

IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.5620/Mum/2016 (Assessment Year 2012-13)

M/s Sarang Property Developers Pvt. Ltd. 215, Atrium, 10 <sup>th</sup> Floor, Near Marriot Courtyard Hotel, Andheri-Kurla Road, Andheri (E), Mumbai-400093. <b>PAN: AADCS6382B</b>	Vs.	ACIT, Central Circle 4(1) Air India Building, 19 <sup>th</sup> Floor, Nariman Point, Mumbai.
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Appellant

Respondent

Appellant by : Shri Anuj Kisnadwala (AR)

Respondent by : Shri Virender Singh (DR)

Date of Hearing : 26.06.2018

Date of Pronouncement : 26.06.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-tax (Appeals)-52, Mumbai [Id. CIT(A)] dated 01.06.2016, which in turn arises from the assessment order passed by Assessing Officer under section 143(3) of the Act dated 11.03.2015 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

1. The learned Commissioner of Income Tax erred in law & on facts in confirming order of the Assessing Officer in adding the ALV of the unsold units which constitutes stock in trade of the appellant as “Income from House Property” u/s 22 of the Income Tax Act, 1961.
2. The appellant prays that the order passed u/s. 143(3) adding sum of Rs. 3,66,23,328/- as ALV of the unsold units under the head “Income from House Property” is bad in law & should be quashed.

2. Brief facts and of the case are that the assessee is a Private Limited Company engaged in the business of Real Estate Development, filed its

return of income for Assessment Year 2012-13 on 26.09.2012 declaring loss of Rs. 12,67,107/-. The assessment was completed u/s 143(3) on 11.03.2014. The Assessing Officer while passing the assessment order worked out the Annual Letting Value (ALV) of unsold units at Rs. 5,23,19,040/- and added Rs. 3,66,23,328/- under the head "Income from House Property" and after granting statutory deduction under section 24a. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee submits that the assessee offered income in respect of sale of unit. The assessee has shown the balance unsold unit as stock-in-trade. The assessee was having such unsold unit of Rs. 8,94,42,150/- under the head "Closing Inventories". The assessee was holding unsold unit as stock-in-trade to earn business income and not for rental income. The said unsold unit cannot be taxed on the basis of notional ALV because the assessee possessed such unoccupied unit in the course of his business as builder and developer. In support of his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Gujarat High Court in case of CIT vs. Neha Builders Pvt. Ltd. (296 ITR 661), decision of Mumbai Tribunal in M/s Runwal

Constructions vs. ACIT (ITA No. 5408/M/2016 dated 22.02.2018), M/s C.R. Developments Pvt. Ltd. vs. JCIT (ITA No. 4277/M/2012 dated 13.05.2015 ACIT vs. M/s Classique Associates in ITA No. 4575/Mum/2013 dated 29.06.2015. On the other hand, the ld. DR for the Revenue supported the order of authorities below. The ld. DR for the Revenue further submits that the Assessing Officer on the basis of decision of Hon'ble Delhi High Court in Ansal Housing Financing & Leasing Co. Ltd. (354 ITR 180) held that assessee is liable to be taxed on the ALV of unsold flat owned by it under the head "Income from House Property". On our specific query from both the ld. representative submits that there is no decision of jurisdictional High Court on this issue. Both the representative replied in negative.

4. We have considered the submission of parties and gone through the orders of authorities below. We have noted that Assessing Officer as well as ld. CIT(A) while relying upon the decision of Delhi High Court i.e. in Ansal Housing Financing & Leasing Co. Ltd. (supra) wherein it was held that assessee is liable to be taxed on notional ALV of unsold units under the head "Income from House Property". The ld. AR of the assessee is relying upon the decision of Hon'ble Gujarat High Court in CIT vs. Neha Builders P. Ltd. (supra) wherein it was held that when the assessee-company engaged in the business of construction of property and one of the building/property was included in the closing stock in the balance-sheet

drawn by assessee, the property would partake the character of “stock” and any income derived from stock would not be taken to be Income from House Property. The Hon’ble High Court further held that business of the assessee is to construct the property and sale it, then that would be the business and business stock, would be taken as “stock-in-trade” and any income derived from such stock cannot be termed as ‘Income from House Property’.

5. In the case in hand, there is no dispute that assessee treated the unsold unit is treated as ‘stock-in-trade’ in its books of account. Further, the unit sold by the assessee has been offered under the head “Income from Business”. Thus, the unsold flat which are stock-in-trade, when are sold, they are assessable under the head “Income from Business” and therefore, the Assessing Officer is not correct in bringing those units to tax on the basis of notional ALV under the head “Income from House Property”.
6. We are conscious of the fact that the decision of Hon’ble Delhi High Court in Ansal Housing Financing & Leasing Co. Ltd. (supra) is against the assessee. The Hon’ble Supreme Court in case of CIT vs. Vegetable Products Ltd. (88 ITR 92) held that wherein two reasonable construction to tax provision are possible that construction which favours assessee must be adopted. Therefore, with utmost regard to the decision of Delhi High Court in case in Ansal Housing Financing & Leasing Co. Ltd. (supra), we

are accepting the view taken by Gujarat High Court in CIT vs. Neha Builders (supra).

7. The Hon'ble Supreme Court in case of Chennai Property (373 ITR 673) held that when the company is primarily engaged in business of construction and development, which is the main object of the assessee, the income derived by assessee would be "Income from Business". On the same analogy in the case in hand, the assessee is engaged in the business of construction and development, which is the main business of the assessee, the units which could not be sold at the end of the year and were shown as 'stock-in-trade', estimating rental income on notional ALV was not justified. Particularly when, there is no evidence on record that these units were either given on rent or that the assessee has intention to let out those units. The Units which are not sold are stock-in-trade and the income arising of its sale is liable to be taxed as Business Income, therefore, we do not find any justification in calculating notional ALV of the vacant units. Therefore, we direct the Assessing Officer to delete the addition made on estimate basis. In the result, Ground of appeal raised by assessee is allowed.

8. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 26.06.2018.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 26.06.2018

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "D" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,  
Dy./Asst. Registrar  
ITAT, Mumbai**