

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. /ITA No.465/PUN/2020

निर्धारण वर्ष / Assessment Year : 2014-15

DCIT, Circle-5, Pune	Vs.	Shah Bafna Associates, Shop No.13 & 14, Ashwini Paradise, Bibwewadi, Lulla Nagar Road, Pune 411 037 PAN : ABRFS7793Q
Appellant		Respondent

Assessee by
Revenue by

Shri Prateek Jha
Shri M.G. Jasnani

Date of hearing

14-12-2022

Date of pronouncement

14-12-2022

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal filed by the Revenue is directed against the order passed by the Commissioner of Income-tax (Appeals)-13, Pune on 27-01-2020 in relation to the assessment year 2014-15.

2. The appeal is time barred by 92 days. The Revenue filed the appeal on 07-07-2020. Prima-facie, the delay pertains to the covid-19 pandemic period prevailed across the country. Therefore, the said delay is condoned, admitting the appeal for disposal of merits, by virtue of the judgment of the

Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and 421 ITR 314.

3. The first four grounds are against allowing of deduction of Rs.5,06,85,894/- u/s.80IB(10) of the Income-tax Act, 1961 (hereinafter also called 'the Act') on pro-rata basis in respect of the housing project "Costa Blanca", Baner, Pune.

4. Briefly stated, the facts of the case are that the assessee firm is a Promoter, Builder and Developer, which furnished its return declaring total income at Rs.37,499/- after claiming deduction u/s.80IB(10) amounting to Rs.5.06 crore. The Assessing Officer (AO) disallowed the deduction on the ground that the assessee had not obtained completion certificate and the project was required to be completed by 31-03-2012. The Id. CIT(A) overturned the assessment order on the reason that no deduction was claimed in respect of incomplete project and the deduction was actually claimed on pro-rata basis. In holding so, he relied on the order passed by the Tribunal in the assessee's own case for the preceding assessment years. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

5. Having heard both the sides and gone through the relevant material on record, it is seen that the ld. CIT(A) has accepted the assessee's claim by mainly relying on the order dated 28-06-2019 passed by the Tribunal in the case of the assessee for the assessment years 2012-13 and 2013-14. The ld. DR fairly agreed that the facts and circumstances of the case for the year under consideration were *mutatis mutandis* similar. He, however, relied on another order passed by the Tribunal in the case of *DCIT Vs. M/s. Aswani Developers (ITA No.576/PUN/2020, dt. 20-09-2022)* in which the Revenue's contention was allowed. In view of the fact that the Tribunal has decided this issue in the case of the assessee, based on the facts peculiar to it only, for the immediately two preceding years granting deduction u/s.80IB(10) on pro-rata basis, which view has, in principle, been approved by various Hon'ble High courts, respectfully following the precedent, we uphold the impugned order without going into the details of the case relied by the ld. DR, which the ld. AR rightly distinguished. The impugned order is countenanced on this score.
6. The only other issue in this appeal is against the deletion of addition of Rs.23,04,982/- towards deemed rent.

7. The facts apropos this ground are that the AO observed that certain units were unsold with the assessee at the end of the year. He determined the Annual Letting Value (ALV) of the property and brought the amount to tax, which action was not approved in the first appeal.

8. Having heard the rival submissions and perused the relevant material on record, it is seen that the assessment year under consideration is 2014-15. The Finance Act, 2017 introduced subsection (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 *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 of 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”. 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’. In the ultimate analysis, the Tribunal eventually deleted the addition. Considering the above factual and legal position, we are of the considered opinion that the order of the Id. CIT(A), in deleting the addition of Rs.23,04,982/- made by the AO, does not call for any interference. The same is upheld.

9. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 14th December, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 14th December, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The PCIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, 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	14-12-2022	Sr.PS
2.	Draft placed before author	14-12-2022	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
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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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