



ITA No.4539/Mum/2017
M/s. Haware Constructions Pvt. Ltd.
Assessment Year-2010-11

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4539/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2010-11)

DCIT-15(2)(1) Room 357, 3 rd Floor, Aaykar Bhavan M.K. Road, Mumbai-400 020.	बनाम/ Vs.	M/s. Haware Constructions Pvt. Ltd. Ramon House, H.T. Parekh Marg Backbay Reclamation Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCH-3858-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	M.Rajan- Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Devendra Jain- Ld.AR
सुनवाईकीतारीख/ Date of Hearing	:	05/03/2019
घोषणाकीतारीख / Date of Pronouncement	:	09/04/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as 'AY'] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-24, Mumbai, [in short referred to as 'CIT(A)'], Appeal No.CIT(A)-



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24/ACIT-15(2)(1)/IT-435/2015-15 dated 24/03/2016 on following Grounds of appeal: -

1. *Whether on the facts and in circumstances of the case and in Law, the Ld CIT(A) erred in holding that no income under the head ' Income from House Property' could be charged in respect of unsold stock of flats, ignoring the decision of the jurisdictional Mumbai ITAT in the case of M/s. Om Prakash & Co (87 TTJ 183) and M/s. Chem Mech Pvt. Ltd (83 ITD427).*
2. *Whether on the facts and circumstances in the case and in Law, the CIT(A) erred in relying on its decision for A.Y. 2009-10 and A.Y. 2011-12 while giving relief for A.Y. 2010-11, ignoring the fact that the issue is still not decided as the Department has not accepted this decision and gone in appeal before Hon'ble ITAT for these years."*
3. *The appellant prays that the order of CIT(A) on the above directions be set aside and that the assessing officer be restored,"*

2.1 Facts in brief are that the assessee being *resident corporate assessee* stated to be engaged as *builder and developer* was subjected to an assessment u/s. 143(3) *read with Section 263* of the Act on 12/01/2016 by Ld. Deputy Commissioner of Income Tax-15(2)(1), Mumbai [AO] wherein the income of the assessee was determined at Rs.22.25 crores after certain adjustments as against assessed income u/s 143(3) on 11/02/2013 at Rs.36.07 Crores.

2.2 Subsequently, Hon'ble Commissioner of Income Tax, invoking revisional jurisdiction u/s. 263 vide order dated 06/02/2015, set aside the issue of determination of *Income from House Property* to the file of Assessing Officer for fresh adjudication. Accordingly, the matter was reconsidered by the Ld. AO in terms of the stated direction and made certain additions in the income of the assessee. However, upon further appeal, Ld. first appellate authority, has deleted the same against which



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the revenue is in further appeal before us. It has been submitted before us that the assessee has not agitated the invocation of revisional jurisdiction u/s 263.

2.3 During revisional assessment proceedings, it transpired that the assessee, following *completed project method* of accounting offered income from construction projects completed during the year. At year-end, the assessee had certain inventories in completed projects in the shape of unsold flats/shops, 488 flats and 22 shops to be precise, the details of which have already been extracted at *para 5.2* of the quantum assessment order.

2.4 The Ld. AO, applying the provisions of Section 22 of the Act, proceeded to determine the *notional rental income* from such properties under *Income from House Property* by taking a view that notional rental income from such properties ought to have been brought to tax irrespective of the fact whether they were held as investment or as stock-in-trade by the assessee. Finally, estimating the notional rental value of these properties @8.9% of the cost of construction of respective properties, Ld. AO worked out notional rent of Rs.522.69 Lacs. After providing for statutory deduction of 30% u/s 24(b), the net addition so made worked out to Rs.365.88 Lacs which was added to the income of the assessee. The Ld. first appellate authority deleted the same by relying upon the decision of its predecessors in assessee's own case for AYs 2009-10 & 2011-12. Aggrieved, the revenue is in further appeal before us.



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3. The Ld. Authorized Representative for Assessee [AR], at the outset, submitted that the revenue agitated the stand of first appellate authority, for AY 2009-10 & 2011-12 before this Tribunal vide ITA Nos.3321,3172/Mum/2016 order dated 31/08/2018 wherein the issue was decided against the revenue. The copy of the order has been placed on record. Although, Ld. DR relied upon the decision of Hon'ble Delhi High Court rendered in *CIT Vs. Ansal Housing & Construction [72 Taxmann.com 254]* but failed to controvert the fact that the issue stood squarely covered in assessee's favor by the earlier order of the Tribunal.

4. Upon careful consideration, the undisputed fact that emerges is the fact that the assessee is having business inventory in the shape of unsold flats / shops in certain projects which have already been completed. The Ld. AO has estimated the notional rental income against the same @8.9% of cost of construction. We find the issue to be recurring in nature which has already been dealt by the co-ordinate bench of this Tribunal in assessee's own case for AYs 2009-10 & 2011-12. For ease of reference, the relevant observation as well as conclusion of the bench could be extracted in the following manner: -

4. The 2nd ground of appeal raised by the revenue is that the Id. CIT(A) erred in holding the unsold flats as stock-in-trade used for purpose of business relying on the decision of the Hon'ble Supreme Court in the case of M/s. Chennai Properties and Investment Ltd. vs. CIT ,231 Taxman 336. It is stated that the above decision pertains to assessees engaged in the business of letting out properties.

4.1. As stated earlier, the assessee is a builder and developer and at the end of the year it had inventory of stock-in-trade which are not sold and lying vacant of Rs.12,10,05,508/-. The AO relied upon the judgment of the Hon'ble Delhi High Court in CIT vs. Ansal Hsg. Finance & Leasing Co. Ltd., (ITA No.18/1999 dtd. 31/10/2012)



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and computed deemed income from house property by estimating @8.5% of cost of construction and after allowing the deductions of 30%, computed the income.

4.2. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A). We find that the Ld. CIT(A), relying on the decision in *Shyam Burlap Co. Ltd. vs. CIT*, 61 taxmann.com 121 (Calcutta High Court), *M/s. Chennai Properties and Investment Ltd. (supra)* and the order of the Tribunal in *C.R. Development Pvt. Ltd. (ITA No.4277/Mum/2012 dtd. 13/05/2016)*, deleted the addition as per para 2.4.60 of his appellate order dtd.01/02/2016.

4.3. The Id. DR relies on the decision in *Ansal Hsg. Finance & Leasing Co. Ltd.*, (supra), and submits that the order passed by the AO may be restored.

4.4. On the other hand, the Id. counsel of the assessee relies on the judgement of the Hon'ble Gujarat High Court in *CIT vs. Neha Builders Pvt. Ltd. 296 ITR 661 (Guj.)* and the order of the Tribunal in *M/s. Runwal Constructions vs. ACIT (ITA No.5408/Mum/2016 dtd.22/02/2018)* and *Progressive Homes vs. ACIT (ITA No.5082/Mum/2016 dtd. 16/05/2018)*.

4.5. We have heard the rival submissions and perused the relevant materials on record. On the above issue, we come across one decision for the assessee and another decision for the revenue. The decision in *Neha Builders Pvt.Ltd.(supra)* is for the assessee, whereas the decision in *Ansal Hsg. Finance & Leasing Co. Ltd.*, (supra) is for the Revenue. The Hon'ble Supreme Court in the case of *CIT vs. Vegetable Products 88 ITR 192 (SC)* has held that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the tax payer must be adopted."

In view of the above position of law, we shall follow the decision in *Neha Builders Pvt.Ltd.(supra)*.

4.5.1. We now come to the relevant provisions in the Act. The following sub-section (5) has been inserted after sub-section (4) of section 23 by the Finance Act, 2017, w.e.f. 01.04.2018:

"(5) Where the property consisting any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to nil."

Thus, in order to give relief to Real Estate Developers, section 23 has been amended w.e.f. AY 2018-19 (FY 2017-18). By this amendment, it is provided that if the assessee is holding any house property as his stock-intrade which is not let out for the whole or part of the year, the annual value of such property will be considered as Nil for a period up to one year from the end of the financial year in which a completion certificate is obtained from the competent authority.

In view of the above amendment to section 23, we are not adverting to the other case laws relied on by the Ld. counsel.

In the instant case, the assessee is a builder and developer. The issue of taxability is with regard to unsold flats. The AY is 2009-10. In view of the insertion of sub-section



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(5) in section 23 by the Finance Act, 2017, w.e.f. 01.04.2018 narrated hereinbefore, we uphold the order of the Ld. CIT(A) and dismiss the 2nd ground of appeal filed by the revenue.

Nothing has been brought on record to demonstrate any change in material facts and circumstances or to establish that the aforesaid ruling is not applicable to the facts of the present case. Therefore, with a view to maintain consistency and respectfully following the binding judicial pronouncement, we dismiss the appeal

5. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 09th April, 2019.

Sd/-

Sd/-

(Saktijit Dey)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :09/04/2019

Sr.PS:- Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai