

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.820/PUN/2022

निर्धारण वर्ष / Assessment Year : 2017-18

Malpani Estates S No.150, Malpani House, New Nagar Road, Indira Gandhi Marg, Sangamner – 422605 PAN: AALFM6549D	Vs.	ACIT, Circle 3, Pune
Appellant		Respondent

Assessee by Shri Nikhil S Pathak  
Revenue by Shri Kalpesh Kumar Rupavatiya

Date of hearing 08-12-2022  
Date of pronouncement 09-12-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by Id. CIT(A), Pune-11 on 31.10.2022 in relation to assessment year 2017-18.

2. The only issue raised in this appeal is against the confirmation of the addition on account of determination of annual letting value in respect of unsold units lying with the assessee, who is a builder.

3. Briefly stated, the facts of the case are that the assessee is a builder and developer, who, at the end of the year, had total 12 unsold units (10 flats & 2 shops) in the project named as 'Malpani Green', which was fully completed on 14.03.2012. The Assessing Officer (AO) observed that the assessee did not offer deemed rental income on these units. Considering the provisions of section 23 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), he determined the annual letting value [after deduction of 30% u/s 24(a)] at Rs.9,83,339 and added the same to the total income of the assessee. The Id. CIT(A) affirmed the addition. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Having heard the rival submissions and perused the relevant material on record, it is seen that the assessment year under consideration is 2017-18. The Finance Act, 2017 introduced sub-section (5) to section 23 providing that where a property held as stock in trade is not let out during the year, its annual value, after a period of one year or as revised to two years, shall be considered for the purposes of inclusion under the head 'Income from House property'. This amendment has

been brought out w.e.f. 01-04-2018. Thus, this provision manifestly does not apply to the assessment year under consideration. Prior to the amendment, the Tribunal considered this aspect in several cases including the one taken note of by the Id. CIT(A), namely, *Cosmopolis Construction vs. ITO (ITA No.230 & 231/PUN/18)* and held that no income from house property can result in respect of unsold flats held by a builder as stock in trade at the year-end. While disposing off the above referred case, the Tribunal observed that income from unsold flats could be considered only under the head “Profits and Gains from business or profession” and not “Income from House Property”. The Id. CIT(A) considered these observations of the Tribunal *qua* the inclusion of income, if any, under the head “Business Income” and directed to include deemed annual value as business income in the impugned order. He however, did not appreciate that the Tribunal nowhere held for the inclusion of the deemed rental income under the head “Profits and Gains from business or profession”. It simply directed that income, if any, from unsold flats held as stock in trade can be considered only as

“Business Income”. In the ultimate analysis, the Tribunal eventually deleted the addition. It is but natural that if a particular income is to be taxed under a specific head, the computational mechanism governing that head only can come into play. There is no provision under the head “Profits and Gains from business or profession” which deems the rental income from unsold flats held as stock as ‘Business income’. Considering the above factual and legal position, I am of the considered opinion that the addition of Rs.9,83,339 made by the AO and as sustained in the first appeal, is not called for. The same is directed to be deleted.

5. In the result, the appeal is allowed.

Order pronounced in the Open Court on 09<sup>th</sup> December, 2022.

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

पुणे Pune; दिनांक Dated : 09<sup>th</sup> December, 2022  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A), Pune-11
4. The Pr.CIT (Central), Pune
5. DR, ITAT, 'SMC' 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	08-12-2022	Sr.PS
2.	Draft placed before author	09-12-2022	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.		

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