

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'B' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.474/PUN/2018

निर्धारण वर्ष / Assessment Year : 2010-11

Atul Jaiprakash Goel, 3 rd Floor, San Mahu Complex, 5, Bund Garden Road, Opp. Poona Club – 411 001 PAN : AAWPG2106M	Vs.	DCIT, Circle-2, Pune
Appellant		Respondent

Assessee by Shri Rajiv Thakkar
Revenue by Shri M.G. Jasnani

Date of hearing 21-06-2022
Date of pronouncement 22-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises of the order dated 09-10-2017 passed by the CIT(A)-5, Pune in relation to the assessment year 2010-11.

2. This appeal is time barred by 59 days. The assessee has filed an affidavit explaining the reasons for the delay. The said reasons have been perused and found to be satisfactory. Ergo, the delay is condoned and the appeal is admitted for hearing.

3. The first issue raised in this appeal is against the addition of Rs.7,83,692/- made by treating the rental income as 'Business income' as against the assessee's claim of the same being 'Income from house property'.

4. Succinctly, the facts of the case are that the assessee is a Builder, Promoter and Developer. He developed projects by name "Gangadham Commercial" and "Ganga Collidium". Some of unsold units in these projects were let out on rent, income from which was declared as 'Income from house property' after statutory deduction. The Assessing Officer (AO) held that letting out activity was incidental to the main business activity and hence, such income from letting was also to be treated as 'Business income'. He, therefore, disallowed the statutory deduction claimed by the assessee, which resulted into an addition of Rs.7,83,692/-. The Id. CIT(A) echoed the assessment order on this point.

5. We have heard the rival submissions and gone through the relevant material on record. The assessee is a builder who had certain unsold flats/units in his possession. Such flats were let out and the income was earned therefrom. The short question before us is as to whether such income would constitute 'Income from

house property' or would partake of the character of Business income. In this regard, we find that the Hon'ble Bombay High Court in *CIT Vs. Sane and Doshi Enterprises (2015) 58 taxmann.com 111 (Bom.)* has dealt with a similar issue and held that the rental income received from unsold portion of the property constructed by the assessee, a real estate developer, is assessable as 'Income from house property'. The facts of the instant case are on all fours with the case before the Hon'ble Bombay High Court. No contrary decision has been brought to our notice by the Id. DR. It is further relevant to note that the Finance Act, 2017 has inserted section 23(5) providing that 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 two (earlier it was one) years 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. This shows that but for the exceptions provided under this provision, the legislature contemplates to compute income under such circumstances under

the head 'Income from house property' and not as Business income. Respectfully following the afore referred precedent of the Hon'ble jurisdictional High Court, we hold that the rental income earned by the assessee from unsold portion of the property should be taken as 'Income from house property'. This ground is, therefore, allowed.

6. The only other ground which survives for consideration is the confirmation of disallowance of Rs.2,01,816/- made by the AO u/s.14A of the Act.

7. The facts of this ground are that the assessee was in receipt of certain exempt income. No disallowance u/s.14A of the Act was offered. On being called upon to explain the reasons, the assessee tendered some explanation, which has been taken note of by the AO in the assessment order. Rejecting the assessee's explanation, the AO invoked provisions of section 14A read with Rule 8D for making disallowance of Rs.2,01,816/-, consisting of disallowance of expenses on account of interest at Rs.4,792/- and disallowance at 0.5% of average value of investments at Rs.1,97,024/-. The Id. CIT(A) sustained the disallowance.

8. Having heard both the sides and gone through the relevant material on record, we find from the balance sheet, a copy placed

at page 51 of the paper book that the Investments made by the assessee stand at Rs.18.44 crore as against his capital of Rs.34.34 crore. Thus, the disallowance of interest is not warranted because the amount of Investments in shares/firms etc. fetching exempt income is quite less than the amount of share capital of the assessee.

9. Now turning to the second part of disallowance, being, 0.5% of the average value of investments, we find that the assessee did not offer any *suo motu* disallowance u/s.14A. The AO recorded satisfaction on this score and thereafter made the disallowance to this extent. In our opinion, no exception can be taken to the action of the AO in making such disallowance. However, the Id. AR pointed out that the total expenses claimed by the assessee in its Profit and loss account were only Rs.20,029/-. It goes without saying that the disallowance of expenses u/s 14A cannot exceed the amount of actual expenses claimed by the assessee. We, therefore, set-aside the impugned order and remit the matter to the file of the AO for examining this aspect of the matter and restrict the disallowance at 0.5% of the average value of investments subject to maximum of the expenses claimed by the assessee in his Profit and loss account.

10. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 22nd June, 2022.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 22nd June, 2022
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-5, Pune
4. The Pr.CIT-4, Pune
5. DR, ITAT, 'B' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	21-06-2022	Sr.PS
2.	Draft placed before author	22-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

*