

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO. 4449/MUM/2019** : **A.Y : 2014-15**

M/s. Archie Creations vs. Pr. CIT – 32, Mumbai.  
405, 5<sup>th</sup> floor, Damin Building, Lapore (Respondent)  
Street, Nr. Apun Apartment,  
Bhayander (West), Thane.  
**PAN : AANFA7232K** (Appellant)

**Appellant by : Shri Devendra Jain**

**Respondent by : Shri Rajiv Harit**

**Date of Hearing : 03/02/2020**

**Date of Pronouncement : 13/07/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

This appeal by the assessee is directed against the order of learned Pr. Commissioner of Income Tax (in short 'PCIT') dated 25.03.2019 pertaining to assessment year 2014-15.

2. The grounds of appeal read as under :-

*"1. In the facts and circumstances of the case and in law, the Learned Principal CIT has erred in assuming jurisdiction under section 263 and holding that the order passed by the learned Assessing Officer dated 25.11.2016 is erroneous and prejudicial to the interest of Revenue."*

3. At the outset, it is noted that there is a delay of 20 days in filing the appeal. The reasonable cause for the same has been attributed to be the

mistake on the part of the employee who received the notice, in not communicating the same to the Consultant. Upon careful consideration and hearing the parties, we condone the delay.

4. We find that in the present case, learned PCIT has exercised his jurisdiction under Section 263 of the Income Tax Act, 1961 (in short 'the Act') on the ground that assessee has not offered notional rent on its unsold flats, which are assessee's stock in trade. The learned PCIT in this regard has referred to the decision of Hon'ble Delhi High Court in the case of *CIT vs Ansal Housing Finance & Leasing Co. Ltd.*, 354 ITR 180 (Delhi). Against this order, assessee is in appeal before us.

5. We have heard both the Counsel and perused the records. Learned counsel of the assessee submitted that the flats are unsold stock in trade of the assessee. He referred to the decision of Hon'ble Gujarat High Court in the case of *CIT vs Neha Builders (P.) Ltd.*, 296 ITR 661 (Gujarat) for the proposition that notional rent under Section 23 of the Act cannot be computed on flats which are stock in trade of the assessee. He also referred to several decisions of Bombay Tribunal to this effect.

6. *Per Contra*, learned Departmental Representative relied upon the order of the PCIT. He further submitted that learned PCIT is fully justified in exercising jurisdiction under Section 263 of the Act in as much as Assessing Officer has not examined this issue in his assessment order.

7. Upon careful consideration, we find that the unsold flats are stock in trade of the assessee. The relevant provision for bringing the same under the

ambit of income from house property has been introduced by Finance Act by introduction of Section 23(5). The said section reads as under :-

*“5) Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to [one year] from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.”*

8. From reading of the above, it is amply clear that the provision in the Act for BRINGING to tax the notional rent on unsold stock of house property was brought into effect from assessment year 2018-19. In the present case, the assessment year is 2014-15 and hence the said provision is not at all applicable for the current assessment year. Moreover, as referred by the learned counsel of the assessee in the decision of Hon'ble Gujrat High Court in the case of *Neha Builders (P.) Ltd.* (supra) it was held that notional house rent cannot be computed for stock in trade. The Hon'ble Supreme Court in the case of *CIT vs Vegetable Products Ltd.*, 88 ITR 192 (SC) has expounded that if two constructions are possible, one in favour of assessee has to be adopted. Even from this point of view on the touchstone of Hon'ble Gujrat High Court decision, as referred above, notional house rental income cannot be computed for the unsold flats of the assessee. In this regard, learned departmental representative has submitted that the issue now is before the Hon'ble Supreme Court and the matter has not been decided by the Hon'ble Supreme Court. In our considered opinion, the submission of the learned departmental representative further supports the case of the assessee. Admittedly, when an issue is before the Hon'ble Supreme Court and has not yet been decided, the issue can be considered to be a debatable issue and in such circumstances as

long as there is existence of debate about both point of view, the learned CIT is not empowered to exercise jurisdiction under Section 263 of the Act in support of one point of view to which he subscribes. This view is duly supported by the decision of Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs CIT, 243 ITR 83 (SC)*.

9. Accordingly, in the background of aforesaid discussion and precedent, in our considered opinion, the exercise of jurisdiction under Section 263 of the Act by the learned CIT is not sustainable. Accordingly, we set aside the order of learned CIT and decide the issue in favour of assessee.

10. Before parting, we note that this appeal was heard on 06.02.2020. The pronouncement is delayed due to lockdown in view of Covid-19 pandemic. The pronouncement is as per Rule 34(5) of Appellate Tribunal Rules and Hon'ble Bombay High Court decision vide order dated 15.04.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect is also dealt with in detail in ITAT Mumbai order in case of *DCIT vs JSW Steel* vide order dated 15.05.2020.

11. In the result, this appeal by the assessee stands allowed.

Order pronounced in the court on 13<sup>th</sup> July, 2020 as per Rule 34(4) by placing the pronouncement list on notice board.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 13<sup>th</sup> July, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai