

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Saktijit Dey, Judicial Member
and Shri Manoj Kumar Aggarwal, Accountant Member**

ITA No. 2002/Mum/2017
(Assessment Year: 2012-13)

M/s. Vijay Grihniramn P. Ltd. 201, Marine Chambers 43, New Marine Lines Mumbai 400020	Vs.	DCIT. Central Circle-3(1) Mumbai
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PAN – AAACV2806N

Appellant

Respondent

Appellant by:	Shri Mani Jain & Shri Prateek Jain
Respondent by:	Shri Rajeev Gubgotra

Date of Hearing:	08.08.2018
Date of Pronouncement:	31.10.2018

ORDER

Per Saktijit Dey, JM

Aforesaid appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-51, Mumbai dated 02.12.2016 and it relates to A.Y. 2012-13.

2. There is a delay of one day in filing the appeal. After considering the submission of the learned Authorised Representative we are satisfied that the delay in filing the appeal is due to a reasonable cause. Accordingly, we condone the delay of one day and admit the appeal for hearing on merit.

3. In Ground No. 1 assessee has challenged the addition of Rs.5,29,269/- on account of annual letting value of unsold flats held as stock-in-trade.

4. Brief facts of the case are that assessee, a company, is engaged in the business of builder and developer. For the Assessment Year (AY) under dispute the assessee filed its return of income on 28.09.2012 declaring

total income of Rs.13,34,79,388/-. During the assessment proceedings the Assessing Officer(AO) while verifying the books of account of the assessee noticed that the assessee has shown closing stock of unsold flats amounting to re.1,76,42,306/-. Therefore, he called upon the assessee to explain why the annual letting value of the unsold flats should not be considered as income from house property for the year under consideration. In reply, it was submitted by the assessee that since the assessee is engaged in construction and building activities and not in the business of letting out property, the flats are held as stock-in-trade and not as investment or fixed assets. It was submitted, assessee has not let out the unsold flats during the year under consideration. Therefore, no notional addition can be made by way of annual letting value of unsold flats. The AO, however, did not find merit in the submissions of the assessee. Relying upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Housing Finance & Leasing Co. Ltd. (2013) 354 ITR 180, he proceeded to determine the annual letting value of the unsold flats at Rs.2,29,269/- by applying the provisions of Section 23 of the Income Tax Act, 1961 (hereinafter "the Act"). Being aggrieved of such addition the assessee preferred appeal before the Commissioner (Appeals). However, the learned Commissioner (Appeals) did not find merit in the submissions of the assessee and sustained the addition made by the AO.

5. The learned Authorised Representative reiterating the stand taken before the departmental authorities submitted, the assessee has shown the unsold flats as inventory and not as fixed assets. Further, the assessee has not let out the unsold flats during the relevant previous year. Therefore, no notional income on account of annual letting value can be added to the income of the assessee. In support of such contention he relied upon the following decisions: -

- i) CIT vs. Neha Builders P. Ltd. (2008) 296 ITR 661 (Guj)
- ii) C.R. Developments P. Ltd. ITA No. 4277/Mum/2012 dated 13.04.2015

- iii) Runwal Constructions vs. ACIT ITA No. 5408/Mum/2016 dated 22.02.2018
- iv) ITO vs. Arihant Estates Pvt. Ltd ITA No. 6037/Mum/2016 dated 27.06.2018.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals) and the AO.

7. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Undisputedly, the assessee is in the business of developer and builder. It is also a fact on record that as on 31.03.2012 the assessee has shown unsold flats valued at Rs.1,76,43,306/- as stock-in-trade. It is the claim of the assessee that the unsold flats lying as stock-in-trade being part of the inventory and not fixed asset, the annual letting value of the unsold flats cannot be determined and added as house property income. In this context the assessee has relied upon certain judicial precedents including decision of the Hon'ble Gujarat High Court in the case of Neha Builders P. Ltd. (supra). However, the Hon'ble Bombay High Court in the case of CIT vs. Sane & Doshi Enterprises (2015) 377 ITR 165 has held that accounting treatment given in the books of account by the assessee is not conclusive. The Hon'ble Jurisdictional High Court has further held that the unsold portion of the property lying as stock-in-trade, if let out, the income derived there from is to be assessed under the head "income from house property". The Hon'ble Supreme Court in the case of Raj Dadarkar Associates vs. ACIT (2017) 394 ITR 592, after taking note of its own decisions in the case of Chennai Properties & Investments Ltd. vs. CIT (2015) 373 ITR 672 as well as Rayala Corporation Pvt. Ltd. vs. ACIT (2016) 386 ITR 500 has also upheld the assessment of income derived from letting out of properties under the head "income from house property". In our considered view, the aforesaid decisions of the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court need to be examined while considering the claim of the assessee that the unsold flats having shown as inventories no deemed income on account of house property can be assessed to tax. The distinguishing feature in the present case is that the assessee has not

let out the unsold flats in the relevant previous year and no rental income has been derived by the assessee. Therefore, in the light of judicial precedents referred to above it needs to be examined whether the deemed annual letting value can be determined by the AO on account of the unsold flats. There is one more aspect to the issue. In case it is ultimately held that deemed annual letting value of unsold flats have to be determined, how it has to be quantified? As can be seen from the assessment order, the AO has not provide the basis on which he has determined the annual letting value of the unsold flats at Rs.5,29,269/-. There is nothing on record to suggest that the annual letting value determined by the AO is as per the municipal rateable value or market rent. Thus, the addition made by the AO towards house property income on purely estimate basis cannot be sustained in view of the decision of the Hon'ble Bombay High Court in the case of CIT vs. Tip Top Typography 48 taxmann.com 191. Therefore, we are inclined to restore the issues to the file of the AO for deciding afresh keeping in view the ratio laid down in the decisions referred to above and only after extending a reasonable opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

8. Ground Nos. 2, 3 & 4 relate to adhoc disallowance made on account of repairs and maintenance of vehicles, travelling and various expenses and communication/telephone expenses. Briefly the facts are that during the assessment proceedings the AO, noticing that the assessee had claimed deduction towards expenditure incurred under the aforesaid heads, called for necessary details. On verifying the details and evidences filed by the assessee the AO found that majority of the expenses were incurred by self-made vouchers. Therefore, being of the view that a part of the expenses incurred by the assessee can be towards personal and non business purposes he disallowed 10% out of the expenditure claimed under the aforesaid heads. Though, the assessee challenged the disallowance made by the AO before the First Appellate Authority, however, no relief was given to the assessee.

9. We have heard the parties and perused the material on record. As can be seen from the orders of the departmental authorities, the assessee could not substantiate the expenditure incurred through proper documentary evidences. Even, before us also the assessee has not produced any evidence to controvert the findings of the departmental authorities that part of the expenditure incurred was not for personal or non business purposes. That being the case, disallowance made at 10% out of the expenditure claimed, in our view being reasonable, we do not see any reason to interfere with the decision of the departmental authorities on these issues. Accordingly ground Nos. 2, 3 & 4 are dismissed.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 31st October, 2018.

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Saktijit Dey)
Judicial Member

Mumbai, Dated: 31st October, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -51, Mumbai*
4. *The CIT, Central-2, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

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Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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