

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

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.596/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

Mansar Construction Company RNA Corporate Park, 7 th Floor, Next to Collector's Office, Kalanagar, Bandra (E), Mumbai-400051.	बनाम/ Vs.	DCIT Central Circle-3(3) Air India Building, Room No.1923, 19 th Floor, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFM3411A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri S. K. Mitra	

सुनवाई की तारीख / Date of Hearing: 09/05/2019

घोषणा की तारीख /Date of Pronouncement: 22/05/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 01.11.2017 passed by the Commissioner of Income Tax (Appeals) -51, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

2. The assessee has raised the following grounds: -

“1. The Ld. CIT(A) erred in confirming the action of the Assessing Officer in computing deemed income under the head Income from House Property in respect of unsold flats in project RNA Heights.

2. *The Ld. CIT(A) erred in holding that deemed income from House Property is to be computed u/s22 even when these are unsold flats lying as stock-in-trade of completed projects as the appellant is engaged in the business of building and developing immovable property.*
3. *The Ld. CIT(A) erred in confirming the Gross Annual Value of Rs.4,87,440/- in respect of unsold flats of total area 2031 sq. feet in project RNA heights at the rate of Rs.20 per sq. feet per month.*
4. *The appellant craves leave to add to, alter or amend any ground before or at the time of hearing."*

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2013 declaring total income to the tune of Rs.23,895/- for the A.Y. 2013-14. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case was selected for scrutiny, therefore, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of development and building of properties. The books of account of the assessee speaks that the assessee has inventory of several unsold flats in respect of Mirage Projects and total area of unsold stock comes to 2031 sq.ft for the relevant assessment year. The notice was given to explain why deemed house property income be not charged on completed flats in possession of the assessee. After filing the reply of the assessee and relying upon the law settled in **CIT Vs. Ansal Housing Finance & Leasing Co. Ltd. Delhi High Court (2013) 354 ITR 180**. The AO assessed the unsold area of 2031 sq.ft @ 20 per sq.ft in sum of Rs.40,620/- per month. The total Annual rental determined at Rs.40,620 X 12 i.e.487,440/-. The statutory deduction @ 30% in sum of Rs.146,232/- was allowed. The taxable income of the assessee was assessed in sum of Rs.3,17,313/-. Feeling aggrieved, the assessee filed an appeal before the

CIT(A) who confirmed the said addition, therefore, the assessee has filed the present appeal before us.

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4. We have heard argument advanced by the Ld. Representative of the Department and have also gone through the case carefully. The fact is not in dispute in which the AO computed the deemed rent @ 4,87,440/- on unsold flats/unit area 2031 sq.ft of the project RNA heights at the rate of Rs.20 per sq.ft per month. Thereafter, statutory deduction of 30% was also allowed. The income of the assessee was assessed in sum of Rs.3,41,208/- as income from house property. The relevant finding has been given in para no.5.3 which is hereby reproduced as under.:-

“5.3 I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO. In the case of Ansal Housing Finance & Leasing Co. Ltd. (2013) 354 ITR 180, the Hon'ble Delhi High Court had decided an identical issue. The relevant portion of the judgement is reproduced as under.:

13. In the present case, the assessee is engaged in building activities. It argues that flats are held as part of its inventory of stock-in-trade, and are not let out. The further argument is that unlike in the other instances, where such builders let out flats, here there is no letting out and that deemed income - which is the basis for assessment under the ALV method, should not be attributed. This Court is of the opinion that the argument, though attractive cannot be accepted. As repeatedly held, in East India. Housing & Land Development Trust's case (supra) Sultan Bros's case (supra) and Karan Pure Development Co. Ltd. 's case (supra) the levy of income tax in the case of one holding house property is premised not on whether the assessee carries on business, as landlord, but on the ownership. The incidence of charge is because of the fact of ownership. Undoubtedly, the decision in Vikram Cotton Mills Ltd. ' case (supra) indicates that in every case, the Court has to

discern the intention of the assessee; in this case the intention of the assessee was to hold the properties till they were sold. The capacity of being an owner was not diminished one whit because the assessee carried on business of developing, building and selling flats in housing estates. The argument that income tax is levied not on the actual receipt (which never arose in this case) but on a notional basis, i.e. ALV and that it is therefore not sanctioned by law, in the opinion of the Court is meritless. ALV is a method to arrive at a figure on the basis of which the impost is to be effectuated. The existence of an artificial method itself would not mean that levy is impermissible. Parliament has resorted to several other presumptive methods, for the purpose of calculation of income and collection of tax. Furthermore, application of ALV to determine the tax is regardless of whether actual income is received; it is premised on what constitutes a reasonable letting value, if the property were to be leased out in the marketplace. If the assessee's contention were to be accepted, the levy of income tax on unoccupied houses and flats would be impermissible - which is clearly riot the case.

14. As far as the alternative argument that the assessee itself is occupier, because it holds the property till it is sold, is concerned, the Court does not find any merit in this submission. While there can be no quarrel with the proposition that "occupation" can be synonymous with physical possession, in law, when Parliament intended a property occupied by one who is carrying on business, to be exempted from the levy of income tax was that such property should be used for the purpose of business. The intention of the lawmakers, in other words, was that occupation of one's own property, in the course of business, and for the purpose of business, i.e. an active use of the property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. This contention is, therefore, rejected. Thus, this question is answered in favour of the revenue, and against the assessee."

5. On appraisal of the above said finding, we noticed that the issue has duly been covered in favour of the revenue in the case of **Ansal Housing**

Finance & Leasing Co. Ltd(supra) which have been duly been discussed by CIT(A) above in his finding. The facts are not distinguishable at this stage also. No law contrary to the law relied by the CIT(A) has been produced before us. Moreover, the assessee did not appear before us in support of his claim nor adduced any kind of evidence. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

6. In the result, the appeal filed by the assessee is hereby ordered to be dismissed.

Order pronounced in the open court on 22/05/2019.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 22/05/2019

Vijay / Sr. PS

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai