

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1947/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

M/s. Goel Raisonni Associates,
San Mahu Complex,
5, Bund Garden Road,
Opp. Poona Club,
Pune - 411001

PAN : AAAAG3623J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax,
Circle - 7, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Krishna Gujrathi
Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 11-09-2019

घोषणा की तारीख / Date of Pronouncement : 13-09-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 12-05-2017 passed by the Commissioner of Income Tax (Appeals)-5, Pune for assessment year 2013-14.

2. The only issue is to be decided as to whether the Commissioner of Income Tax (Appeals) is justified in confirming the addition made by the Assessing Officer by fixing Annual Letting Value u/s. 23(4) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in the facts and circumstances of the case.

3. Heard both parties and perused the materials available on record. According to the Assessing Officer that the assessee is an AOP and engaged in the business of building construction/development of real estate. During the course of assessment proceedings, the Assessing Officer found that the assessee has one unsold property which has got completion certificate from the competent authority and has been shown as closing stock. He proposed to invoke the provisions of section 23(4) of the Act. The assessee furnished explanation vide letter dated 14-03-2016 contending that unsold flat was sold in subsequent year i.e. assessment year 2014-15 and such proposed rental income would fall under the head "Business Income" but not from "Income from House Property". The Assessing Officer held the explanation offered by the assessee is not tenable and found not acceptable. The Assessing Officer deputed its Inspector to ascertain the fair market rent of the aforesaid unsold flat and on the basis of report of such Inspector, he determined the gross annual lettable value at Rs.90,000/- and by allowing standard deduction of 30%, an amount of Rs.63,000/- added to the total income of the assessee vide this order dated 17-03-2016 passed u/s. 143(3) of the Act. The Commissioner of Income Tax (Appeals) in the First Appellate proceedings agreed with the view of Assessing Officer and upheld the invocation of sub-section (4) of section 23 of the Act.

4. Aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee before us, reiterated the submissions made before the two lower authorities and placed reliance of the order of SMC Bench in the case of M/s. Shree Balaji Ventures Vs. ITO in ITA No. 1914/PUN/2018 for the assessment year 2015-16 decided on 19-02-2019.

5. The ld. DR did not controvert the findings of Tribunal in holding when there is no earning of rental income from letting out of properties there cannot be any taxation on any hypothetical income.

6. On perusal of the order dated 19-02-2019 in the case of M/s. Shree Balaji Ventures Vs. ITO (supra) as relied on by the ld. AR, we find that the Assessing Officer therein proposed to invoke the provisions of section 23(4) of the Act on two properties which were held by the assessee therein as closing stock. It is noted that the assessee therein contended no income can be determined on the properties held as stock-in-trade under the head "Income from House Property" and it should be computed under the income from business and profession. The SMC Bench considering the facts and circumstances of the case and taking support from the Hon'ble Supreme Court in the cases of S.G. Mercantile Corporation Pvt. Ltd. Vs. Commissioner of Income Tax reported in 83 ITR 700 (SC) and Chennai Properties and Investments Ltd. Vs. Commissioner of Income Tax reported in 373 ITR 673 (SC), held the income of builder in respect of letting of properties is chargeable to tax under the head profits and gains of business or profession but not under the income from house property. Further, held that there cannot be any taxation to the effect when there is no income on such properties which were unsold. Therefore, we find that the facts and circumstances of the present case are similar and identical to

the facts and circumstances of the case of M/s. Shree Balaji Ventures Vs. ITO (supra) and thus, the order of Commissioner of Income Tax (Appeals) is not justified, is set aside, grounds raised by the assessee succeeds and are allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 13th September, 2019.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 13th September, 2019

RK

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, Pune
4. The Pr. Commissioner of Income Tax-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune