

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM**

ITA Nos.4640 & 4641/Mum/2024
(Assessment Years: 2018-19 & 2020-21)

Bengal Shapoorji Housing Development Pvt. Ltd. 41/44, S P Centre Minoo Desai Marg, Colaba, Mumbai-400 005	Vs.	DCIT, Circle 3(1)(1) Aayakar Bhavan, M K Road, Mumbai-400 020
PAN/GIR No.AACCM 1595 P		
(Assessee)	:	(Respondent)
Assessee by	:	Dr. K. Shivaram, Sr. Adv & Shri Rahul Hakani
Respondent by	:	Shri Kailash C. Kanojiya & Shri S. K. Jain
Date of Hearing	:	24.10.2024
Date of Pronouncement	:	25.10.2024

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2018-19 & 2020-21.

2. As the facts are common in both the appeals, we hereby take ITA No.4640/Mum/2024 as the lead case.

ITA No.4640/Mum/2024 (A.Y. 2018-19)

3. The assessee has challenged this appeal on the following grounds:

1 *Natural Justice - Opportunity of video conference is not granted.*

1.1 *The learned CIT(A)/NFAC erred in passing the ex parte order without giving an opportunity of providing video conference and hence the order passed by the CIT(A)/NFAC may be quashed and set aside.*

2. *Merits*

2.1. *The Ld CIT(A)/NFAC failed to appreciate that the annual letting value of the inventory as per the provisions of Section 23(5) shall be NIL and hence, the entire income from house property assessed u/s 23(5) may be deleted.*

2.2 *The Ld CIT(A)/NFAC failed to appreciate that the provisions of Section 23(5) are not applicable in the facts and circumstances of the case and hence, the entire income from house property assessed u/s 23(5) may be deleted.*

3. ***Merits Flats allotted to the allottees cannot be let out as per the law and flats used for business purposes cannot be taxed as income from house property and hence no income can be estimated on notional basis.***

3.1 *The Ld CIT(A)/NFAC erred in confirming the order of Ld Assessing Officer in making addition of Rs 1,14,43,247/- u/s 23(5) being deemed rent w.r.to vacant flats [Annual letting value estimated at Rs 2,59,48,935/- being 8% of value of inventory) without appreciating that the Ld AO erred in estimating deemed rent even on flats which were already allotted and flats which were used for business purposes and hence the addition of Rs 1,14,43,247/- may be deleted.*

3.2 *Without prejudice to above, the Flats which are allotted and cannot be let out, the notional value cannot be assessed as deemed income and hence addition wr.to such allotted flats may be directed to be deleted.*

3.3. *Without prejudice to above the Learned CIT(A)/NFAC failed to appreciate that the flats which are used for business purposes, the notional income cannot be estimated and hence the addition w.r.to flats used for business purposes may be directed to be deleted.*

3.4. *Without prejudice to above, the Ld CIT(A)/NFAC erred in confirming the order of Ld Assessing Officer in making addition of Rs 1,14,43,247/- u/s 23(5) being deemed rent w.r.to vacant flats by estimating Annual letting value at Rs 2,59,48,935/- being 8% of value of inventory without appreciating that adoption of the rate of 8% is arbitrary and without any basis and also unrealistic and on a very higher side and hence the annual letting value of the entire inventory which is subject to deemed rent u/s 23(5) be estimated at reasonable rate of the value of the inventory.*

4. ***Current year loss of Rs 50,86,078.***

4.1. *The learned Ld CIT(A)/NFAC erred in holding that the ground is dismissed. The observation of the learned Ld CIT(A)/NFAC that the appeal is dismissed may be modified and treated as allowed as per the law.*

5. ***Penalty under section. 270A- Direction to levy the penalty is without jurisdiction and without giving a show cause notice and hence bad in law.***

5.1. *The Ld CIT(A)/NFAC erred in directing the Ld AO to levy penalty as per the addition confirmed by the Ld CIT(A)/NFAC without appreciating that penalty provisions and assessment provisions are separate and independent and penalty is not automatic and no show cause notice was issued for levying penalty and hence the direction to impose penalty be deleted.*

4. The brief facts are that the assessee is a company, engaged in the business of development of housing projects, which was allotted by West Bengal Housing Infrastructure Corporation for the purpose of constructing residential flats for different categories of income group. The assessee had filed its return of income on 30.10.2018,

declaring total income at Rs.11,61,74,940/- and had filed revised return of income dated 29.03.2019, declaring an increased total income at Rs.12,28,95,950/-. The assessee's case was selected for complete scrutiny under CASS and notice u/s. 143(2) and 142(1) were issued and served upon the assessee.

5. The Id. Assessing Officer ('A.O.' for short) observed that the assessee had higher turnover in its service tax return as compared to ITR and sought for various details on notional rent on finished unsold flats and on perusal of the same, passed the assessment order u/s. 143(3) r.w.s. 144B of the Act on 02.09.2021, determining the total income at Rs.13,43,39,197/- after making an addition of Rs.1,14,43,247/- towards notional rent on unsold flats held by the assessee.

6. Aggrieved the assessee had challenged the assessment order before the Id. CIT(A).

7. The Id. CIT(A) vide order dated 22.07.2024 upheld the addition made by the Id. A.O. on the ground that the decision of Hon'ble High Court of Delhi in the case of *Ansal Housing Finance Ltd.* which has decided this issue in favour of the Revenue would be squarely covered in case of the assessee. The Id. CIT(A) also directed the Id. A.O. to levy penalty accordingly.

8. Aggrieved the assessee is in appeal before us, challenging the order of the Id. CIT(A).

9. The Id. Sr. Advocate for the assessee vide an application dated 15.10.2024 under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 sought for admission of additional evidences, proposed to be filed by the assessee. The Id. Sr. Advocate further contended that the Id. CIT(A) has not passed a speaking order with reasoning as to why

the addition made by the Id. A.O. was upheld and has also not considered the case law cited by the assessee during the appellate proceeding. The Id. Sr. Advocate also submitted that the assessee has a good case on merits, where the flats alleged to be vacant were already allotted, on which no deemed rent can be estimated. The Id. Sr. Advocate also challenged the Id. CIT(A)'s order, directing the Id. A.O. to levy penalty which according to him was contrary to law and had also contended that the case law relied upon by the Id. CIT(A) are distinguishable.

10. The Id. Departmental Representative (Id. DR for short), on the other hand, vehemently controverted to the submission of the Id. Sr. Advocate and objected to the admission of the additional evidence. The Id. DR relied on the orders of the lower authorities.

11. Having heard the rival submissions and perused the materials available on record, we deem it fit and proper to provide the assessee with one more opportunity to furnish the documentary evidence in support of its claim before the Id. A.O. as in accordance with the principles of natural justice. The Id. A.O. is directed to admit the additional evidence proposed to be filed by the assessee and to decide all the issues raised by the assessee on the merits, based on the submission of the assessee. The assessee is directed to co-operate in the proceedings before the Id. A.O. by furnishing all the relevant documentary evidence without causing delay. We hereby remand both these appeals to the file of the Id. A.O. for *de novo* adjudication.

12. In the result, the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on .25.10.2024

Sd/-

Sd/-

(Renu Jauhri)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 25.10.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai