

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI  
BEFORE SHRI JASON P. BOAZ, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 6083/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Vijay Naranji Kataria 67, Chakala Street, Mumbai-400 003.	<b>बनाम/</b> Vs.	The Income Tax Officer 13(1)(3), Aayakar Bhavan, M.K. Road, Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AGSPK 3020G
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri Sumit Kumar
सुनवाई की तारीख / <b>Date of Hearing</b>	:	04/02/2016
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	24/08/2016

**आदेश / ORDER**

**Per Sandeep Gosain, Judicial Member:**

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)- 24, dated 09.07.2013 on the grounds of appeal mentioned herein below.

- “1. (a) On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs.25,200/- assessed as property income by estimating income of flat at Lonavala at Rs.36,000/-.
- (b) The learned assessing officer has erred in estimating the ratable value at Rs.36,000/- without any details which is arbitrary and hence the estimate made is bad in law and it should be deleted.
- (c) The appellant prays that, addition of Rs.25,200/- made be deleted.

*Without prejudice, the addition being made on adhoc basis and it should be deleted.*

2. (a) On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs.1,57,500/-- as income from Vijay Guest House. The appellant prays that, estimate made be deleted.
- (b) The learned assessing officer and the CIT(A) has estimated income from the Guest House, which is contrary to the facts and evidence on record and hence it should be deleted.
- (c) The learned CIT(A) erred in observing that, the appellant has not given details and evidence.

*The learned assessing officer and the CIT(A) erred in estimating occupancy rate and charges per day without any details being brought on record which is based on conjectures and being arbitrary the same should be deleted.*

- (d) The appellant prays that, the addition of Rs.1,57,500/- be deleted.

*Without prejudice, the estimate of income being on higher side it be reduced.*

3. (a) On the facts and in the circumstances of the case, the learned CIT(A) erred in making addition u/s.14A of Rs.1,56,763/- and CIT(A) erred in confirming the same, which addition be deleted.
- (b) The learned assessing officer, failed to appreciate that, the provisions of section 14A are not attracted and the addition made be deleted.

*The appellant prays that, the addition of Rs.1,56,763/- be deleted.*

*Without prejudice, the addition be reduced.”*

2. The brief facts of the case are that the return of income declaring total income at Rs.8,49,990/- was filed on 24.02.2010. The return was processed u/s

143(1) of the Act and later on the case was selected for scrutiny under CASS. After serving statutory notices and seeking reply from the assessee, an order of assessment thereby estimating rateable value of flat at Lonavala at Rs.36,000/- and also estimated income from guest house at Jamnagar has passed. In addition, the AO in the assessment order has also held that since the assessee has raised loans and invested the money in the partnership firm and by virtue of said investment had earned 2 types of income, i.e. salary of Rs.3,62,000/- and profit exempt Rs.9,19,303/- therefore while calculating the said amount has disallowed Rs.1,56,763/- on account of expenses for earning of exempt income u/s 14A and added the same to the total income.

3. Aggrieved by the order of the AO, assessee filed the appeal before CIT(A) and the CIT(A) after considering the case of the assessee partly allowed the appeal vide order dated 09.07.2013.

4. Aggrieved by the order of CIT(A) the assessee filed the present appeal before us on the grounds mentioned herein above.

5. At the very outset, when the case was called for hearing, none has appeared on behalf of assessee and on the perusal of order sheet we have noticed that

nobody was appearing even on behalf of assessee on the last date. Although the notices were also served upon the assessee for appearing before us, but even then the assessee has not preferred to appear and even no application for adjournment was moved before us. On the other hand ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the ld. DR and the material on record.

### Ground No.1

6. This ground relates to making of addition of Rs.25,200/- assessed as property income by estimating income of flat at Lonavala at Rs.36,000/-. While dealing with the said ground the CIT(A) has passed detailed order the operative para 4.3 is reproduced below:

#### *“4.3 Decision:-*

*I have considered the facts of the case and the submissions made by the assessee. The Assessing Officer has estimated the annual let out value of the property located at Bangroli village, Maval Taluka, Lonavala District. It appears, the assessee has not declared any rental income from this property. The Assessing Officer, after considering reply submitted by the assessee during the assessment proceedings has estimated the property's ratable value at Rs. 36,000/- p.a. He has also allowed the standard deduction @ 30% on this amount. The assessee during the appellate proceedings has stated that the property could not be let out during the year and it was lying vacant. He further submitted that the municipal taxes paid on this property were only Rs. 3,050/- p.a. Considering the municipal taxes paid at 1/3rd of the total rental income earned during the year the rent that would have been received works out to Rs. 9,150/- and submitted that the Assessing Officer had taken unreasonably high value while estimating the property income. It is seen from the facts on record that the assessee relied only on the municipal taxes paid as basis for estimation of rental income. This cannot be a measure to estimate ALV of the property, since, for the purpose of valuation of the property tax the assessee ought to have given the monthly/annual rental income from the said property. It is not on record what has been submitted by the assessee to the municipal authorities for property tax valuation. In the absence of this factual information, besides as the assessee is also not keen to produce any other*

*supporting documents, it is held that the ALV estimated by the Assessing Officer cannot be disturbed and, therefore, the same is confirmed. The ground of appeal of the assessee is dismissed.”*

6.1 After hearing ld. DR present in the court and after perusal of documents as well as orders passed by lower authorities we found that CIT(A) has passed a detailed order thereby mentioned that the assessee had relied only on the Municipal taxes paid as basis for estimation of rental value and since the payment of Municipal taxes is not a measure to estimate the ALV of the property therefore the CIT(A) has held that it is not on record as to what had been submitted by the assessee to the Municipal authorities for property tax valuation. Since the assessee had not supplied any documentary proof therefore the CIT(A) in the absence of such factual information has held that the ALV estimated by assessing officer cannot be disturbed.

6.2 No new circumstance has been brought on record before us by the learned DR in order to controvert or rebut the findings recorded by the learned CIT (A) on the basis of the remand report. Moreover, there is no reason for us to deviate from the findings recorded by the learned CIT (A). Therefore, we are of the considered view that the findings recoded by the learned CIT (A) are judicious and are well reasoned. Accordingly, we uphold the same. Resultantly, this ground raised by the assessee stands dismissed.

Ground No. 2

7. This ground relates to making of addition of Rs.1,57,500/- as income from Vijay Guest House. While dealing with the said ground the CIT(A) has passed detailed order the operative para 5.3 is reproduced below:

*“5.3 Decision:-*

*I have considered the facts of the case and the submissions made by the assessee. This ground is raised as the assessee has been aggrieved by the Assessing Officer's estimation of income from a guest house at Rs. 4,93,200/-. During the assessment proceedings, the Assessing Officer called for the details with regard to availability of rooms, location, occupation, rent etc. In response the assessee submitted that the said building was in a dilapidated condition having 6 rooms and Rs. 125/- per day per person was being charged as the tariff. However, the Assessing Officer, as the information submitted by the assessee, in his opinion, was not satisfactory he estimated rent per day per person at Rs. 300/-. He has also taken the occupancy rate at 75% and accordingly he estimated Rs. 4,93,200/- as rent received from the guest house. During the appellate proceedings the assessee submitted that the Assessing Officer while estimating the income at Rs. 4,93,200/- has not brought any material on record but decided the issue on surmises and imagination. In addition to this, the assessee also submitted the electricity bills paid by the assessee in respect of the above mentioned guest house in support of his claim that the occupancy rate of the guest house during the relevant period was not to the extent of 275 days as mentioned by the Assessing Officer. I have considered the facts of the case and details submitted by the assessee and found that neither the Assessing Officer nor the assessee could conclusively prove the stand taken by them. The Assessing Officer has resorted to the estimation of income from the guest house as the assessee could not provide any evidence or photograph of the guest house. In the absence of this the Assessing Officer should have carried out certain local enquiries before arriving at the amount of addition. Similarly, the assessee has not produced any books of accounts which include client/customer register in support of his submissions which would have given the details of the occupancy rate and also amount charged per person per day. In the absence of the complete details based on the facts available on record, such as the guest house situated adjacent to high way, in the limits of the city and also nearer to oil refinery of Reliance Industries Ltd., the rent the assessee would have received has to be arrived at. However, the factors such as lesser amount of electricity charges paid, lack of running water facility and the dilapidated condition of the property are also considered for deciding the income which the assessee would have earned from the guest house during the relevant period. For the above reasons mentioned, in my opinion, the occupancy rate may be taken at 50% per annum and charges per day per person per room may be taken at Rs. 150/-. Thus, the amount works out to Rs. 1,57,500/-*

*(150 X 6 X 175). The Assessing Officer is directed to adopt the above figure for the purpose of estimation of income from the guest house. This ground of appeal is partly allowed.”*

7.1 Ld. CIT(A) has passed a detailed order thereby observed that the assessing officer has resorted to the estimation of income from the guest house as the assessee could not provide any evidence such as account books, registers etc or photograph of the guest house. The CIT(A) has rightly held that in the absence of this the AO should have carried out certain local enquiries before arriving at the amount of addition. Therefore after discussing the entire case, the CIT(A) has rightly come to the conclusion by taking occupancy rate at 50% per annum and charges per day per person per room by taking @ Rs.150 per day and has worked out the amount in question which comes to Rs.1,57,500 (150 x 6x 175) as detailed above.

7.2 No new circumstance has been brought on record before us by the learned DR in order to controvert or rebut the findings recorded by the learned CIT (A) on the basis of the remand report. Moreover, there is no reason for us to deviate from the findings recorded by the learned CIT (A). Therefore, we are of the considered view that the findings recorded by the learned CIT (A) are judicious and are well reasoned. Accordingly, we uphold the same. Resultantly, this ground raised by the assessee stands dismissed.

Ground No.3

8. This ground relates to making an addition u/s 14A of Rs.1,56,763/-. The Ld.

CIT(A) has dealt with this issue in para no.6.3 which is reproduced below:

*“6.3 Decision :-*

*The Assessing Officer in the assessment order has raised a very interesting issue, i.e. the share of profit from the firm which is exempt u/s 10(2A) of the Income Tax Act has been taken into consideration for invoking provisions u/s 14A. The assessee during the year received salary of Rs. 3,62,000/- and profit of Rs. 9,19,303/- from the firm. The assessee claimed interest of Rs. 2,18,485/- as deduction in the computation. The Assessing Officer has calculated the disallowable expenses on account of interest at Rs. 1,56,763/- relating to earning of exempt income. During the appellate proceedings the assessee submitted that the share of profit from partnership firm should not be considered for the purposes of sec. 14A, as the firm is paying tax on total income and as such the profit received by the partner cannot be taxed, as it amounts to double taxation. I have considered the facts of the case and also the submissions made by the assessee. It is seen from the assessment order that the assessee has raised loans and advanced the same to the partnership firm. As far as this fact is concerned neither the Assessing Officer nor the assessee is in dispute (it is not mentioned that the quantum of amount given to the firm by the assessee). The assessee on the said loan has paid Rs. 2,18,485/- as interest. The same has been claimed as deduction from the income received by the assessee from the firm. The case of the Assessing Officer is that the assessee earned exempted income only because he invested in the partnership firm. Therefore, any expenditure on account of interest should be subjected to the provisions of sec. 14A. There is no dispute in the amounts advanced and also the purpose for which the advance/loan was given. There is also no mixing of funds advanced by the assessee to the firm. It has also been observed by the Assessing Officer that for exclusive purpose of investment in firm the aforesaid amounts were advanced. I find that the reasoning given by the Assessing Officer is well founded and correct. Coming to the argument of the assessee that the tax has already been paid by the firm on the profits derived and the balance amount only has been received by the assessee and also other partners and if any disallowance is made u/s 14A, would amount to double taxation, is not correct for the reason that the Assessing Officer has not taxed the share of profit received by the assessee from the firm but he has only disallowed the expenses which are attributable to the earning of exempt income. Further, it may be pointed out that the dividend and other exempt incomes as per sec. 10(34) would also suffer dividend distribution tax u/s 115-O of the Income Tax Act; it is also to be mentioned that the company pays the income tax in addition to dividend distribution tax u/s 115-O. Therefore, the assessee's argument that expenditure relating to the exempted income should not be subjected to any disallowance in the hands of the recipient is not correct. However, it is observed from the*

*computation of total income, that the Assessing Officer has disallowed the interest claimed by the assessee and also the disallowance made u/s 14A. In the light of above, the correct claim of the assessee would be Rs. 2,14,485/- (total interest claimed) - Rs. 1,56,763/- (interest claimed proportionate to exempt income) = Rs. 57,722/-. Thus, only Rs. 57,722/- is allowable as expenditure on account of interest. Thus, Rs. 1,56,763/- to be added to total income of the assessee. This ground of appeal is partly allowed.”*

8.1 We have heard ld. DR and perused the material on record. ld. CIT(A) has passed the detailed order after taking into consideration the arguments raised by the both the parties in para no.6.3 mentioned above. Ld. CIT(A) after detail discussion has rightly observed from the computation of total income that the AO has wrongly disallowed the interest claimed by the assessee and also the disallowance made u/s 14A. Therefore ld. CIT(A) made correct claim of the assessee in the afore mentioned para and directed the same to be added to total income of the assessee.

8.2. After analyzing the afore mentioned order we found that the CIT(A) has dealt with all the issues and has passed judicious and well reasoned order and no new circumstances have been brought before us in order to controvert or rebut the findings recorded by the CIT(A). Therefore, we see no reason to deviate or interfere into the findings recorded by the CIT(A) and hence, we reject these grounds raised by the assessee and uphold the order of the CIT(A).

9. In the result, the assessee's appeal is dismissed.

*Order pronounced in the open court on 24<sup>th</sup> August, 2016*

Sd/-  
(Jason P. Boaz)

लेखा सदस्य / Accountant Member

Sd/-  
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.08.2016

Ps. Ashwini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**