

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
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.126/PUN/2023
निर्धारण वर्ष / Assessment Year : 2005-06

Jayant Avinash Dave,
46/2/1B, Kaka Halwai Industrial Estate,
Parvati, Pune – 411009

PAN : AAQPD6875J

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle – 3,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik
Revenue by : Shri Ramnath P. Murkunde

सुनवाई की तारीख / Date of Hearing : 17-05-2023
घोषणा की तारीख / Date of Pronouncement : 18-05-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 29-12-2022 passed by the National Faceless Appeal Centre, Delhi ("NFAC") for assessment year 2005-06.

2. The assessee raised legal issue in ground Nos. 1 to 4. The ld. AR submits that the assessee is not interested to prosecute the same. Hence, the same are dismissed as not pressed.

3. Ground Nos. 5 and 6 raised by the assessee challenging the action of CIT(A), NFAC, Delhi in confirming the order of AO in charging deemed rent on unsold properties (units) in the facts and circumstances of the case.

4. At the outset, we note that the assessee is an individual claimed to be engaged in the business of promoters and builders. It was explained during the course of assessment proceedings that the assessee commenced development work of site at S. No. 46/1A, Parvati, Pune-411009 in F.Y. 1991-92 (A.Y. 1992-93). A small portion of the said site was sold in the F.Y. 1996-97 (1997-98) and work for the remaining part was claimed as incomplete by the assessee. The AO reproduced the details of area, details of costs and cost of work in progress in assessment order extracting the same from tax audit report. On perusal of the same, we note that the total built up area was 8133 sq. ft. and area sold during F.Y. 1996-97 (A.Y. 1997-98) to an extent of 1456 sq. ft. Further, it shows the unsold area at 6677 sq. ft. and the cost of work in progress to such unsold area shown at Rs.25,35,650/-. The AO did not accept the said unsold area as stock in trade and determined deemed income on the said unsold area to an extent of Rs.13,17,624/-, added the same to the total income of the assessee vide para 11 of the assessment order. The CIT(A) was of the opinion that the assessee is taking shelter behind hyper legal provision to divert the attention of Revenue from its malafide intention of showing a completed project as incomplete and unnecessarily postpone taxation on a completed project which is evident from para 4 of the impugned order.

5. Before us, the ld. AR submits that the assessee treated the said unsold area as stock in trade and the cost incurred on that unsold area as shown as work in progress. The ld. DR drew our attention to page 83 of the paper book, wherein, the particulars of stock are provided in Form No.

3CD. On an examination of such details provided at page No. 83, we note that the said details were before the AO it has been reproduced in his order at page No. 2 of the assessment order which clearly demonstrate that the assessee shown the unsold area as stock in trade and claimed the cost of such unsold area as work in progress. Further, we note that the said unsold area remained with the assessee as stock in trade on which deemed rent cannot be charged. The ld. AR drew our attention to the order of this Tribunal in the case of Pride and Expert Properties Private Limited in ITA No. 860/PUN/2022 for A.Y. 2017-18. In the said order the Co-ordinate Bench held that no addition on account of deemed rent on unsold flats can be made in the hands of the assessee. For better understanding the relevant portion of the said order is reproduced as under :

“8. Coming to the present facts of the case the contention of assessee was that the said 15 unsold flats was not sold during the year under consideration and no rental income derived from the said unsold flats as they were not let out, hence, no deemed rent could be levied u/s. 23(4) of the Act. We note that the assessee treated the same as 15 unsold flats as stock-in-trade which means that the profits on its sale would be offered as business income and no rental income received by the assessee from such 15 unsold flats. Therefore, facts in the case of Gundecha Builders (supra) are different from the facts of the present case in hand. Thus, we reject the arguments of ld. DR of applicability of observation of Hon’ble High Court of Bombay in the case of Gundecha Builders (supra). On similar issue and same identical facts, this Tribunal in the case of Sai Spacecon India Pvt. Ltd. in ITA No. 2824/PUN/2017 held no addition on account of deemed rent on unsold flats could be made in the hands of the assessee. The relevant portion of the same are as under for ready reference :

“3. Heard both the parties and perused the material available on record. We note that the assessee is a Private Limited Company engaged in the business of Promoter, Developer, Builder and Power Generation. The AO found 37 unsold flats ready for possession and completion certificate in respect of said flats were also issued. He observed the assessee has not offered any rent income on these 37 unsold flats. The assessee claimed that the flats are stock-in-trade and the income from it is income from Business and Profession and not from House Property. The AO did not accept the submissions of the assessee and proceeded to calculate deemed rent vide its Para No. 5.4 to an extent of Rs.27,97,200/-. The CIT(A) confirmed the same. According to ld. AR that the issue is covered in favour of the assessee and the addition made by the AO as confirmed by the CIT(A) is not maintainable and the assessee recognized unsold flats as stock-in-trade. The ld. AR placed on record of order of this Tribunal in the case of Kumar Properties and Real Estate Private Limited in ITA No. 2977/PUN/2017 for A.Y. 2013-14. The Co-ordinate Bench of Tribunal vide order dated 28-04-2021 discussed the issue in detail from Para Nos. 3 to 13 of the said order and held that an exception has been carved out in section 22 of the Act that any such property or its part, which is occupied by the assessee for the purposes of any

business or profession carried, the profits of which are chargeable to income-tax, shall be excluded on satisfying the conditions therein. The Co-ordinate Bench, further discussed the four conditions in Para Nos. 6, 7, 8 and 9. The first condition being that the property or its part should be occupied by the assessee as an owner. There is no material evidence to show before us that the assessee is not occupied the said unsold 37 flats. The second condition is that any business or profession should be carried on by the assessee. We note that the assessee filed return showing income from such business and also engaged in the business of property development. The third condition is that the occupation of the property should be for the purpose of business or profession wherein the assessee before us shown the said 37 unsold flats as stock in trade. The last condition is that profits of such business or profession should be chargeable to income-tax. In the present case that there is no dispute that the profits of the business of construction by the assessee are chargeable to income-tax. Therefore, in our view that the unsold 37 flats are occupied by the assessee are as owner; business of construction is carried on by the assessee; the occupation of the flats is for the purpose of business; and profits of such business are chargeable to Income-tax. Thus, in our opinion, all the four conditions provided in exclusion clause in section 22 of the Act are to be excluded, therefore, we hold that no addition on account of deemed rent on unsold 37 flats can be made in the hands of the assessee. The ld. DR did not dispute that the assessee recognized the unsold flats as stock-in-trade but however relied on the order of CIT(A). Thus, the order of CIT(A) is not justified and it is set aside. Thus, the grounds raised by the assessee are allowed.”

9. *In the light of the above, we hold that the order of CIT(A) is not justified in confirming the view of AO in levying deemed rent u/s. 23(4) of the Act on account of income from house property. Thus, the grounds Nos. 1 to 3 raised by the assessee are allowed.”*

6. Therefore, in view of the above, the order of CIT(A), NFAC, Delhi is not justified in holding the view of AO in charging deemed rent u/s. 23(4) of the Act on account of income of house property. Thus, ground Nos. 5 and 6 raised by the assessee are allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 18th May, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th May, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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