

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE
BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.17/PUN/2019
निर्धारण वर्ष / Assessment Year : 2015-16

M/s. Homeland Construction Pvt. Ltd.,
5, 100/4, The Retreat Salisbury Park,
Near Poonawala Bunglow,
Pune – 411037

PAN: AABCH8510Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asst. Commissioner of Income Tax,
Circle 11, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vinay Chordia
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 12-07-2022
घोषणा की तारीख / Date of Pronouncement : 19-07-2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Ld. Commissioner of Income Tax (Appeals)-1, Pune, dated 06.09.2018 for the assessment year 2015-16.

2. Briefly, the facts of the case are as under:

The appellant is a private limited company engaged in the business of builder and developer. The return of income for the assessment year 2015-16 was filed on 29.09.2015 declaring total income of

Rs.4,42,25,690/-. Against the said return of income, assessment was completed by the Assessing Officer (AO) vide order dated 29.11.2017 passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') at a total income of Rs.4,45,10,600/-. While doing so, the AO brought to tax notional value of flats unsold lying in closing stock of Rs.2,84,910/- u/s 23(1) of the Act. Being aggrieved by the above addition, an appeal was preferred before the CIT(A), who vide impugned order had confirmed the addition placing reliance on the decision of Hon'ble High Court of Delhi in CIT vs. Ansal Housing Finance & Leasing Co. Ltd. 354 ITR 180 (Del). Being aggrieved by the order of CIT(A), the appellant is before us in the present appeal.

3. The learned authorized representative submits that the issue in the present appeal is covered by several decisions of Co-ordinate Bench of Tribunal in the cases of M/s. Bengal Shapoorji Housing Development Pvt. Ltd. vs. DCIT in ITA No.4369/Mum/2019, order dated 23.03.2021, M/s. Osho Developers vs. ACIT in ITA Nos.2372 & 1860/Mum/2019, order dated 03.11.2020, ACIT vs. Ashapura Developers in ITA No.1466/Mum/2017, order dated 01.03.2019, M/s. Pranjali Constructions Pvt. Ltd. vs. ACIT in ITA Nos.1075/PUN/2018 and 50/PUN/2019, order dated 13.01.2022 and M/s. Sheth Developers Pvt. Ltd. vs. DCIT in ITA Nos.1953 & 1954/Mum/2020, order dated 27.06.2022.

4. On the other hand, learned Sr.CIT-DR placing reliance on the decision of Mumbai Bench of Tribunal in the case of Dimple Enterprises vs. DCIT (2021) 129 taxman.com 66 (Mum-Trib.) submits that notional value of the flats unsold should be brought to tax. He also referred to the

decision of Hon'ble Bombay High Court in the case of CIT vs. Gundecha Builders (2019) 102 taxmann.com 27 (Bom).

5. We have heard the rival contentions and perused the material on record. The issue in the present appeal relates to the assessability of notional income from the unsold flats held as 'stock in trade' in the case of the assessee whose business is construction and sale of residential properties. The undisputed fact of the case is that the assessee has unsold flats which are held as 'stock in trade'. Then the question that arises for consideration whether the annual value of such unsold flats can be assessed u/s 23 of the Act. There is no doubt that the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) held that the annual value of unsold flats is chargeable to tax as 'income from house property'. Contrary position was taken by the Hon'ble Gujarat High Court in the case of CIT vs. Neha Builders (P.) Ltd., 296 ITR 661 (Gujarat). The Legislature also enacted sub-section (5) of section 23 of the Act inserted by the Finance Act, 2017 w.e.f. 01.04.2018 to provide that the property as held 'stock in trade' which is not let out during the whole or any part of the previous year, its value for the period of two years from the end of the financial year in which the completion certificates of construction were issued by the competent authority, shall be taken as Nil. The Memorandum explaining the provisions of Finance Bill has clearly clarified that this amendment will take effect from 01.04.2018 and, will accordingly apply in relation to the assessment year 2018-19 and subsequent year.

6. In the backdrop of the above, we are now required to adjudicate the issue on hand. The identical issue has been dealt by the Co-ordinate Bench of this Tribunal in the case of Kumar Properties and Real Estate (P.) Ltd. vs. DCIT, 190 ITD 212 (Pune Trib.) to which one of us Hon'ble Judicial Member is party. The Co-ordinate Bench of this Tribunal noticed cleavage of the opinion between the decisions of the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) and the Hon'ble Gujarat High Court in the case of Neha Builders (P.) Ltd. (supra) and in the absence of any decision from the Jurisdictional High Court, a view in favour of the assessee has taken by holding as under :-

“11. The authorities below have canvassed a view that the annual letting value of flats/bungalows is income chargeable to tax as 'Income from house property' by relying on Ansal Housing Finance and Leasing Company Ltd. (supra). There is no doubt that the Hon'ble Delhi High Court in the said case has held that Annual letting value of unsold flats at the year end is chargeable to tax under the head 'Income from house property'. At the same time, we find that the Hon'ble Gujarat High Court in CIT v. Neha Builders (P.) Ltd . [2007] 164 Taxman 342/[2008] 296 ITR 661 has held that income from the properties held as stock in trade can be treated as Income from business and not as 'Income from house property'. Our attention has been drawn towards certain Tribunal decisions including Cosmopolis Construction v. ITO [IT Appeal No. 230 & 231 (PUN) of 2018, dated 12-9-2018], wherein, after taking note of both the above judgments and finding none of them from the jurisdictional High Court, a view has been canvassed in favour of the assessee by holding that no income from house property can result in respect of unsold flats held by a builder at the year end. Similar view has been reiterated by the Pune Bench of the Tribunal in Mahanagar Construction v. ITO [IT Appeal No. 623 (PUN) of 2018, dated 5-9-2019].

12. At this juncture, it is relevant to mention that the Finance Act, 2017 has inserted sub-section (5) of section 23 w.e.f. 1-4-2018 reading as under:—

'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.'

13. A close scrutiny of the provision inducted by the Finance Act, 2017, transpires that where a property is held as stock-in-trade which is not let out during the year, its annual value for a period of one year, which was later enhanced by the Finance Act, 2019 to two years, from the end of the financial year in which the completion certificate is received, shall be taken as Nil.”

7. The reliance placed by the ld. Sr.CIT-DR on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Gundecha Builders (supra) is misplaced, inasmuch as, the issue in that case relates to the assessability of the rental income received from unsold flats under the head 'income from house property' or 'business income', whereas the issue on hand relates to the assessability of notional rent of unsold flats lying in closing stock. The decision of Co-ordinate Bench of Mumbai Tribunal in the case of Dimple Enterprises vs. DCIT (supra) is also based on the decision of Hon'ble Bombay High Court in CIT vs. Gundecha Builders (supra), cannot be applied to the facts of the present case. Therefore, respectfully following the decision of Co-ordinate Bench of Pune Tribunal in M/s. Pranjal Constructions Pvt. Ltd. vs. ACIT (supra), we hold that notional value of flats unsold lying under closing stock cannot be brought to tax for the year under consideration. The appeal of assessee stands allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19th July, 2022.

Sd/-
S.S.VISWANETHRA RAVI
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th July, 2022
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A',
ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

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