

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 6570/MUM/2018 (A. Y: 2011-12)

M/s. Ashford Corporation 16, Vasani Chambers Mezanine Floor 47, New marine Lines Mumbai – 400 020 PAN: AAGFA9350D	v.	Asst. Commissioner of Income-tax Range – 17(2) {Previously Range – 12(2)} Mumbai
(Assessee)		(Respondent)

Assessee by : None

Department by : Shri S. Michael Jerald

Date of Hearing : 14.11.2019

Date of Pronouncement : 22.11.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals) – 55, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 05.06.2018 for the Assessment Year 2011-12.

2. The only issue in the appeal of the assessee is with respect to computation of notional annual letting value on unsold flats which were held as stock in trade by the assessee.

3. Ld. Counsel for the assessee, at the outset submitted that identical issue had come up before the Hon'ble Gujarat High Court in the case of CIT v. Neha Builders Pvt. Ltd. [296 ITR 661 (Guj.)], wherein it has been held that when the property held as stock in trade the notional annual letting value cannot be computed on such property. Learned Counsel for the assessee submitted that similar issue has been decided by the Mumbai Bench of the Tribunal in the case of the M/s. Runwal Constructions v. ACIT in ITA.No. 5408 & 5409/Mum/2016 dated 22.02.2018, considering the decision of the Hon'ble Gujarat High Court in the case CIT v. Neha Builders Pvt. Ltd. (*supra*) as well as the Hon'ble Delhi High Court in the case of the Ansal Housing Finance & Leasing Co. Ltd. [354 ITR 180], held that unsold flats which are stock in trade and when they are sold they are assessable under the head income from business and therefore Assessing Officer and Ld.CIT(A) are not correct in bringing to tax notional annual letting value under the head income from house property.

4. Ld. DR vehemently supported the orders of the Authorities below.

5. We have heard the rival submissions, perused the orders of the authorities below. Identical issue came up before the Coordinate Bench

in the case of the M/s. Runwal Constructions v. ACIT (supra) and the Tribunal held as under: -

“3. The brief facts of the case are that the assessee, engaged in the business of builders and developers, filed return of income for A.Y. 2012-13. The assessment was completed under Section 143(3) of Income Tax Act, 1961 (hereinafter “the Act”) and while completing the assessment the AO computed the annual letting value in respect of unsold flats held as stock in trade by the assessee. The assessee contended before the AO that they are engaged in the business of builder, developers and construction and the property they purchased is stock in trade and the income from sale of such developed property into flats is assessable as business income. Therefore, the unsold flats which are in the stock in trade cannot be brought to tax under the head ‘income from house property’ simply because the flats remain unsold at the end of the year. The assessee also placed reliance on the decision of the Hon’ble Gujarat High Court in the case of CIT vs. Neha Builders Pvt. Ltd. (296 ITR 661) in support of their contentions. However, the AO referring to the decision of the Hon’ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (354 ITR 180) computed the notional annual letting value on the unsold flats and brought to tax under Section 23 of the Act as income from house property.

4. On appeal the learned CIT(A) sustained the action of the AO in bringing to tax the notional annual letting value under the head ‘income from house property’ in respect of the unsold flats. Aggrieved, assessee is in appeal before us.

5. The learned A.R. before us strongly placing reliance on the decision of the Hon’ble Gujarat High Court in the case of Neha Builders Pvt. Ltd. (supra) submitted that if the property is used as stock in trade then such property would become or partake the character of stock and any income derived from such stock in trade would be income from business and not income from house property. The learned counsel also placed reliance on the decision of the Coordinate Bench in the case of C.R. Developers Pvt. Ltd. vs. JCIT in ITA No. 4277/Mum/2013 dated 13.05.2015 and submitted that identical issue has been decided by the Coordinate Bench holding that in the case of property held as stock in trade the income should be assessable under the head ‘income from business’ and no income shall be brought to tax as notional annual letting value under the head ‘income from house property’.

6. The learned D.R., on the other hand, vehemently supported the orders of Authorities below. He also placed reliance decision of the Hon’ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra)

7. We have heard the rival submissions and perused the orders of the authorities below and the decisions relied upon. It is an undisputed fact that the assessee is in the business of builders, developers and construction. Both the assessee have constructed various projects and the projects were treated as stock in trade in the books of account. Flats sold by the assessee were assessed under the head ‘income from business’. There were certain unsold flats in stock in trade which the AO treated as property assessable under the head ‘income from house property’ and computed notional annual letting value on such unsold flats placing reliance on the decision in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra). The action of the AO was upheld by the learned CIT(A).

8. The Hon'ble Gujarat High Court in the case of *Neha Builders Pvt. Ltd. (supra)* considered the question whether the rental income received from any property in the construction business can be claimed under the head 'income from property' even though the said property was included in the closing stock. The Hon'ble Gujarat High Court held that if the business of the assessee is to construct the property and sell it or to construct and let out the same, then that would be the business and the business stocks, which may include movable and immovable, would be taken to be stock in trade and any income derived from such stocks cannot be termed as income from house property. While holding so the Hon'ble High Court observed as under: -

"8. True it is, that income derived from the property would always be termed as 'income' from the property, but if the property is used as 'stock-in-trade', then the said property would become or partake the character of the stock, and any income derived from the stock, would be 'income' from the business, and not income from the property. If the business of the assessee is to construct the property and sell it or to construct and let out the same, then that would be the 'business' and the business stocks, which may include movable and immovable, would be taken to be 'stock-in-trade', and any income derived from such stocks cannot be termed as 'income from property'. Even otherwise, it is to be seen that there was distinction between the 'income from business' and 'income from property' on one side, and 'any income from other sources'. The Tribunal, in our considered opinion, was absolutely unjustified in comparing the rental income with the dividend income on the shares or interest income on the deposits. Even otherwise, this question was not raised before the subordinate Tribunals and, all of sudden, the Tribunal started applying the analogy.

9. From the statement of the assessee, it would clearly appear that it was treating the property as 'stock-in-trade'. Not only this, it will also be clear from the records that, except for the ground floor, which has been let out by the assessee, all other portions of the property constructed have been sold out. If that be so, the property, right from the beginning was a 'stock-in-trade'."

9. Similarly the Coordinate Bench has considered similar issue as to whether the unsold property which is held as stock in trade by the assessee can be assessed under the head 'income from house property' by notionally computing the annual letting value from such property and the Coordinate Bench considering the decision of the Hon'ble Delhi High Court in the case of *Ansal Housing Finance & Leasing Co. Ltd. (supra)* which the AO relied upon and the decision of the Hon'ble Supreme Court in the case of *Chennai Properties & Investments Ltd. vs. CIT* reported in 373 ITR 673, held that unsold flats which are in stock in trade should be assessed under the head 'business income' and there is no justification in estimating rental income from those flats and notionally computing annual letting value under Section 23 of the Act. While holding so the Coordinate Bench observed as under: -

"3. The Id. AR placed the order of Bombay Tribunal in the case of M/s Perfect Scale Company Pvt. Ltd., ITA Nos.3228 to 3234/Mum/2013, order dated 6-9-2013, wherein it was held that

in respect of assets held as business, income from the same is not assessable u/s.23(1) of the IT Act.

4. On the other hand, Id. DR relied on the order of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd., 354 ITR 180 (Delhi) in support of the proposition that even in respect of unsold flats by the developer is liable to be taxed as income from house property.

5. We have considered rival contentions and perused the record. The issue under consideration has been restored by the CIT(A) to the file of AO to compute the annual value. Recently the Hon'ble Supreme Court in the case of M/s Chennai Properties & Investments Ltd. Vs. CIT, reported in (2015) 42 SCD 651, vide judgment dated 9-4-2015 has held that where assessee company engaged in the activity of letting out properties and the rental income received was shown as business income, the action of AO treating the rental income as income from house property in place of income from business shown by the assessee was held to be not justified. The Hon'ble Supreme Court held that since the assessee company's main object, is to acquire and held properties and to let out these properties, the income earned by letting out these properties is main objective of the company, therefore, rent received from the letting out of the properties is assessable as income from business. On the very same analogy in the instant case, assessee is engaged in business of construction and development, which is main object of the assessee company. The three flats which could not be sold at the end of the year was shown as stock-in-trade. Estimating rental income by the AO for these three flats as income from house property was not justified insofar as these flats were neither given on rent nor the assessee has intention to earn rent by letting out the flats. The flats not sold was its stock-in-trade and income arising on its sale is liable to be taxed as business income. Accordingly, we do not find any justification in the order of AO for estimating rental income from these vacant flats u/s.23 which is assessee's stock in trade as at the end of the year. Accordingly, the AO is directed to delete the addition made by estimating letting value of the flats u/s.23 of the I.T.Act."

10. In the case on hand before us it is an undisputed fact that both assessees have treated the unsold flats as stock in trade in the books of account and the flats sold by them were assessed under the head 'income from business'. Thus, respectfully following the above said decisions we hold that the unsold flats which are stock in trade when they were sold they are assessable under the head 'income from business' when they are sold and therefore the AO is not correct in bringing to tax notional annual letting value in respect of those unsold flats under the head 'income from house property'. Thus, we direct the AO to delete the addition made under Section 23 of the Act as income from house property."

6. Admittedly in this case on hand the unsold property being flats were held as stock in trade. In the circumstances, respectfully following the above decision we allow the ground raised by the assessee and direct the Assessing Officer to delete the addition made towards Annual Letting Value under the head from house property.

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

Order pronounced in the open court on the 22nd November 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 22/11/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum