

THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai  
Before Shri Mahavir Singh (JM) & Shri Shamim Yahya (AM)

I.T.A. No. 4360/Mum/2018 (Assessment Year 2014-15)

M/s. Dream Enterprises G/1&2, B Building Ground Floor Mangal Kunj, Jambli Gully S.V. Road, Borivali West Mumbai-400 092.  PAN : AA EFD5638B (Appellant)	Vs.	DCIT Central Circle 5(2) Air India Building 19 <sup>th</sup> Floor Nariman Point Mumbai-400 021.  (Respondent)
---	-----	---

Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	19.09.2019
Date of Pronouncement	03.12.2019

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 16.5.2018 and pertains to A.Y. 2014-15.

2. The issue raised is that learned CIT(A) erred in upholding the order of the Assessing Officer in bringing to tax alleged notional rent of Rs. 27,38,904/- as income from house property.

3. The assessee in this case is engaged in the business as builder & property developers. In course of assessment proceedings the Assessing Officer observed that the assessee firm had developed a mall known as “Zoom Plaza” in Borivali and the same was completed in the assessment year 2014-15. That some of the units remained to be sold. That however, the assessee did not offer notional income under the head ‘income from house property’ as per Judgement of Hon'ble Delhi High Court in the case of Ansal Housing &

Finance Leasing Ltd. the Assessing Officer assessed notional rent at Rs. 27,38,904/-.

3. This order was upheld by learned CIT(A). Against this order assessee is in appeal before us.

4. We have heard learned Departmental Representative and perused the record. We find that the assessee is engaged in the business of builder and developers. Shops which have remained unsold and hence are in stock-in-trade. We find that in identical situation Hon'ble Gujarat High Court Neha Builders Pvt. Ltd. (164 Taxman 342) has held that unsold stock-in-trade cannot be subjected to notional rent. Though we note that decision contrary to this has been rendered by Hon'ble Delhi High Court in the case of Ansal Housing & Finance Leasing Ltd. No decision of Hon'ble Jurisdictional High Court on the subject has been produced before us. In this view of the matter, we refer to Hon'ble Apex Court decision in the case of CIT Vs. Vegetable Products Ltd. (88 ITR 192) for the proposition that if two views are possible one in favour of the assessee should be adopted. Hence, respectfully following the decision of Hon'ble Gujarat High Court in the case of Neha Builders Pvt. Ltd. (supra). We decide the issue in favour of the assessee and delete the addition of notional rent on unsold shops.

5. In the result, appeal stands allowed.

Order has been pronounced in the Court on 3.12.2019.

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 3/12/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

*PS*

BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai