

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "SMC",
JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM

आयकर अपील सं./ITA No. 1286/JP/2018
निर्धारण वर्ष / Assessment Year :2009-10

Shri Hanuman Prasad Jangid 866-B, Devi Nagar, New Sanganer Road, Jaipur.	Vs.	I.T.O., Ward 2(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AFJPJ 2511 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri P.C.Parwal, (CA)
राजस्व की ओर से / Revenue by : Smt. Roshanta Meena, (JCIT)

सुनवाई की तारीख / Date of Hearing : 15/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 06/06/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-I, Jaipur dated 13/09/2018 for the A.Y. 2009-10 in the matter of order passed u/s. 143(3)/147 of the Income Tax Act, 1961 (in short, the Act).

2. I have heard the rival contentions and carefully gone through the orders of the authorities below and found that the assessee is engaged in the business of real estate developer. The A.O. got information from the Director of Income Tax that the assessee had sold two immovable properties, however, no capital gain was offered

nor any return was filed. Accordingly, the assessment was reopened by issuance of notice U/s 148 of the Act. In the return so filed after reopening, the assessee had shown loss of Rs. 59,667/- from the house property and business income of Rs. 1,84,880/- U/s 44AD of the Act.

3. During the course of reassessment, the A.O. declined assessee's claimed profit offered U/s 44AD of the Act on the plea that Section 44AD is applicable only when the assessee is engaged in business of civil construction or supply of labour for civil construction. As per the A.O., the assessee is not engaged in construction activity but only in purchase and sale of property. Accordingly, the A.O. estimated profit of Rs. 5.00 lacs in respect of flats so sold during the year as against the income offered by the assessee U/s 44AD of the Act @ 8% of the gross receipts.

4. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. by observing that the assessee had not constructed house for sale but the construction of flat was for assessee himself. Against the order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

5. I have considered the rival contention and carefully gone through the orders of the authorities below and found from the record that in reply to notice U/s 148 of the Act, the assessee has filed return

wherein he has declared profit of Rs. 1,84,880/- on turnover of Rs. 23,11,000/- U/s 44AD of the Act. I found that the assessee has purchased a plot on 09/08/2007 for a sum of Rs. 8.00 lacs and constructed three flats on it. During the year under consideration, the assessee had sold two flats for consideration of Rs.9,11,000/- and Rs. 14,00,000/-. Thus, total sale consideration of flats works out to be Rs. 23.11 lacs on which the assessee has offered 8% profit under the provisions of Section 44AD of the Act. I do not find any merit in the action of the A.O. for not applying the provisions of Section 44AD of the Act with respect to construction activity so carried on by the assessee. It appears that the A.O. has wrongly presumed that Section 44AD of the Act is only applicable in the case when assessee engaged in the business of civil construction for others or supply of labour for civil construction. In the instant case, since the assessee has constructed flats on the land, the same also amounts to civil construction and profit earned thereon, are eligible for taxation U/s 44AD of the Act. The finding of the Id. CIT(A) to the effect that the assessee has constructed flat for himself is also contrary to the material on record. In so far as the assessee after construction of flat had sold the same and the profit earned thereon was also offered as business income, there is no reason to hold that the assessee has earned capital gains. Accordingly, I direct the A.O. to compute 8%

income on the gross receipts of turnover of Rs. 23.11 lacs, which works out to be Rs. 1,84,880/-. I direct accordingly.

6. In the result, appeal of the assessee is allowed, in terms indicated hereinabove.

Order pronounced in the open court on 06th June, 2019.

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 06th June, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Hanuman Prasad Jangid, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO, Ward 2(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1286/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar