

**आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई में।**

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

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 8045/Mum/2019

(निर्धारण वर्ष / Assessment Year 2013-14)

Shivshankar Singh & Others C/o. Porwal & Porwal LLP 625 Laxmi Plaa, 6 <sup>th</sup> floor, off New Link Road Andheri (West), Mumbai-400 053	Vs.	The Income Tax Officer, Ward-29(3)(4) Kautilya Bhavan, G-Bloc, Bandra Kurla Complex, Bandr(e) Mumbai-400 051
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAAAS5080P</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Narendra Porwal, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Smt. Smita Verma, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	28.09.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	28.09.2021

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /  
**PER MAHAVIR SINGH, VP:**

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-40, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-40/10404/2016-17, vide dated 23.10.2019. The Assessment was framed by the Income Tax Officer, Ward 29(3)(4), Mumbai (in short ITO/ AO) for the A.Y. 2013-14 vide order dated 11.03.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the Assessing Officer in considering the closing stock of unsold premises and estimating from the same unsold closing stock as deemed income from house property at ₹4,64,892/-.



3. At the outset, the learned Counsel for the assessee stated that exactly identical issue on the same unsold stock, the Assessing Officer has assessed the deemed income from house property by assessing the Annual Letting Value and Tribunal in ITA No.5236/Mum/2016 for Assessment Year 2012-13 vide order dated 23.05.2018 deleted this addition by observing in Para 6 as under:-

*“6. We have considered rival submissions and perused the material on record. It is accepted by the department that assessee is a builder and constructs buildings comprising of shops and residential premises. It is evident, in course of such business activities some flats and shops remain unsold and are shown as stock in trade. There is no dispute that the profit derived by the assessee from sale of flats/shops in the building project has been assessed as business income. However, the AO has proceeded to determine notional house property income on the unsold stock of flats and shops by determining the annual letting value. As could be seen, prior to 01.04.2018 there was no provision under Section 23 of the Act to determine the annual value of unsold flat/shop held as stock in trade. In the Finance Act, 2017 an amendment was made to section 23 of the Act by inserting sub-clause (v), which provides for determination of annual value of any building or land appurtenant thereto held as stock in trade and which has not been let out. However, the aforesaid provision has been made effective from 01.04.2018. The Coordinate Bench in the case of M/s. Runwal Constructions (supra), following the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Neha Builders Pvt. Ltd. 296 ITR 661 and the decision of the ITAT Mumbai Benches in the case of C.R.*



*Developers P. Ltd (supra) has held that unsold flats held as stock in trade in the books of account when sold, the profit derived there from will be assessable under the head 'income from business'. That being the case, notional house property income on such unsold stock in trade cannot be brought to tax. In view of the aforesaid decision of the Coordinate Bench we hold that the departmental authorities were not justified in determining the deemed annual letting value of the unsold stock and bringing it to tax as notional house property income. Accordingly, we delete the addition made by the AO and sustained by the CIT(A)."*

4. The learned Counsel for the assessee stated that this issue is squarely covered in favour of assessee in this year also, as the facts are exactly identical and the remaining unsold stock is carried from earlier year. When this was point out to learned Sr. Departmental Representative Smt. Smita Verma, she could not controvert that the issue is not covered but she relied on the assessment order and the order of CIT(A).

5. After hearing the rival contentions I am of the view that the issue of unsold stock treated as deemed income from house property, is squarely covered in favour of assessee in the immediate preceding assessment year i.e. Assessment Year 2012-13 in assessee's own case. Hence taking a consistent view, I direct the Assessing Officer to delete this disallowance. The orders of the lower authorities are reversed and issue of assessee's appeal is allowed.



6. The next issue in this appeal of assessee is as regards to the non consideration of the claim of deduction under section 80G of the Act amounting to ₹1,61,000/- being qualifying amount related to donation paid during the previous year.

7. Both the learned Counsel for the assessee as well as learned Sr. Departmental Representative agreed that this issue has not adjudicated despite the fact that this issue raised before CIT(A) by the assessee as is evident from Form No.35 filed before me. As the issue has not adjudicated by the CIT(A), this needs re-adjudication but whether at the level of the Assessing Officer or before Commissioner of Income Tax (Appeals). Both learned Counsel for the assessee as well as learned Sr. Departmental Representative agreed that let the issue restore back to the file of the Assessing Officer and assessee can file the evidences before AO for claim of deduction under section 80G of the Act. The Assessing Officer will consider the claim as per law. This issue of assessee's appeal is allowed for statistical purposes.

**8. The appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 28.09.2021.

Sd/-  
(महावीर सिंह / MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 28.09.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



**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. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai