

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी", मुंबई पीठ
श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री एम बाल गणेश, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " C ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH , ACCOUNTANT MEMBER
आअसं. 1397/मुं/ 2022 (नि.व. 2017-18)
ITA NO. 1397/MUM/2022(A.Y.2017-18)

Prashasti Enterprise,
4, Bhoomi Garden, Mahavir Nagar,
Kanidvali (W), Mumbai 400 067.

PAN: AABAP-2414-R

..... अपीलार्थी /Appellant

बनाम Vs.

Principal Commissioner of Income Tax,
(Central) Mumbai -3,
Room No.1901, 19th Floor,
Air India Building,

Nariman Point, Mumbai 400 021

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Mahavir Jain

प्रतिवादी द्वारा/Respondent by : Shri Jayant Jhaveri

सुनवाई की तिथि/ Date of hearing : 11/10/2022

घोषणा की तिथि/ Date of pronouncement : 06/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Principal Commissioner of Income Tax (Central), Mumbai-3 [in short 'the PCIT'] dated 31/03/2022 passed under section 263 of the Income Tax Act, 1961 [in short 'the Act'] for the Assessment Year 2017-18.

2. Shri Mahavir Jain appearing on behalf of the assessee submits that the PCIT has erred in invoking revisionary powers u/s. 263 of the Income Tax Act, 1961 [in short 'the Act'] on an issue where two views are possible and the Assessing Officer has take one of the possible view. The Id. Authorized Representative for the assessee submits that the PCIT in exercise of revisional jurisdiction held that the Assessing Officer has not made enquiries with respect to notional rent u/s. 23 of the Act.

2. Narrating the facts of case the Id. Authorized Representative for the assessee submits that the assessee is a Developer. The assessee had constructed residential building. During the Financial Year 2016-17 relevant to assessment year 2017-18, the assessee could sell only one flat. The remaining unsold vacant flats amounting to Rs.29,58,00,065/- were carry forward as closing stock. During the course of scrutiny assessment proceedings the Assessing Officer made a specific enquiry with respect to the closing stock. The Assessing Officer after being satisfied with submissions of the assessee did not make any addition on account of notional rent in respect of carry forward of closing stock i.e. unsold flats lying vacant. The view taken by the Assessing Officer in not making addition on account of notional rent is in line with the decision of Tribunal in the case of Osho Developers vs. ACIT in ITA No.2372/Mum/2019 decided on 03/11/2020 reported as [2020 (11) TMI 218]. The Id. Authorized Representative for the assessee further submits that the Assessing Officer followed the judicial discipline and decided the issue in line with the view taken by the Jurisdictional Tribunal.

3. The Id. Authorized Representative for the assessee further submits that the Assessing Officer has taken one of the possible view, which is duly

supported by the decision of Tribunal. The PCIT has followed the decision in the case of CIT vs. Ansal Housing Finance & Leasing Company Ltd., 354 ITR 180 (Del). It is a settled law that where two views are possible and the Assessing Officer has taken one of the possible view, the PCIT cannot invoke revisionary powers merely for the reason that the view taken by Assessing Officer is contrary to the view of PCIT.

4. Per contra, Shri Jayant Jhaveri representing the Department vehemently defended the impugned order. The Id. Departmental Representative submits that the Assessing Officer has failed to charge notional rent on vacant flats held as stock-in-trade in accordance with the provisions of section 23 of the Act. The Id. Departmental Representative placed reliance on the decision of CIT vs. Ansal Housing Finance & Leasing Company Ltd.(supra) to support his submissions.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The Id. Authorized Representative for the assessee has reiterated the submissions made before the PCIT. The short contention on behalf of the assessee is that no notional rent is offered to tax in respect of unsold flats lying vacant held as closing stock is in line with the decision of Mumbai Bench of the Tribunal in the case of Osho Developers Vs. ACIT (supra). Whereas, the PCIT has taken a contrary view following the decision of Hon'ble Delhi High Court in the case of CIT vs. Ansal Housing Finance & Leasing Company Ltd. (supra). We find that in the case of Osho Developers vs. ACIT (supra), the Mumbai Bench of the Tribunal after considering judgment rendered in the case of CIT vs. Ansal Housing Finance & Leasing Company Ltd. (supra) and various other decisions, which inter-alia, includes decision in the case of CIT vs. Gundecha Builders, 102 CCH 426 (Bom), CIT vs. Sane & Doshi Enterprises, 377 ITR 165 (Bom), CIT vs. Neha Builders, 296 ITR 661(Guj)

and K. Subramanian, ITO & Another vs. Siemens India Ltd. 156 ITR 11 concluded that the annual letting value of flats held as stock-in-trade cannot be brought to tax under the head "house property". While taking such view the Tribunal distinguished the decision rendered in the case of CIT vs. Ansal Housing Finance & Leasing Company Ltd. (supra). Thus, as per the decision rendered in the case of Osho Developers vs. ACIT (supra) no addition could have been made u/s. 23 of the Act in respect of vacant flats held as stock-in-trade and carried forward as closing stock.

6. It is a well settled law that where two views are possible and the Assessing Officer has taken one of the possible view, the PCIT cannot substitute his view in exercise of revisional jurisdiction u/s. 263 of the Act. In the instant case the PCIT has tried to super impose his view in exercise of powers u/s. 263 of the Act over one of the possible view taken by Assessing Officer. This is not in accordance with the settled law. Thus, the PCIT has exceeded his jurisdiction in exercise of revisionary powers.

7. Thus, in facts of the case, we find merit in appeal of the assessee, hence, impugned order is quashed and appeal of the assessee is allowed.

Order pronounced in the open court on Friday the 06th day of January, 2023.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 06/01/2023

Vm, Sr. PS(O/S)

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar),
ITAT, Mumbai