

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
DR. DIPAK PANDURANG RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1408/PUN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Ankit Enterprises,
2nd Floor, City Point,
Dhole Patil Road,
Pune-411001

PAN : AAFFA1172N

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Central Circle – 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil S. Pathak
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 09-02-2022
घोषणा की तारीख / Date of Pronouncement : 11-02-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 21-06-2018 passed by the Commissioner of Income Tax (Appeals)-11, Pune [‘CIT(A)’] for assessment year 2012-13.

2. The ld. AR submits that the assessee is not interested to prosecute ground No. 4. Accordingly, the same is dismissed as not pressed.

3. The assessee raised ground Nos. 1 to 3 amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in confirming the addition made by the AO on account of deemed rent in the facts and circumstances of the case.

4. Heard both the parties and perused the material available on record. We note that the assessee is a firm engaged in the business of developer and promoter. On an examination of details, the AO observed that the assessee held 12 unsold flats/shops as closing stock and the same were treated as stock-in-trade. According to the AO, the assessee is the owner of more than two house properties and liable to pay Income Tax on deemed rent. In view of the same, the AO asked the assessee to explain as to why the deemed rent in respect of 12 unsold flats should not be levied. The assessee explained vide letter dated 13-03-2015 that the assessee offered the sale proceeds on selling of such flats as business income and the Revenue accepted the same. Further, that the said 12 unsold flats were shown as stock-in-trade by the assessee as on 31-03-2012 and in subsequent assessment years the assessee sold the remaining units and the profits thereon has been offered to tax as business income. The AO did not accept the submission of assessee and proceeded to charge annual retable value as per PMC as deemed rent to an extent of Rs.6,64,210/- vide Para No. 3.3 of the assessment order. The CIT(A) confirmed the order of AO by discussing the same in Para Nos. 5 to 7 in the impugned order.

5. The ld. AR, Shri Nikhil S. Pathak placed on record two decisions of this Tribunal in the case of M/s. Mangal Murti Developers Ganesham in ITA No. 980/PUN/2019 for A.Y. 2015-16 and in the case of Kumar Construction and Properties Private Limited in ITA No. 568/PUN/2018 for A.Y. 2013-14 and referred to Para No. 2 of M/s. Mangal Murti Developers Ganesham (supra) and submitted that the issue therein is similar to the issue raised in the present case and the Tribunal by placing reliance in the case of Cosmopolis construction in ITA Nos. 230 & 231/PUN/2018 and also considering the amendment brought in w.e.f. 01-04-2018 to Sub-section (5) of Section 23 of the Act held that the income from unsold flats could be considered only under the head "Profits and Gains from business or profession" and not "Income from House Property". He reiterated that the assessee treated the said unsold 12 flats as stock-in-trade in the Balance sheet and offered the proceeds thereon in the next subsequent years as business income. The ld. DR did not dispute the treatment of 12 unsold flats as stock-in-trade by the assessee and also offering as same as business income in the subsequent years. The ITAT in the case of Kumar Construction and Properties Private Limited (supra) followed the order of this Tribunal in the case of M/s. Mangal Murti Developers Ganesham (supra) and held no addition on account of deemed rent on unsold flats could be made. Therefore, following the same the assessment year being 2012-13, we, by holding the amendment brought in by Finance Act, 2017 w.e.f. 01-04-2018 is not applicable and no addition is maintainable on account of deemed rent on 12 unsold flats which is treated as stock-in-trade by the assessee. Thus, the order of CIT(A) is not justified and it is set aside. Accordingly, grounds raised by the assessee allowed.

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

Order pronounced in the open court on 11th February, 2022.

Sd/-
(Dr. Dipak Pandurang Ripote)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th February, 2022.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune
4. The Pr. CIT (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune