IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIALMEMBER

ITA Nos.2770 to 2776/DEL/2022
(Assessment Years : 2013-14 to 2019-20)

The Kumar Family Trust, F – 14/15, Pushpanjali Farms, Dwarka Road, Bijwasan, New Delhi – 110 061.	vs.	ACIT, Central Circle 4, New Delhi.

(P**AN: AAATT6581H)**

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Akkal Dudhwewala, CA
REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 11.09.2024
Date of Order : 20.11.2024

O R D E R

PER S. RIFAUR RAHMAN, AM :

1. The assessee has filed seven appeals against the separate orders of ld. Commissioner of Income-tax (Appeals)-23**,** New Delhi (hereinafter referred to 'Ld. CIT (A)') all dated 26.09.2022 for Assessment Years 2013-14 to 2019-20.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.

3. All these appeals are connected with search conducted in the case of Ritika Private Limited (RPL) group and associates on 29.05.2018. As per the submissions of the assessee AYs 2013-14 to 2016-17 are unabated assessment years and AYs 2017-18 to 2019-20 are abated assessment years. The grounds raised in all the appeals are similar and variation only in the figures and quantum of addition. First we take up AY 2013-14 as base year.

4. Aggrieved with the order of ld. CIT (A)-23, New Delhi, assessee is in appeal raising following grounds of appeal :-

> *"1. For that on the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have held the additions made under the head "Income from House Property' the order passed u/s lS3A/143(3) for the unabated AY 2013-14 to be bad in law in view of the fact that no incriminating material or document pertaining thereto was either found and / or seized in course of the search.*
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> *2. For that on the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to correctly appreciate the fact that the property at Goa was being used for the purposes of business and therefore, the Ld. CIT(A)'s action of upholding the assessment of annual lettable value of such property to tax in terms of Section 22 & 23 of the Act, was grossly unjustified.*
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> *3. For that on the facts and in the circumstances of the case and in law and without prejudice to the preceding grounds, the Ld. CIT(A) grossly erred in holding that the assessee was not entitled to the benefit of Section 23(2) of the Act,*
> *without correctly appreciating the fact that the beneficiaries of the assessee Trust were all individuals and therefore the status of the assessee Trust was also that of an 'individual'.*

4. For that on the facts and in the circumstances of the case and in law and without prejudice to the preceding grounds, the lower authorities failed to appreciate that the assessee Trust was a private discretionary Trust created solely for the benefit of the member-individuals and therefore they ought to have held that the assessee Trust was entitled to claim benefit of Section 23(2) of the Act for each house property held by it qua each individual-member of the assessee Trust.

5. For that on the facts and in the circumstances of the case and in law and without prejudice to the preceding grounds, the manner in which the lower authorities computed the annual lettable value of the properties was completely fallacious and unjustified and in that view of the matter the impugned addition of Rs.12,60,000/- ought to be cancelled.

6. For that the appellant craves leave to N.A. submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

5. We proceeded to adjudicate the above grounds issue-wise.

6. The relevant facts of the case are, a search and seizure action under section 132 of the Income-tax Act, 1961 (for short 'the Act') was issued in the name of the assessee, resident of F-14/15, Pushpanjali Farms, Bijwasan, New Delhi-110061 on 29.05.2018. Based on the search initiated in the case of the assessee, notice u/s 153A of the Act was issued and served on the assessee. In response, assessee filed its return of income on 21.02.2020 declaring the total income at Rs.1,21,57,710/-. The assessee has furnished the total income as per the original return of income filed u/s 139 (1) of the Act on

13.09.2013. Based on the return of income filed by the assessee, notices u/s 143(2) and 142(1) along with questionnaire were issued and served on the assessee. The assessee derived income from house property, business and profession.

7. During search proceedings, various incriminating documents/books of account and loose documents as well as soft data were found and seized. On analysis of several emails which were received during the course of search operation, the Assessing Officer observed that assessee has acquired various properties at different places. The details are reproduced below :-

Sl. No.	*Name*	*Properties*		*Remarks*
		S.No.	*Location*	
9.	*THE KUMAR FAMILY TRUST*	*1.*	*SHOP AT LANDMARK, JUHU TARA ROAD, MUMABI*	*(Leased to Ritika @ Rs.550000/- PM)*
	Mr. Suresh Chander Kumar Trustee	*2.*	*SHOPS AT MEGA MALL, GURGAON*	*(Leased to Ritika @ Rs.350000/- PM)*
	Mrs. Ritu Kumar Trustee	*3.*	*REIS MAGOS, GOA*	
	Mr. Ashvin Prakash	*5.*	*JARDIM TROPICALE – VILLA NO.1 – SANGOLDA*	
	Mr. Amrish Prakash Kumar – Beneficiary	*6.*	*VATIKA LANDBASE LTD. (UNIT 708)*	
		7.	*VATIKA LANDBASE LTD. (UNIT 709)*	

8. The Assessing Officer observed from the seized records, several emails were recovered wherein it was found that the properties owned by Kumar Family Trust i.e. Reis Magos Villa and Sangolda Villa in Goa were used by Mr. Ashvin Prakash Kumar (one of the beneficiaries) for running the business of hotel/let out property to tourists. The Assessing Officer reproduced the

relevant emails in the assessment order and observed that several members of the family had discussed over mail regarding two alternatives whether rent be paid to the assessee or alternatively commission be paid to Ashvin Prakash Kumar and who should book all expenses. As per the information seized during the search, Assessing Officer observed that the above properties were shown by Ashvin Prakash Kumar in his Balance Sheet i.e. with the concern name M/s. RTA Retreats, proprietorship concern of Ashvin, who is running and maintaining the property of the assessee and also engaged in the business of hotel/letting of property to tourists. Along with two properties held with the family, he also held other property, namely, Anjuna Property. In the post-search, summons were issued to the assessee why the properties in Goa owned by the family were not disclosed in the rental income in its return of income. In response, assessee has submitted as under :-

> *"1. M/s RTA Retreats is a Proprietorship Concern run by Mr. Ashvin Prakash Kumar for the business of running and maintaining the property of The Kumar Family Trust for running and Operating Guest House / Paying Guest. The business was short-lived and did not last long because it did not turn up into a profitable venture and was discontinued within a short span. The Financials of this Venture were duly reflected in the ITR of Mr. Ashvin Prakash Kumar for Assessment Years 2015-16 and 2016-17.*

2. No formal agreement was executed between both the parties mentioned above."

9. Further summons were issued to Ashvin Prakash Kumar also in order to provide the details of the business and any consideration for use of assets of the family. In response, he submitted as under :-

"6.8 In response to the same, Mr. Ashvin Prakash Kumar through its A.R. has submitted as follows:

7. M/s. RTA Retreats Proprietorship Concern run by Mr. Ashvin Prakash Kumar for the business of running and maintaining the property of The Kumar Family Trust for running and operating Guest House/Paying Guest. The business was short-lived and did not last long because it did not turn up into a profitable venture and was discontinued within a short span. The Financials of this Venture were reflected in the ITR of Mr. Ashvin Prakash Kumar for Assessment Years 2015-16 and 2016-17.

Trust the above to be in order.

Thanking You,

Yours faithfully,

(ALOKE PERIWAL)"

10. Further assessee was asked to provide explanation/calculation chart with respect to the rent received / notional rent if the property was not rented. In response, assessee has submitted that the property in Goa is a residential property which was used by the assessee for its own use i.e. self-occupied property by relying on section 23 of the Act. After considering the submissions of the assessee, the Assessing Officer found the explanation not

acceptable and observed that on perusal of the seized email data, it is seen that assessee has used two properties of the Trust to Mr. Ashvin Prakash Kumar for running his business and for the same, the assessee has not offered any income in the return of income. For the purpose of use of the above two properties in Goa by Ashvin Prakash Kumar, during the course of search operation as well as post-search inquiry proceedings, no agreement was found to be entered by the assessee nor brought on record any agreement in respect to abovesaid query. He observed that it is clear that assessee has focused on tax saving only whether the means are genuine or not. The Assessing Officer observed that as per the provisions of section 23, which provides computation of gross annual value, unless the same is being used for business carried on by the owner himself. Since the assessee has given the property to Ashvin Prakash Kumar, therefore, section 23 (4) is applicable over these properties.

11. In order to verify the notional rent of the abovesaid two properties, a commission dated 12.03.2021 was issued to the Joint Director of Investigation (OSD)(Inv.), Unit 2, Panaji, Goa u/s 131 of the Act. Based on the report submitted by the Joint Director of Investigation (OSD), the annual lettable value of the abovesaid properties were estimated at Rs.80,000/- and Rs.70,000/- respectively per month. Further Assessing Officer observed that

the aforesaid properties held by the assessee, first of all, cannot be said to be residential in nature and secondly, it cannot be held by the assessee Trust for its own residence purposes. Therefore, the properties held by the assessee are governed by section 23(1) of the Act and accordingly actual rent or expected rent, whichever is higher, is taxable. Accordingly, he determined the undisclosed income in the case of Sangolda Goa at Rs.9,60,000/- and after allowing standard deduction allowable to the property of Rs.2,88,000, he determined the net amount of annual lettable rental value at Rs.6,72,000 and similarly he determined net amount of annual lettable rental value of Ries Magos, Goa property at Rs.5,88,000/- after giving the standard deduction of Rs.2,52,000/-. Accordingly, he determined total rental income at Rs.12,60,000/- and the same was added to the total income of the assessee.

12. Coming to the other properties at Unit No.701 & 702 in Vatika Professional Point situated in Sector 66, Gurugram, Haryana. During the course of assessment proceedings, assessee has submitted that this is a commercial property/shop located at complex in Gurugram held with an intention of letting it out. The intention to let out the abovesaid property and has been made constant efforts for letting it out, it could not be said that the said property is let out property. After considering the above submission, the

Assessing Officer found it not acceptable and tenable as the assessee stated in their submissions that the assessee has clear intention of letting out the property but still the same could not be let out, the same shall be considered as the let out property but as per the definition of let out property, the let out property is that property which is let out on rent, which is not the case in the present situation. Therefore, the assessee has not declared any rent on these properties in the return of income, accordingly rejected the submission of the assessee. In order to determine annual lettable value, an Inspector was deputed to make field enquiries of these properties. As per the report of the Inspector, Assessing Officer observed that the Unit No.703 and 704 in the same Tower was occupied by Rohlig India Pvt. Ltd. in the same Tower and at 6th Floor property, it is occupied by Finelines PJ Management India Pvt. Ltd. and the said properties were occupied for more than 6 years. Therefore, the contention of the assessee that it has clear intention of letting out the property but the same could not be let out, stands futile seeing the other properties adjacent to i.e. Unit No.703 & 704 and on 6th Floor were given on rent. Further he observed that the properties held by the assessee are commercial properties. As the enquiries conducted by the Inspector, it was found that the prevailing rate for letting out the property was Rs.50 per sq.ft per month. Based on the above, the Assessing Officer determined the

annual lettable value of the abovesaid properties at Rs.9,00,000/- each and determined the net amount of annual value after standard deduction of Rs.6,30,000/- per unit. Accordingly, he determined the total rental income of Rs.12,60,000/- and made addition to the total income of the assessee.

13. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A)-23, New Delhi and objected to the additions made by the Assessing Officer. With regard to commercial properties at Gurugaon, ld. CIT (A) deleted the addition based on the fact that the property was not let out through out the year and the property is vacant, in that case notional rent is chargeable to tax. However, in the instant case, the property was acquired at the fag end of the financial year, therefore, the assessee could not have let out the property immediately after the purchase. With regard to Reis Magos Villa and Sangolda Villa, Goa, he sustained the addition in this assessment year with the observation that the Assessing Officer has computed the income on ALV of the property after conducting market survey and after taking into account the prevailing rate of the property from the property websites and property dealers located in that area. Further we observed that assessee's abovesaid properties were used as guest house by RTA Retreats and assessee did not disclose any income from the abovesaid properties. He observed that Ashvin Prakash Kumar, son of Smt. Ritu Kumar and Shri

Shashi Kumar, who were the settlers of the trust and Ashvin Prakash Kumar is also one of the principal beneficiaries of the trust. Therefore, this is a case of collusive deal wherein the property was used for the benefit of the trust. Even though the property was utilised for rental income by Ashvin Prakash Kumar, no rent was charged by the assessee from Ashvin Prakash Kumar. Therefore, the action of the Assessing Officer in computing the income under the head Income from House Property is upheld. He rejected the other alternatives proposed by the assessee for computing the fair rent on the basis of backward calculation of municipal tax paid.

14. At the time of hearing, ld. AR of the assessee submitted that ground no.1 raised in AYs 2013-14 to 2016-17 which are unabated assessments and owing to no incriminating material found during the search, the assessment itself is bad in law requires to be set aside. In this regard, assessee has filed a detailed submissions including the abated assessments in AYs 2017-18 to 2019-20 and for the sake of clarity, it is reproduced below :-

> **2. Ground No.l of AYs 2013-14 to 2016-17**
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> 2.1 In these grounds the appellant has contended that the lower authorities were unable to bring any evidence on record which prove that any incriminating material was found in the course of search which can justify the impugned additions of Rs. 12,60,000/-, Rs.25,20,000/-, Rs. 25,20,000/- & Rs. 25,20,000/- in AYs 2013-14, 2014-15, 2015-16 & 2016-17 respectively and in that view of the matter the addition made in these orders deserve to be deleted.
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> 2.2 The appellant submits that the assessments of AYs 2013-14 to 2016- 17 were unabated in terms of Section 153A of the Act. The relevant dates to substantiate the same have been enumerated in the table below:

Asst Year	Date of filing of original ROI	Income returned	Date of order u/s 143(1)	Last date of notice u/s 143(2)
/2013-14	30.09.2013	1,21,57,710/-	N.A.	30.09.2014
2014-15	26.06.2015	50,07,870/-	29.11.2015	30.09.2015
2015-16	27.08.2015	50,40,270/-	14.10.2015	30.09.2016
2016-17	05.08.2016	47,12,910/-	28.11.2016	30.09.2017

2.3 Consequent to the search action u/s 132 which took place on 29.05.2018, the AO had issued notices u/s 153A dated 03.02.2020 for the above-mentioned assessment years requiring it to file true and correct taxable income for these years. All the returns of income were filed disclosing the income as originally returned by the appellant. The summarized details of the original income declared u/s 139 and income return u/s 153A are as follows:

Asst. Year	Income returned u/s 139	Income returned u/s 153A
2013-14	1,21,57,710/-	1,21,57,710/-
2014-15	50,07,870/-	50,07,870/-
2015-16	50,40,270/-	50,40,270/-
2016-17	47,12,910/-	47,12,910/-

2.4 The AO thereafter issued notices u/s 143(2) 8s 142(1) of the Income-tax Act, 1961. Copies of the relevant notices for AYs 2013-14 to 2016-17 are enclosed at **Pages 107 to 134 of the Paperbook.** In response to the questionnaire issued by the AO, the appellant filed suitable explanations 8c submissions, extracts of which are also enclosed at **Pages 135-146 of paper book.**

2.5 In the enquiries made in the course of assessment, the AO had required the appellant to explain as to why no rental income was reflected in respect of the properties held at Gurgaon and Goa. The AO noted that the properties at Goa were used for business under the name and style of M/s. RTA Retreats but according to him the income therefrom was not reflected by the assessee. From these notices/ enquiries it shall be noted that no incriminating document or papers found by the Department in the course of search in relation to the unabated income-tax assessment of AYs 2013-14 to 2016-17 was referred to by the AO. Meaning thereby that the impugned assessments framed by the AO making additions of Rs. 12,60,000/-, Rs.25,20,000/-, Rs.25,20,000/- 8c Rs.25,20,000/- in AYs 2013-14, 2014-15, 2015-16 8c 2016-17 respectively,

was not with reference to any incriminating material or document found in the course of the search.

2.6 The aforesaid fact is further fortified by the findings recorded by the AO in the assessment order wherein he has referred to emails exchanged between the group personnel regarding the properties at Goa. On perusal of the said emails, it is evident that these were regular communications made in the regular course of business activities in as much as it did not contain anything incriminating whatsoever. The entity, M/s. RTA Retreats was a proprietorship firm of Mr. Ashvin Kumar and the income/expenses derived from the business activities conducted at the property in Goa formed part of his regular books of accounts. Accordingly, the information contained in these emails cannot by any stretch of the imagination be construed to be 'incriminating' in nature. It is further submitted that even the AO is unable to correlate or link as to how the contents of these emails led to the unearthing of unexplained income of the appellant. The AO has also not specified as to how this material was 'incriminating' in nature.

2.7 Reference in this regard is made to the decision of the Hon'ble ITAT, Delhi in the case of **Lord Krishna Dwellers (P) Ltd Vs ACIT in ITA No.5294/Del/2013 & 2403/Del/2014 dated 17.12.2018,** In the decided case, Search u/s 132 was conducted against the assessee and certain sale deeds were impounded by the Investigating authorities which related to purchase of land worth Rs. 4.01 crores. Based on the registered sale deeds, the AO observed that the assessee had paid consideration in cash of Rs. 1.05 crores which was disallowed u/s 40A(3) of the Act. On appeal, the question posed before the Hon'ble Tribunal was whether the registered sale deeds constitute 'incriminating' material to trigger the provisions of section 153A of the Act. The ITAT observed that there is no dispute that the purchases of land including the cash payments reflected in the seized sale deeds were duly recorded in the regular books of account. It was further observed that there is no dispute in relation to the sources of payments made for purchase of land. According to the Ld. Tribunal therefore, *the sale deeds, transactions when duly recorded in the regular books of account, cannot be considered as incriminating material found during the course of search operation.* According to ITAT, *it is not the case of the Revenue that if the search and seizure operation had not been conducted, the Revenue could never have come to know that the assessee had entered into various purchase transactions of land.* The ITAT thus deleted the disallowance made by the AO u/s 40A(3) with reference to such sales deeds in the order framed u/s 153A in respect of an unabated year.

2.8 Reliance in this regard is placed on the decision of the Hon'ble ITAT, Cuttack in the case of **Daffodil Vincom Pvt Ltd Vs DCIT in ITA (SS) Nos. 95 & 96/Kol/2018 dated 28.06.2019.** In the decided cases, the AO had added the share capital raised by the assessee in AYs 2011-12 8s 2012-13 by way of unexplained cash credit u/s 68 of the Act in the assessments framed u/s 153A of the Act. On appeal, it was the assessee's contention that the addition u/s 68 was not based on any incriminating material found in the course of search and

therefore the assessee claimed that the impugned additions be deleted. On the other hand, the Revenue contended that the additions were made with reference to documents marked as SFA/01 and SFA/02, which were seized in the course of the search and hence stated that the AO had rightly made the impugned addition. The Hon'ble Tribunal found that the documents referred to by the AO comprised of the disclosed bank account statements. These were found during the course of search and seizure operation but for such reason these could not be held as incriminating in nature justifying the impugned addition on account of share application money. The Tribunal noted that the deposits and withdrawals within the said bank account statement were duly recorded in the regular books of account of the assessee and therefore the account statements didn't form "incriminating evidence" so as to justify the impugned additions. The Tribunal therefore, in absence of any incriminating material found in the course of search, deleted the additions made in the orders u/s 153A in the unabated assessments for AY 2011-12 & AY 2012-13.

2.9 Attention is further invited to the decision of the Hon'ble ITAT, Delhi in the case of **HBN Insurance Agencies Vs ACIT in ITA No. 3783/Del/2014 dated 23.12.2019.** In the decided case the AO had made an addition by way of unexplained bank deposits in the assessments framed u/s 153A of the Act. On appeal, the assessee contended that the additions made u/s 68 were not based on any incriminating material found in the course of search whereas the Revenue claimed that the balance sheet, bank statements etc. found and seized in the course of search constituted incriminating material' which justified the impugned addition. The Hon'ble Tribunal upheld the contention of the assessee by observing as under:

> "In our considered opinion, the profit and loss account and balance sheet of the assessee company, by any stretch of imagination, cannot be considered as incriminating material. It is also not the case of the Revenue that the bank accounts were unearthed during the search operation. On these facts, the ratio laid down by the Hon'ble High Court of Delhi in the case of Kabul Chawla [supra], squarely apply wherein the Hon'ble High Court of Delhi held as under:
>
> ……..
>
> Respectfully following the ratio laid down by the Hon'ble High Court of Delhi and Hon'ble Supreme Court [supra], we are of the considered view that the assessment framed u/s 153A of the Act for both the Assessment Years under appeal deserves to be set aside. We, accordingly direct the Assessing Officer to delete the impugned additions from both the Assessment Years. "

2.10 Useful reference in this regard may also be made to the decision of Hon'ble ITAT, Guwahati in the case of **ACIT Vs Goldstone Cements Ltd (ITA Nos.l26-131/Gau/2020) dated 10.12.2021.** In the decided case also the AO had referred to the electronic seized material marked as GCL-HD-1 as the

relevant 'incriminating material' to justify the addition/s made u/s 68 of the Act in relation to the share subscription monies raised by the company. On appeal both the Ld. CIT(A) as well as Hon'ble ITAT observed that the alleged electronic material referred to by the AO was the group-wise shareholding pattern found in regular books of accounts which also formed part of the secretarial records filed with ROC and thus constituted a regular business document whose contents did not contain anything incriminating whatsoever. Hence, in absence of incriminating material, the order of the AO disturbing the unabated assessments were held to be invalid and accordingly quashed. It is imperative to mention that the aforesaid order of the Hon'ble Tribunal has since been affirmed by Hon'ble Guwahati High Court in **ITA No. 10 of 2022 dated 29.09.2023,**

2.11 In view of the above decisions, the appellant thus submits that the email communications regarding the properties at Goa which formed port of the regular business records of the appellant cannot and does not constitute 'incriminating material' so as to justify the impugned additions made u/s 23 of the Act in the unabated assessments framed u/s 153A for AYs 2013-14 to 2016-17.

2.12 Even with regard to the additions made u/s 23 of the Act in relation to the commercial properties at Gurgaon, it is evident from the face of the assessment order that the AO had made enquiries through ITI / Investigation Wing in the course of the assessment which cannot by any stretch of the imagination be said to be incriminating material unearthed in relation to these properties at Gurgaon in the course of search so as to justify the additions made in the unabated AYs 2013-14 to 2016-17.

2.13 These facts considered cumulatively show that no incriminating material whatsoever was found in the course of search pertaining to the appellant to justify the additions made u/s 23 of the Act in the unabated assessments of the relevant AYs 2013-14 to 2016-17. In the circumstances, the appellant submits that the impugned additions made in the absence of any incriminating material found in the course of search were wholly unsustainable and deserve to be deleted in full.

2.14 Reference in this regard is made to the following judgments of the judicial forums wherein it has been consistently held that where no incriminating material is found in the course of search pertaining to the assessee's unabated assessment, then it is not permissible to make any addition while passing an order of assessment u/s 153A of the Act.

- PCIT Vs Abhisar Buildwell (P.) Ltd. (149 taxmann.com 399) [SC]
- CIT Vs Kabul Chawla reported in [380 ITR 573] (Delhi HC)
- CIT Vs Continental Warehousing Corpn [58 taxmann.com 78]
- All Cargo Global Logistics Ltd Vs DCIT [18 ITR (Trib) 106] (Mum ITAT)
- Mani Square Ltd Vs ACIT (118 taxmann.com 452)

- PCIT Vs. Best Infrastructure (India) (P.) Ltd. (ITA Nos. 11 to 22 of 2017) (Del HC)
- PCIT Vs. Lata Jain (384 ITR 543) (Del HC)
- Pr. CIT v. Saumya Construction (P.) Ltd. (387 ITR 529) (Guj HC)
- Pr. CIT v. Meeta Gutgutia (248 taxman 384) (Del HC)
- CIT v. Sinhgad Technical Education Society (378 ITR 84) (Bom HC)
- Jai Steel (India) Vs ACIT [259 CTR 281] (Raj HC)
- Chetandas Lakshmandas [254 CITR 392] (Del HC)
- CIT vs Veerprabhu Marketing Ltd [73 taxmann.com 149] (Cal HC)

2.15 For the reasons set out in the foregoing and in view of the above-cited judgments, the appellant submits that since no incriminating material whatsoever was found or seized from the appellant's premises in the course of search operations which would have any bearing or relation to the income- tax assessments for the relevant assessment years, the additions made in the assessment of the appellant framed u/s 153A for the AYs 2013-14 to 2016- 17 were unsustainable and therefore should be directed to be deleted in full.

3. Ground No. 2 of AYs 2014-15 to 2016-17 and Ground No. 1 of AYs 2017-18 to 2019-20
(Addition u/s 23 in relation to properties at Gurgaon)

3.1 The appellant submits that the commercial properties at Gurgaon were acquired on 14.02.2013. On perusal of the conveyance deeds, it is clear that these properties were bare-shell / raw in nature and therefore not habitable for use. The said commercial properties also did not have electricity connection and/or proper sanitation /water etc. This fact has also been stated by the Inspector in his report dated 27.03.2021 wherein he has categorically observed that these properties were in raw form as provided by the builder. It is thus apparent that these commercial properties were not fit for habitation and therefore no annual value could have been legally assessed u/s 23 of the Act.

3.2 Reliance in this regard is placed on the decision of the Hon'ble ITAT, Amritsar in the case of **Shyam Sunder Behl Vs Addl. CIT (147 Taxman 1).** In the decided case it was held that where the property is not in a 'habitable condition', the annual value cannot be assessed to tax u/s 23 of the Act. In the instant case also, the property in question was held to be not in a habitable condition because it was neither having an electricity nor a water connection and other things such as flooring, sanitation etc. were also to be completed for the purpose of use and occupation of the property by the tenant. In the absence of the basic material amenities in the property, it was held that the owner would not be in a position to create interest of the tenant in the property and hence the annual value was held to be NIL.

3.3 The above decision was again followed by the Hon'ble ITAT, Amritsar in the case of **ACIT Vs Dr. Amrit Lai Adlakha (11 SOT 674).** In the decided case also the report of the Inspector showed that there were cracks

in the impugned property which was being planned to be demolished and re-constructed. The Hon'ble ITAT therefore upheld the order of the Ld. CIT(A) that the property was not capable of being let out as it was not in a habitable condition. Accordingly, the annual value of the property was assessed at NIL.

3.4 In view of the above decisions and having regard to the admitted facts in the present case, the appellant submits that the commercial properties at Gurgaon were not in a habitable condition and therefore not capable of being let out. Accordingly, the annual value of the property ought to be assessed at NIL.

3.5 **WITHOUT PREJUDICE** to the above, it is further submitted that the appellant was unable to find a suitable tenant willing to pay fair rent and in absence of a suitable tenant, the property in question remained vacant. For such reason also, the appellant did not invest further funds or incur costs towards these properties to make them habitable. It is therefore the appellant's plea that the "annual value" of the property is required to be assessed keeping in view the provisions of Sec. 23(l)(c) of the Act and not in terms of Sec. 23(1)(a) of the Income Tax Act and thereby the assessee company be allowed vacancy allowance for the entire year.

3.6 It is submitted that with effect from A.Y.2002-03, the provisions of Sec. 23 had undergone a material change. Effective from A.Y. 2002-03 where the property was let out at any time and the property remained vacant during the whole or any part of the previous year and owing to such vacancy; actual rent received by the owner is less than the sum referred to in Sec. 23(l)(a), then the annual value would be the amount actually received or receivable was taxable. In terms of the aforesaid provision and in the facts of the present case, the property in question remained vacant throughout the previous year. No rent was actually received and therefore the assessee submits that 'NIL' amount was required to be taken as the annual value of the property under the provisions of Sec. 23(l)(c) of the Income Tax Act. Reliance in this regard is placed on the following decisions of the coordinate Benches of the Tribunal wherein on similar facts 85 circumstances and having regard to provisions of Section 23(l)(c), the annual value of the property which was lying vacant was assessed at 'NIL'.

- Sonu Realtors Pvt Ltd Vs DCIT (173 ITD 82)
- ACIT Vs Dr. Prabha Sanghi (139 ITD 504) (ITAT Delhi)
- ITO Vs Metaoxide Pvt Ltd (170 ITD 235) (ITAT Mumbai)
- S.R. Tendulkar Vs Dy.CIT (172 ITD 266) (ITAT Mumbai)
- Premsudha Exports (P.) Ltd. Vs ACIT (110 ITD 158) (Mumbai)

3.7 In view of the above the appellant submits that even in the alternate the annual value of the property has to be assessed at 'NIL' in terms of Section 23(l)(c) of the Act.

4. Ground No. 3 of AYs 2014-15 to 2016-17 and Ground No. 2 of AY 2013-14 6b **AYs 2017-18 to 2019-20**
(Addition u/s 23 in relation to properties at Goa)

4.1 The appellant is a private discretionary trust settled by Mrs. Ritu Kumar **8**b Mr. Shashi Kumar in favour of their sons, Mr. Ashvin Kumar and Mr. Amrish Kumar, who are the principal beneficiaries of the Trust. Clause 8.1 of the Trust Deed states that all the properties owned by the Trust shall be applied only for the benefit of the beneficiaries of the Trust. Copy of the Trust Deed is enclosed at **Pages 45 to 52 of the Paper Book.** Accordingly, in terms of the Deed of Trust, the Trustees had permitted one of the principal beneficiary, Mr. Ashvin Kumar to use the properties owned by the Trust for business purposes. The principal beneficiary, Mr. Ashvin Kumar had accordingly used these properties in the course of business for the purposes of providing accommodation to tourists which were being run under the name 8s style M/s RTA Retreats. The income derived from this business activity formed part of the total income of Mr. Ashvin Kumar and has all along been assessed to tax at the normal marginal tax rates.

4.2 Referring to some email communications, the AO inferred that the action of the appellant Trust permitting its beneficiaries to use the properties without payment of any rent was a tool to avoid tax and according to him as the appellant did not charge any rent, the annual value of the said property has to be assessed to tax. The appellant submits that the aforesaid reasoning given by the AO is factually as well as legally unsustainable.

4.3 Section 22 of the Act provides that the properties which are occupied for the purposes of business shall be excluded from the charge of income under the head House Property. From the facts set out above it is apparent that the appellant which is a private discretionary trust had not given the properties to any outsider or third party but it was given for business use by the principal beneficiary of the Trust. In terms of the Deed of Trust, not only were the Trustees required to apply the assets for the benefit of the beneficiaries but even the assets & properties which were vested with the appellant Trust beneficially belonged to and shall ultimately stand vested in the beneficiaries alone. Therefore the act of the appellant trust allowing the beneficiary to use the properties owned by the Trust for business purposes cannot be viewed adversely or said to be unjustified or illegal.

4.4 Reliance in this regard is placed on the decision of the Hon'ble Gujarat High Court in the case of **CIT Vs Rasiklal Balabhai (119 ITR 303)** involving somewhat similar facts & circumstances as involved in the present case. In the decided case, an individual partner had permitted the partnership firm to use the property held by him in his personal name without any rent/charge. The AO however refused to accept that the property was being used by him in business and therefore estimated and assessed the annual value. On appeal however, the Hon'ble High Court upheld the order of the lower appellate authorities deleting the same, by observing as under:

> The assessee must be held to be carrying on business, when that business is a business of a partnership firm since the firm, as a partnership firm has no legal entity and, it is a compendious expression for all the partners. In that view of the matter, therefore, the first condition which is prescribed in section 22 for purposes of qualifying for exemption, viz., that the person must be carrying on his business in question was fulfilled.
>
> If an assessee partner is in law carrying on business, though the business may be the business of a firm, it is beyond comprehension as well as common sense that he could not be said to be carrying on business in the premises in respect of the income of which the exemption is claimed since he is occupying the same as a partner and not in the capacity of an owner. If, when a partnership carries on a business, each partner thereof, carried on that business, and if the firm is carrying on business on the premises in respect of the income of which the exemption is claimed, it must be held as a necessary implication that that partner is occupying the premises.
>
> Therefore, the Tribunal, was justified in holding that the annual letting value of the godown, owned by the assessee and used for the business carried on by him in partnership was not liable to be included in his total income under section 22.

4.5 Following the above judgment similar view was expressed by the jurisdictional Delhi High Court in the case of **H.S. Singal & Sons (118 Taxman 894).** In the decided case the assessee HUF was owning a property which was being used by a partnership in which the family of the assessee was a partner. The AO held that the property was not being used by HUF for its own business and therefore assessed the annual value to tax u/s 23 of the Act. On appeal, the Hon'ble High Court held that an HUF is not a juristic person and that the HUF and the members of the family are one and the same. Accordingly, since the property was being used by the assessee family for business purposes, it was held that no annual value could be assessed to tax. The relevant observations of the Hon'ble High Court is as follows:

> "An HUF is not a juristic person for all purposes and cannot enter into an agreement of partnership with either another HUF or individual. It is open to the manager or karta of a joint HUF as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the manager or the karta and the other person and by the partnership agreement no member of the family except the said person acquires a right or interest in the partnership. Requirements of section 22 are that (i) a person who is the owner of the property is carrying on business or profession and for the purpose of such business or profession carried on by him the property is used; *(ii)*

the income of such business or profession is chargeable to tax. Section 22 is in essence an exception to the charging or taxing provision and provides for exemption in a case where the property is used for the purpose of business or profession and the owner of the property and the owner of the business or profession are the same person. That being the situation, the Tribunal was justified in its conclusions. We are in agreement with the view expressed by the Gujarat and Madras High Courts and are unable to agree with the view expressed by the Karnataka and Allahabad High Courts. The answer to the question referred is in the affirmative, in favour of the assessee and against the revenue."

4.6 Similar view has been expressed by the following High Courts as well.

- CIT Vs Rabindranath Dhol (79 Taxman 170) (Orissa HC)
- CIT Vs Mustafa Khan (145 Taxman 522) (All HC)

4.7 In the present case also the assessee Trust is not a juristic person. The appellant Trust derives its status from the beneficiaries in as much as all the assets/income of the appellant Trust beneficially belongs to the beneficiaries. In that view of the matter, and on the admitted fact that the principal beneficiary of the appellant Trust was using the property for business purposes, it is submitted that the lower authorities had grossly erred in assessing the annual value of the properties at Goa. The appellant submits that these properties qualify in the exception set out in Section 22 of the Act and therefore its annual value is not assessable under the head 'House Property'.

4.8 With regard to the AO's allegation that the non-charging of rent by the appellant trust from its beneficiaries was a tax saving tool, it is submitted that this observation does not hold any water. Had the appellant Trust charged rent from the principal beneficiary, on one hand, the rent would be taxable in its hands but correspondingly it was also tax deductible in the hands of the beneficiary. Since both the appellant Trust and the beneficiary are taxed at the same tax rates, it was not the case that the appellant avoided any tax by not charging rent from its beneficiary. This may be viewed from another angle as well. Assuming that rent was charged by the appellant Trust, then such income ultimately would in turn be passed on to the beneficiary i.e. Shri Ashvin Kumar for whose benefit the appellant Trust was formed. Hence, there is no rationale for the beneficiary to pay rent to the appellant private trust which was formed by his parents for his personal benefit.

4.9 For the reasons set out above therefore it is submitted that, as the properties at Goa were being used for business purposes, their annual value was not assessable to tax in view of the specific exception carved out in Section 22 of the Act. The AO may accordingly be directed to delete the same.

4.10 Without prejudice to the above submissions, the appellant further submits that the 'annual value' of the property ought to be assessed with

reference to the annual value adopted for local municipal tax purposes for the relevant year. The appellant in this regard relies on the submissions made at Paras 6.1 to 6.5 below.

5. Grounds No. 4 & 5 of AYs 2014-15 to 2016-17 and Grounds No. 3. & 4 of AY 2013-14 and AYs 2017-18 to 2019-20 *(Denial of benefit of one-self occupied property)*

5.1 It is submitted that the appellant being a private discretionary trust formed for the benefit of individual beneficiaries shall derive its status from the beneficiaries i.e. 'individual' and therefore the appellant was legally entitled for the benefit of exclusion of one-self occupied property in terms of Section 23(2) of the Act. The Ld. CIT(A) however denied the same by holding that the assessee being a discretionary trust was assessable in the status of AOP. In this regard, the appellant relies on the decision of the Hon'ble ITAT, Special Bench, Kolkata in the case of **ITO Vs Shri Krishna Bhandar Trust (29 ITD 15)** wherein on identical facts and circumstances the Hon'ble Tribunal had held that the status of discretionary trust formed for the benefit of individuals has the status of an 'individual' and not 'AOP'. The relevant findings of the Tribunal is as follows:

> "In the instant case neither the beneficiaries nor the trustees had joined in a common purpose or common action. The object of which was to produce income, profits or gains. In the assessment year in question the assessee in each case derived income from investment, i.e., from dividend and interest. The mere fact that beneficiaries or trustees were more than one could not lead to the conclusion that they constituted an 'AOP'. The necessary element to constitute an AOP as pointed out by the Supreme Court in the case of N.V. Shanmugham v. CIT[1971] 81 ITR 310, was altogether missing in the instant case. So the status of trustees in the instant case could only be that of an individual and not that of an AOP. In the instant case, there were more than one trustees and they were to be assessed as one unit in the status of an individual. It had not been disputed that if the status of the assessees were to be taken to be that of an individual, they should be entitled to deduction under section 80L. The order of the Commissioner (Appeals) was justified in allowing the assessee's claim. "

5.2 The above decision of the Hon'ble Tribunal has since been upheld by the Hon'ble Calcutta High Court which is reported in **201 ITR 989** wherein it was held as follows:

> Since the determination of the status of an assessee is a part of the process of computation of income, it is necessary to look into the general principles for determining whether the status of the trustees of a discretionary trust can be taken to be as "an association of persons" or as an "individual".

The Supreme Court in CIT v. Indira Balkrishna [1960] 39 ITR 546, while considering what constitutes an association of persons, held that the word "association" means "to join in any purpose" or "to join in an action". Therefore, "association of persons" as used in section 2(31)(v) of the Income-tax Act, 1961, means an association in which two or more persons join in a common purpose or common action. The association must be one the object of which is to produce income, profits or gains. In the present case, neither the trustees nor the beneficiaries can be considered as having come together with the common purpose of earning income. The beneficiaries have not set up the trust. The trustees derived their authorities under the terms of the deed of trust. Neither the trust nor the beneficiaries have come together for a common purpose. They are merely in receipt of income. The mere fact that the beneficiaries or the trustees being representative assessees are more than one, cannot lead to the conclusion that they constitute "an association of persons".

In Suhashini Karuri v. WTO [1962] 46 ITR 953, this court held that joint trustees must be taken to be a single unit in law and not as an "association of persons" and there is nothing wrong in treating such a unit as "an individual".

In CIT v. Sodra Devi [1957] 32 ITR 615, the Supreme Court held that the word "individual" does not mean only a human being, but is wide enough to include a group of persons forming a unit.

In Mammad Keyi v. WTO [1966] 60 ITR 737, the Full Bench of the Kerala High Court held (Velu Pillai J. dissenting) that the term "individual" in section 3 of the Wealth-tax Act, includes a Moplah Muslim family which is governed by the usages similar to those that governed a Hindu undivided family.

It is now well-settled that the word "individual" does not necessarily and invariably always refer to a single natural person. A group of individuals may as well come in for treatment as an individual under the tax laws if the context so requires. Reference may be made in support of this proposition, to the Full Bench decision of the Kerala High Court in Kerala Financial Corporation v. WTO [1971] 82 ITR 477, where the statutory Corporation was held to be assessable as an individual. The said decision drew strength from a number of decisions of the Supreme Court including that in Sodra Devi's case [1957] 32 ITR 615. The other decision is Andhra Pradesh State Road Transport Corporation v. ITO [1964] 52 ITR 524 (SC). We may also refer to the decision in Jogendra Nath Naskar v. CIT [1969] 74 ITR 33, wherein the Supreme Court has observed that there could be no reason why the word "individual" in section 3 of the Indian Income- tax Act, 1922, should be restricted to human being alone and not to juristic entities.

…

> Having regard to the facts and circumstances of this case, we are of the view that the trustees of the assessee-trust have to be assessed in the status of an "individual". We, accordingly, return our answer in the affirmative and in favour of the assessee."

5.3 Following the above judgment, an identical view has been expressed by the Hon'ble Delhi High Court in the case of **CIT Vs Food Corpn. of India, Contributory Provident Fund Trust (318 ITR 318)** and Hon'ble Madras High Court in the case of **CIT v. Shriram Ownership Trust (122 taxmann.com 155).** In view of the foregoing judgments therefore and without prejudice to the earlier submissions, the appellant submits that it is legally entitled to the benefit of at least one-self occupied property in terms of Section 23(2) of the Act.

6. Ground No. 6 of AYs 2014-15 to 2016-17 and Ground No. 5 of AY 2013- 14 and AYs 2017-18 to 2019-20

(Manner of computation of annual lettable value was erroneous)

6.1 **Without prejudice to the above submissions,** the appellant further submits that the 'annual value' of the property is required to be assessed with reference to the annual value adopted for local municipal tax purposes for the relevant year. The sum which is assessable under the head "house property' in terms of Sections 22 & 23 of the Act, is higher of the "annual value" of the property or the rent actually received. The term "annual value" however has not been defined in the said Section or for that matter in the Income-tax Act, 1961. Instead, the term "annual value" has been defined in the Wealth-tax Act, 1957. Rule 4 of the Schedule-Ill of Wealth-tax Act, 1957 states that "gross maintainable rent" in relation to an immovable property which is not let-out is *the amount of annual rent assessed by the local authority in whose area the property is situated for the purpose of levy of property tax or any other tax on the basis of such assessment.* Therefore, similarly, for the purposes of determining the annual value under Section 23(l)(a) of the I.T. Act, 1961, the annual municipal value computed as per the principles laid down in Schedule III of the Wealth-tax Act, 1957 is to be adopted. It is submitted that these two Acts must be read in consonance and the principles for determining annual value under these Acts are common. The "property tax is levied by the Municipal Corporations of the respective States with reference to the annual valuation of the property. The said municipal valuation is to be considered as the "prevailing market value" for the purposes of Section 23(l)(a) of the Income-tax Act, 1961.

6.2 Reliance in this regard is placed on the decision of the jurisdictional Delhi High Court in the case of CIT Vs Moni Kumar Subba (333 ITR 38) wherein it was held as follows:

> "13. The next question would be as to whether the annual letting value fixed by the Municipal Authorities under the Delhi Municipal

Authority Act can he the basis of adopting annual letting value for the purposes of section 23 of the Act. This question was answered in affirmative by the Calcutta High Court in Satua Co. Ltd. 's case (supra) on the ground that the provisions contained in the Delhi Municipal Corporation Act for fixing annual letting value is pari materia with section 23 of the Act. The Court opined that the fair rent fixed under the Municipal laws, which takes into consideration everything, would form the basis of arriving at annual value to be determined under section 23(l)(a) and to be compared with actual rent and notional advantage in the form of notional interest on interest free security deposit could not be taken into consideration.

……

14. In fact, this is the view taken even by the Supreme Court in the case of Mrs. Shiela Kaushish v. CIT [1981] 131 ITR 435/7 Taxman 1 on account of similarity of the provisions under the municipal enactments and section 23 of the Act.

15. It is on this basis that in the present case, the CIT(A) gave primacy to the rateable value of the property fixed by the Municipal Corporation of Delhi vide its assessment order dated 31-12-1996 and on this basis, opined that the actual rent was more than the said rateable value and therefore, as per section 23(l)(b), the actual rent would be the income from house property and there could not have been any further additions.

16. Since the provisions of fixation of annual rent under the Delhi Municipal Corporation Act are pari materia of section 23 of the Act we *are inclined to accevt the aforesaid view of the Calcutta High Court in Satya Co. Ltd. 's case (suyra) that in such circumstances, the annual value fixed by the Municipal Authorities can be a rationale yardstick.* However, it would be subject to the condition that the annual value fixed bears a close proximity with the assessment year in question in respect of which the assessment is to be made under the income-tax laws.

6.3 Gainful reference in this regard may also be made to the following observations of the Calcutta High Court in the case of **CIT Vs Bhaskar Mitter (73 Taxman 437)** wherein the Court held as below:

"The ratio of the several decisions of the Supreme Court as well as this Court is that there is unity of the Municipal Act and the Income- tax Act on the question of annual value and that such annual value cannot exceed the standard or fair rent under the Rent Control Act and may in a given case even be lower than the standard or fair rent. The principles for determining the annual municipal value and the annual letting value under the two Acts being common, in a case where the annual municipal value is available, that itself would be the annual

> letting value under the Act. In fact, this principle has now been statutorily recognized in Schedule III of the Wealth-tax Act, 1957. Rule 5 of Part 'B' of Schedule III to the Wealth-tax Act lays down the procedure for determining the gross maintainable rent..."
>
> 6.4 In view of the above therefore it is prayed that the AO be alternatively directed to re-work the annual value of these properties with reference to the annual values determined by the Municipal Corporation.
>
> 6.5 Without prejudice to the above and in the alternate rental yield of immovable properties in metro cities are generally in the range of 2% of the value of investment. This view has been endorsed by the Hon'ble ITAT, Mumbai in the cases of **DCIT Vs Rustomjee Evershine Joint Venture in ITA No. 1349/Mum/2022 dated 31.07.2023** and **ACIT Vs Chalet Hotels Ltd in ITA No. 2513/Mum/2021 dated 30.08.2023.** Following the same, the AO may alternatively be directed to restrict the ALV of the impugned properties to 2% of the cost of investment made by the appellant."

15. On the other hand, ld. DR for the Revenue submitted that various emails found during search are nothing but incriminating material. He further submitted that with regard to properties at Goa, the assessee has not submitted any agreement for usage of the property since the same was used by one of the beneficiaries for running the business.

16. With regard to Gurugram properties, ld. DR submitted that the assessee claims that these properties were not rentable properties, however there are adjacent properties which were already let out. Therefore, the submissions of the assessee are not acceptable. Accordingly, he supported the findings of the lower authorities.

17. In the rejoinder, ld. AR of the assessee submitted that properties at Gurugram is neither rentable nor useable considering the fact that these were

incomplete and also there are several issues relating to access of these properties. He further submitted a statement indicating the sale of Gurugram properties unit no.701 & 702 which was sold by the assessee on 30.04.2024 and he submitted a calculation indicating that sale consideration of Rs.1,94,67,000/-, cost of purchase of Rs.1,87,57,457 and maintenance expenditure of Rs.93,52,580/- during the assessment years 2013-14 to 2025-26 and net cash loss was determined at Rs.86,43,037.51. He submitted that the assessee has not let out the property till AY 2024-25. He pleaded that assessee has not been able to let out this property.

18. Considered the rival submissions and material placed on record. We observed that a search and seizure action was initiated in the case of the assessee on 29.05.2018. During the search, certain incriminating material found on various investment on the properties and also certain emails exchanged between the family members were found as per which assessee was holding seven properties, out of which two properties at Mumbai and Goa were leased out to Ritika Private Limited. With regard to other properties at Reis Magos Villa and Sangolda Villa at Goa and further commercial properties at Vatika Professional Point bearing Unit No.701 & 702 were found for which assessee has not declared any rental income. With regard to properties at Goa, an email was found wherein family

members were in discussion with regard to utilisation of this property and as per the email, it was found that Ashvin Prakash Kumar is one of the beneficiaries, who was running RTA Retreats for commercial purposes. As per the proposal, these properties will be commercially exploited to earn the income for the family. As per the Balance Sheet dated 31.03.2015 of RTA Retreats, these properties were recorded in the Balance Sheet as the property run by Ashvin Prakash Kumar. As per the submissions, Ashvin Prakash Kumar has submitted that RTA Retreats is a proprietary concern run by him for the business of running and maintaining the property of the family trust as guest house/paying guest. The business was short-lived and did not last long because it did not turn up into a profitable venture and accordingly discontinued within a short span. It was submitted that financials of this venture were reflected in the ITR of Ashvin Prakash Kumar for AYs 2015-16 & 2016-17.

19. From the above discussion, it is clear that assessee has not disclosed details of any of the above properties in its return of income filed during the AYs 2013-14 to 2016-17. These details were found only during the search that assessee has invested in other properties and the emails relating to exploitation of properties owned by the assessee trust. Therefore, the claim of the assessee that there is no incriminating material found during the

search is unfounded. We observed that assessee has disclosed rental income of Gurugram and Mumbai properties only and not disclosed any rental income for other assets held by it even though it has disclosed the existence of the property in its Balance Sheet as on 31.03.2013. As per the exchange of emails between family members, it is clear that one of the beneficiaries has taken up the properties in Goa to exploit the same commercially. Accordingly, we noticed that Ashvin Prakash Kumar has declared income for this property in his Balance Sheet submitted as on 31.03.2015 and 31.03.2016 and the emails were also dated 20.02.2015 onwards. It clearly shows that the property was commercially exploited from AY 2015-16. The additions proposed by the Assessing Officer relates back to AY 2013-14 onwards. It is clear from the above information that the assessee has not disclosed any rental income for the abovesaid properties during the AY 2013-14 onwards. It is not clear how the property at Goa was utilised by the family. If these properties were under utilisation of the family members during the AYs 2013-14 to 2015-16, we noticed that all these properties were already disclosed in the Balance Sheet of the Trust dated 31.03.2013. Therefore, the emails found during the search are not an incriminating material for the AYs 2013-14 and 2014-15. Considering the fact that the family has started the discussion of exploring the various options only

through email dated 20.02.2015. Accordingly, the assessments under section 153A for AYs 2013-14 & 2014-15 are unabated and without any incriminating material, therefore, the addition made in these assessment years are accordingly directed to be deleted. These assessment years are unabated assessment years and no addition can be made without there being any incriminating material. Accordingly, ground no.1 raised by the assessee in AYs 2013-14 & 2014-15 are allowed and other grounds raised by the assessee are also allowed due to the fact that the legal ground raised in ground no.1 is allowed. The grounds are consequential in nature. Accordingly, the appeals in AYs 2013-14 & 2014-15 are allowed.

20. Coming to the AYs 2015-16 and 2016-17, we observed that there is trail of emails exchanged by the family members as per which the property under consideration are under commercial exploitation by one of the beneficiaries of the trust. It is a fact on record that the beneficiary has disclosed the income earned from the property in his personal return of income, however it should have been income of the assessee. We cannot say that there is no incriminating material for these assessment years under consideration i.e. 2015-16 and 2016-17. Accordingly, ground no.1 raised in AYs 2015-16 & 2016-17 are dismissed.

21. Coming to the merits of the issue under these assessment years, we observed

that the properties under consideration are under the trust and the trust has utilised the properties at Goa for commercial exploitation and gave the same to one of the beneficiaries. Therefore, no doubt, one of the beneficiaries carried on the exploitation of the property and declared the commercial rent by the beneficiary in his financial statements. It clearly shows that the property under consideration was utilised by Ashvin Prakash Kumar for commercial purposes. Therefore, it is a fact on record that the commercial exploitation of the abovesaid properties was not favourable to the assessee/ family members. The assessee should have declared the annual lettable value u/s 23 of the Act. Considering the fact that the assessee trust is a separate entity under the Act in case any property belongs to the assessee are given to any of the beneficiary who is also a separate entity under the provisions of the Act and Ashvin Prakash Kumar has declared the rental income of the property in his financial statement even though, on the loss, it is still exploitation of the property owned by the assessee trust. Therefore, assessee should have declared rental income u/s 23 of the Act and it is not necessary that the annual lettable value considering the fact that it was used for commercial purposes by one of the beneficiaries of the trust in his individual capacity. Strictly speaking, the revenue of the RTA Retreats should have been the revenue of the assessee trust. Since the beneficiary has

already declared the revenue as his own, the assessee should have declared the annual lettable value as the rent. Since it has failed to do, the AO has made the addition based on the report from the Joint Director (Inv.), Goa. The annual rent determined/estimated was Rs.12.40 lakhs after standard deduction. However, we noticed that Mr. Ashvin Prakash Kumar has earned the gross income itself of Rs.3.59 lakhs and Rs.8.39 lakhs in AY 2015-16 and 2016-17.

22. Considering the AY 2016-17 as the base year, since the property was exploited fully during this year. The amount lettable value cannot be more than Rs.8.39 lakhs. Therefore, we direct the Assessing Officer to treat the ALV as Rs.8.39 lakhs for both the years and allow the standard deduction of 30% on the above ALV and bring to tax the net ALV at Rs.5,87,300/- to the income for the AY 2015-16 and AY 2016-17..

23. Since the facts in the other AYs viz. AY 2016-17 are exactly similar, the findings in the above are applicable *mutatis mutandis*. Accordingly, ground no.3 raised by the assessee is dismissed in AY 2016-17.

24. With regard to Vatika Professional Point commercial property held by the assessee, we observed that these properties were already declared by the assessee in its Balance Sheet dated 31.03.2013 and not disclosed any rental income during AYs 2013-14 to 2016-17 considering the fact that these

commercial properties were not let out and also not in lettable position by the facts stated before us. It is also brought to our notice that property under consideration was finally disposed off by the assessee in AY 2025-26 without actually any profit till such time the property was never let out due to various conditions prevailing during the period. Therefore, there is no incriminating material found during the search relating to this property. Accordingly, the additions made by the Assessing Officer from AYs 2013-14 to 2016-17 are deserved to be deleted and without any incriminating material, considering the fact that these assessment years are unabated.

25. Coming to the abated assessment years i.e. AYs 2017-18 to 2019-20. As discussed in the earlier paras, the addition made by the Assessing Officer and facts are similar in all the assessment years under consideration with regard to Goa properties which were commercially exploited by one of the beneficiaries, the issue was already adjudicated in para nos.22 & 23 are applicable mutatis mutandis to grounds no.4 & 5 relating to denial of benefit of one self occupied property, we observed that these properties were commercially exploited by one of the beneficiaries and two Balance Sheets were submitted by the assessee relating to the beneficiary, Ashvin Prakash Kumar and no further details were submitted. From the material available on record and submissions made by the assessee, it shows that the property

at Goa were commercially exploited by one of the beneficiaries during AYs 2015-16 and 2016-17 and due to persistent loss, the same was not exploited further. We observed that these properties were belonged to the assessee and also not commercially exploited after AY 2016-17. There is no further material available on record to show that assessee has actually exploited commercially afterwards. However, we observed that based on the emails exchanged between the family members during February 2015 and subsequently on 21.02.2015, Assessing Officer presumed that the property was commercially exploited and proceeded to make the addition. We noticed that assessee also made a submission that the property was used by one of the beneficiaries for the business purpose and made a submission that section 22 of the Act provides that properties which are occupied for the purpose of business shall be excluded from the charge of income from Income from House Property. We observed that the property under consideration was utilised by one of the beneficiaries, however as per the Act, the trust is assessed to income separately and beneficiaries are separate. The property owned by the assessee cannot be termed as property utilised for business purpose since one of the beneficiaries is a separate person who runs a business for his own purposes under proprietorship and it is a fact on record that he has disclosed the rental income earned from the property in

his financial statements. Therefore, it cannot be treated as the property under consideration as the property utilised by the assessee for its own business. In this regard, assessee has also relied on certain cases like CIT vs. Rasiklal Balabhai and H.S. Singhal cases & sons (supra) which are relating to running of partnership firm by the beneficiary representing as partner of that firm and also representing the Karta of the family as a partner in the partnership firm. These facts are distinguishable to the facts in the present case. Trust and beneficiary are two different entities under the Act. From the facts on record, the beneficiary has run the business in his individual capacity utilised the property of the trust which is a distinct person under the Act. Therefore, the assessee should have declared the Income from House Property during this period.

26. Further assessee has made a submission that assessee being a trust allowed to be treated as an individual and one of the properties may be allowed as self-occupied property. After careful consideration, we observed that assessee is a distinct person and if at all any property is to be allowed as self-occupied property, assessee has to make a submission in its return of income as self-occupied property for the benefit of the beneficiaries and it also has to be declared that the beneficiary does not own any other residential property under his utilisation. In absence of such declaration in the return of

income, the assessee cannot claim on presumption basis that one property should be allowed as self-occupied property, it cannot be entertained at this stage. The assessee has relied on several decisions which are distinguishable with the facts of the present case.

27. Coming to the issue of computation of Annual Lettable Value. After considering the detailed submissions of the assessee, we are not inclined to agree with the submissions of the assessee. We observed that the property at Goa is a commercial property allotted to one of the beneficiaries of the trust considering the fact that the property does not give positive income as per the information available on record, the beneficiary also has not declared any income during that period under consideration. Therefore, in our considered view, the assessee should have disclosed annual municipal value as rental income as against the ALV adopted by the Assessing Officer which is determined by the Assessing Officer through commission as per which it was estimated on the information gathered from the properties located in the same vicinity. However, it is only an estimation and as submitted by the beneficiary, it clearly shows that it does not give such rental income. It is also a fact that assessee has not properly exploited the property still the assessee has incurred huge loss. It is not commercially viable from the information available on record. Further there is no material brought on

record by the Assessing Officer that the assessee has exploited the property subsequent to AY 2016-17. Keeping the information available on record, it is not fair to estimate the rental income on the presumption basis. Therefore, we direct the Assessing Officer to adopt the municipal value of the property as ALV as per municipal valuation and we direct Assessing Officer accordingly.

28. Coming to the property at Gurugram. As per the information available on record, we observed that assessee was not in a position to let out the property on rent and various information available on record clearly show that it was not commercially lettable. It was also brought on record that assessee has disposed off abovesaid properties in AY 2025-26 without letting out the property and absorbing the maintenance charges over the years. After considering the facts on record, it is not appropriate for estimating the income when the property itself was not let out as held in the case of DCIT Rustomjee Evershine Joint Venture and ACIT vs. Chalet Hotels Ltd. (supra). It was held that ALV may be adopted alternatively keeping the generally expected rent from these properties. As per the information available on record, it is appropriate to estimate the same. We noticed that the assessee has prayed for 2% of the investment. But in actual, the commercial properties fetch 8% to 10% in the Metro Cities. In our view, estimating at

5% of the investment value is appropriate. Accordingly, we direct the Assessing Officer to adopt 5% of the value of investment as ALV for the properties under consideration. After standard deduction, the annual income of Rs.6.65 lakhs may be added as income of the assessee.

29. In the result, appeal for AYs 2013-14 & 2014-15 are unabated and assessments are set aside due to no incriminating material found during the search and the appeals for the said assessment years are allowed. With regard to AYs 2015-16 to 2019-20, the appeals filed by the assessee are partly allowed as indicated above.

Order pronounced in the open court on this 20TH day of November, 2024.

SD/-	**SD/-**
(SUDHIR KUMAR)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 20.11.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-28, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI