court cases filed by Mr. Subhash Arora on 11/10/2012 and agreement was reached between the assessee and Mr. Subhash Arora and finally on 11/01/2013, the Property No. 13 was sold to Mr. Subhash Arora. Hence only in the intervening period from 11/10/2012 to 11/01/2013 the assessee company had clear vacant possession of both the properties. It was further submitted that the Ld. CIT(A) has not called for any further supporting documents and not any opportunity been granted to the assessee. It was accordingly submitted that the matter may be set-aside to the file of the Id CIT(A) to decide the same a fresh after providing reasonable opportunity to the assessee and the assessee will submit the necessary documentation as so required by the Id CIT(A).

9. We have heard the rival contentions and perused the material available on the record. We find that the assessee had filed necessary written submission before the Ld. CIT(A), Chandigarh on 10/02/2020 and thereafter during the faceless appellate proceedings on 10/01/2023, the reference was drawn to the earlier submissions and copy of the earlier submissions were again submitted.

Therefore, admittedly, the submissions are on record and infact, the Id CIT(A) has taken cognizance of the same while passing the impugned order. However, certain supporting documentation as so sought by the Id CIT(A) were not part of the submissions so filed and in absence of any specific requisition, the assessee, couldn't submit the same. Further we find that due to the medical condition of the Counsel of the Assessee, he could not personally attend to the proceeding and therefore there is a reasonable cause for non appearance on behalf of the Ld. Counsel for the assessee. Further, we find that the relevant facts of the case need to be threshed out in the instant case especially the circumstances under which and the period for which the premises were kept vacant, and couldn't be let out/sold and basis thereof as so claimed by the assessee and basis thereof, the matter has to be examined in context of section 23(1)(a) for the purposes of determining the sum for which the property might reasonably be expected to be let out during the financial year relevant to the impugned assessment year. In view of the same, we deem it appropriate that the matter be set aside to the file of the Ld. CIT(A) to decide the same afresh as per law after providing reasonable opportunity to the assessee.

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

Order pronounced in the open Court on 12/07/2024.

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar