

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.1980 & 1981/M/2019
Assessment Years: 2013-14 & 2014-15**

M/s. Dhruva Woollen Mills Pvt. Ltd., 5 th Floor, Runwal & Omkar Esquare, Off. Eastern Express Highway, Sion Chunabatti Signal, Sion Mumbai – 400 022 PAN: AAACD3893P	Vs.	Dy. Commissioner of Income Tax, Central Circle-4(1), Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rakesh Joshi, A.R.
Revenue by : Shri Akhtar H. Ansari, D.R.

Date of Hearing : 01.10.2020
Date of Pronouncement : 27.10.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the order dated 20.08.2017 & 10.08.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2013-14 & 2014-15 respectively.

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2. The only issue raised by the assessee is against the confirmation of addition of Rs.31,38,240/- by Ld. CIT(A) as made by the AO on account of notional ALV under section 22 read with section 23 of the Act in respect of unsold flats held as stock in trade.

3. The facts in brief are that the assessee filed the return of income on 25.09.2013 declaring an income of Rs.51,42,710/-. The case of the assessee was selected under scrutiny and statutory notices were duly issued and served upon the assessee. The assessee was carrying on the business of construction and property development as builders and developers of projects. The AO noticed from the balance that assessee is holding inventory of an unsold flats in three projects at a stock price of Rs.4,42,39,613/-. The said stocks represented 18 unsold flats in project Runwal Garden City. According to the AO the said unsold flats constitute immovable property which is liable to be assessed under section 22 read with section 23 of the Act on the basis of notional annual value and accordingly calculated the ALV at Rs.44,83,200/- and after allowing statutory deduction of 30%, computed the net annual letting value at Rs.31,38,240/- and added the same to the income of the assessee.

4. Aggrieved assessee filed an appeal before the Id. CIT(A) who also dismissed the appeal of the assessee by upholding the order of AO.

5. After hearing the rival contentions and perusing the material on record, we find that the AO has estimated the notional ALV in respect of 18 flats which the assessee was carrying as stock in trade under the head "Inventories" in its annual accounts. According to the AO, the said unsold flats constitute immovable property which is liable to be assessed under the head "Income from house property" on the basis of

notional ALV as calculated as per the provisions of section 22 read with section 23 of the Act. Since the assessee is a developer and builder by profession and is holding the unsold stock of finished flats as inventories which can not be brought to tax on the basis of ALV. The case of the assessee is squarely covered by the decision of co-ordinate bench of the Tribunal in assessee's sister concern's case in ITA No.5408/M/2016 dated 22.02.2018 which is reproduced as under:

"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 assesseees are in the business of builders, developers and construction. Both the assesseees have constructed various projects and the projects were treated as stock in trade in the books of account. Flats sold by the assesseees 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 assesseees 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. Since the facts before us are materially same vis-à-vis the facts in the case decided by the co-ordinate bench of the Tribunal in assessee's sister concern's case (supra), therefore, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance.

ITA No.1981/M/2019

7. The issue raised in ITA No.1981/M/2019 is identical one as decided by us in ITA No.1980/M/2019 for A.Y. 2013-14. Therefore, our decision in ITA No.1980/M/2019 for A.Y. 2013-14 would ,mutatis mutandis, apply to this appeal as well. Hence, this appeal is allowed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 27.10.2020.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.10.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent

The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.