

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 2942/Ahd/2013  
(Assessment Year: 2010-11)

PASL Windtech Pvt. Ltd.,  
37-B, Phase – 1, GIDC Estate,  
Vatva, Ahmedabad 382445

Appellant

Vs.

ACIT, Circle-5, Ahmedabad

Respondent

&

ITA No. 248/Ahd/2014  
(Assessment Year: 2010-11)

Income Tax Officer,  
Ward 5(2), Ahmedabad

Appellant

Vs.

M/s. PASL Windtech Pvt. Ltd.,  
37-B, Phase – 1, GIDC Estate,  
Vatva, Ahmedabad- 382445

Respondent

PAN: AABCA3022G

आवेदक की ओर से/By Assessee : Shri S. N. Soparkar with  
Parin Shah, A.R.  
राजस्व की ओर से/By Revenue : Shri Prasoon Kabra, Sr. D.R.  
सुनवाई की तारीख/Date of Hearing : 08.09.2017  
घोषणा की तारीख/Date of  
Pronouncement : 12.09.2017

## ORDER

### **PER S. S. GODARA, JUDICIAL MEMBER**

The assessee and Revenue have instituted their instant cross appeals for assessment year 2010-11 against the CIT(A)-XI, Ahmedabad's order dated 25.11.2013 in case no. CIT(A)-XI/295/ACIT.Cir-5/12-13, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

Heard both sides. Case file(s) perused.

2. A combined perusal of both the parties' respective pleadings indicate that their identical grievance in nut shell revolves around computing income from house property in respect of assessee's properties A & B comprising of industrial shed at plot no.37-B and 5/1/B situated in phase-1, GIDC, Industrial Estate, Vatva, Ahmedabad. The assessee had given it to its sister concern M/s. Patel Alloy Steel Pvt. Ltd. (PASPL) without charging any rent in earlier assessment years. The Assessing Officer framed a regular assessment on 12.03.2013 computing net addition of Rs.34,59,456/- under the head income from house property at Rs.49,42,080/-. It emerges that the very issue had arisen for the first time in assessment year 2005-06. The Assessing Officer referred to the said proceedings in arriving at the impugned addition amount after a detailed discussion after taking into account this tribunal's directions in assessment year 2005-06 involving interest rate addition @17.25%.

3. The assessee preferred appeal. We notice that the CIT(A) takes into account his findings in the abovestated first assessment year 2005-06 adopting 8.5% to be the rate of return qua the two properties in question stated to be at par with prevailing interest rates on long term fixed deposits. He however observes that the impugned assessment year show the above

interest rising to 10%. He therefore adopts the said latter rate to arrive at the impugned addition amount of Rs.14,03,640/- only. The assessee has been granted relief to the tune of Rs.20,55,816/- in this manner.

4. Learned counsel representing assessee summarizes its grievance to be three folded i.e. the CIT(A) has erred in confirming Assessing Officer's action in principle computing notional income on its properties let out to its sister concern, adopting 10% rate as return of investment (supra) and in not taking into consideration cost of the property in question as on 31.03.2010; respectively. The Revenue on the other hand pleads that the CIT(A) ought not to have disturbed Assessing Officer's computation arriving at the abovestated figure of Rs.49,42,080/- as well as in holding rate of interest on investment to be the relevant benchmark for determining the notional income in question.

5. We have heard rival submissions in tune with above narrated pleadings. We sought to know about status of identical proceedings in preceding assessment years qua the instant issue. Case file indicates that this tribunal in a batch of cases ITA Nos. 2639/Ahd/2013 and four other appeals in assessment years 2005-06 , 2007-08 to 2009-10 decided on 17.04.2015 has already dealt with all these arguments in arriving at interest rate of 8.5% to form reasonable basis as under:

*"4. The facts of the case are that the assessee has given the immovable property which was the industrial shed to the sister concern without charging any rent. The Assessing Officer, in his order u/s 143(3) dated 31.12.2007, estimated the Annual Letting Value (ALV for short) of the property and assessed the same as income from house property. On appeal, the CIT(A) confirmed the addition made by the Assessing Officer. The assessee preferred an appeal before the ITAT which by order dated 31.03.2011 in ITA No.1165/Ahd/2009 set aside the matter back to the file of the Assessing Officer, with the following findings:-*

"5. We have heard both the parties and perused the material placed before us. In the case of Sakarlal Balabhai (supra), the Hon'ble jurisdictional High Court held as under:-

*"... In the absence of better way of estimating rent, the rate of interest on cost of building and land may provide a reasonable basis for determining the annual letting value of property more particularly when the property is occupied by the owner. The capital value of the property has relevance in determining its annual letting value."*

*In this case, the AO estimated the "ALV" on the basis of some information said to have been collected by him behind back of the assessee. Admittedly, those details were not confronted to the assessee. Neither the same is produced before us. Therefore, the same cannot be relied on for estimating the "ALV". In the above circumstances, we deem it proper to set aside the order of the authorities below on this point and restore the matter back to the file of the AO. We direct him to determine the "ALV" as per the observations of the Hon'ble jurisdictional High Court i.e. by applying the reasonable rate of interest on the cost of immovable property. Needless to mention, he will allow adequate opportunity of being heard to the assessee while adjudicating the matter.*

5. The Assessing Officer gave effect to the order of ITAT vide his order dated 03.12.2012 passed u/s 143(3) r.w.s. 254 of the Act, wherein the Assessing Officer estimated income at the rate of 17.25% of the investment in the property by the assessee. On appeal, the CIT(A) vide his order dated 11.09.2013 computed the income at 8.5% of the cost of the property and allowed part relief to the assessee. The relevant portion in the order of the CIT(A) reads as under:-

*"2.2 I have carefully considered the rival contentions. I am of the opinion that the stand of A.O. in adopting the interest as if the appellant is borrowing funds equivalent to the investment is not reasonable. The appellant had already invested in the property and what is to be worked out is a reasonable rate of return from such investment, in accordance with the directions given by Hon'ble ITAT. In such a scenario the reasonable rate of return can be equated with the prevailing interest rate on the long term fixed deposit kept with the banks/NBFCs. The appellant has contended that the rate of interest which could have been earned in respect of the bank deposit would be 5.5 to 7.75%. In this regard the decision of Hon'ble Bombay ITAT in the case of Smt. Indira S. Jain reported in 52 SOT 270 is relevant wherein the Hon'ble Bench has adopted and confirmed the rate of return at 8.5% on the cost of the property.*

*I therefore deem it fit to adopt the rate of return on investment in the property at 8.5% which is at par with the prevailing interest rate on the long term fixed deposit during the relevant period. The ALV of the property is worked out as under:-*

<i>Property detail (as per submission dt. 14.03.2012)</i>	<i>Cost of Property (In Rs.)</i>	<i>ALV calculated assuming rate of interest at 8.5% (in Rs.)</i>
<i>Property 'A'</i>	<i>74,22,612/-</i>	<i>6,30,922/-</i>
<i>Property 'B'</i>	<i>1,26,29,388/-</i>	<i>10,73,498/-</i>
	<i>Total</i>	<i>17,04,420/-</i>

*ALV as calculated above : Rs. 17,04,420/-*

*Less : 30% Standard Deduction u/s 24 : Rs. 5,11,326/-*  
*Income from House Property : Rs.11,93,094/-*

*Accordingly the income from house property is worked out at Rs.11,93,094/- the appellant will get a relief of Rs.12,28,185/-. This ground of appeal is partly allowed."*

*6. Both the parties, aggrieved with the order of the ld. CIT(A), are in appeal before us.*

*7. We have heard both the sides and perused the material placed before us. At the time of hearing before us, the ld. Counsel for the assessee stated that the Assessing Officer has estimated the interest which the assessee would have been required to pay had he borrowed the money for the purpose of investment in the property. He submitted that in the case of the assessee, income from the property is to be estimated and not interest expenditure on acquisition of such property had borrowed money been utilized. Therefore, proper yardstick is to estimate the proper rate of return on the investment of similar amount in any other secured investment. He gave before us various bank certificates for investment in FDRs and pointed out that interest on the FDRs was varying from 5.5% to 7.5%. He, therefore, submitted that the average rate of interest on the FDRs was around 6.5% and therefore, income should be estimated at the rate of 6.5% on the cost of the property let out by assessee to sister concern.*

*8. The ld. Departmental Representative, on the other hand, relied upon the order of the Assessing Officer and he stated that the Assessing Officer was fully justified in estimating the interest at the rate of 17.25% on the basis of interest which would have been required to be paid by the assessee had borrowed money being utilized. He alternatively submitted that if the assessee's contention with regard to rate of return on investment is accepted, then the examples in the investment in FDRs by the assessee should not be accepted because those investments are for a short period; while the investment in the property is for the long period. He also submitted that the rate of return should be considered on the basis of market value of the property in each year and not simply on the basis of cost of the property.*

*9. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that this issue is squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of Sakarlal Balabhai vs Income-Tax Officer, reported in 100 ITR 97. In the first round of appeal also,*

*the ITAT has set aside the matter back to the file of the Assessing Officer for determining the ALV as per the above decision of Hon'ble Jurisdictional High Court. In the above mentioned case, their Lordships of the Hon'ble Jurisdictional High Court have considered various decisions from other courts and also from book Ryde on Rating and thereafter, concluded as under at page No.107:-*

*"17. Though the above passages are more or less in the context of ascertaining rateable value of property, they none-the-less assure us that in the absence of any better way of estimating rent, the rate of interest on cost of building and land may provide a reasonable basis for determining the annual letting value of property, and more particularly, as observed in Ryde on Rating, when the property is occupied by the owner. In our opinion, therefore, the contention of the learned Advocate-General that capital value of property may not have a bearing or relevance on the question of annual letting value, should be rejected, and more particularly, when, as in the instant case, the annual letting value of a self-occupied property is to be ascertained...."*

*From the above, it is evident that their Lordships of Hon'ble Jurisdictional High Court have come to the conclusion that rate of interest on cost of the building and land would provide a reasonable basis for determining the Annual Letting Value of property. Therefore, the contention of the ld. DR that instead of cost, market value of the property in each year should be adopted cannot be accepted.*

*10. Now, we come to the question whether rate of interest to be adopted for determining the ALV should be interest which would have been payable by the assessee had the assessee borrowed the money for investment in the property or it should be interest receivable by the assessee had the similar money is invested somewhere else. In our opinion, for determining the income from the property, it should be rate of return on the investment of similar amount in another asset. Therefore, in our opinion, the CIT(A) was fully justified in estimating the ALV on the basis of interest which assessee would have earned on the investment of the similar amount. The ld. Counsel for the assessee had argued that the rate of interest applied by the CIT(A) at 8.5% is excessive. In support of which, he gave various examples of investment in FDRs which faced the interest ranging from 5.52% to 7.5%. Copies of those certificates from the bank are placed at page No. 29 onwards of the assessee's paper-book. However, we find that those investments were for a very short period. In first case where interest rate was 5.5%, the investment was only for 46 days. In another case where the interest was 5.6%, it was only for 31 days. In another case, where the rate of interest was 6%, it was for 91 days and in another case where the period of deposit was 366 days, the rate of interest was 7.75%. The ld. DR was fully justified that if the rate of return on the investment is considered, then it should be a long term investment because in any property nobody would make investment just for few days. Considering all these facts, in our opinion, the CIT(A) has rightly applied the rate of interest of 8.5%. We, therefore, do not find any justification to interfere with the order of the CIT(A), the same is sustained; and on this point, the ground appeal of Revenue as well as assessee are rejected."*

Both parties fail to indicate any distinction in the two sets of facts involved in said earlier and in the impugned assessment year. We therefore uphold CIT(A)'s findings except to the extent that he has arrived at interest rate @10% than that @8.5% in earlier assessment years. We therefore direct the Assessing Officer to pass consequential order accordingly adopting 8.5% as the rate of return in view of learned co-ordinate bench detailed discussion extracted hereinabove. Rest all other substantive grounds stand rejected in both these cross appeals.

6. The assessee's appeal ITA No.2942/Ahd/2013 is partly allowed whereas Revenue's appeal ITA No.248/Ahd/2014 is dismissed.

[Pronounced in the open Court on this the 12<sup>th</sup> day of September, 2017.]

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 12/09/2017

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।