

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1792/DEL/2019 [A.Y. 2013-14]

ITA No. 1793/DEL/2019 [A.Y. 2014-15]

ITA No. 1794/DEL/2019 [A.Y. 2015-16]

Vardhman Properties Ltd
G- 9, DDA Building,
Nehru Place, New Delhi

Vs. The Dy. C.I.T
Central Circle - 26(1)
New Delhi

PAN: AAACV 2330 B

ITA No. 3408/DEL/2019 [A.Y. 2013-14]

ITA No. 3227/DEL/2019 [A.Y. 2014-15]

ITA No. 3228/DEL/2019 [A.Y. 2015-16]

The Dy. C.I.T
Central Circle - 26(1)
New Delhi

Vs.

Vardhman Properties Ltd
G- 9, DDA Building,
Nehru Place, New Delhi

PAN: AAACV 2330 B

(Applicant)

(Respondent)

Assessee By : Shri P.K. Mishra, CA
Shri Neeraj Jain, CA

Department By : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 18.09.2023

Date of Pronouncement : 18.09.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned three separate appeals by the assessee and the three separate cross appeals by the Revenue are preferred against the orders of the Id. CIT(A)-9, New Delhi dated 29.01.2019 pertaining to Assessment Years 2013-14, 2014-15 and 2015-16. All these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The underlying facts in the issues in all the captioned appeals are identical in all the years under consideration.

3. Facts on record show that the assessee is engaged in the business of construction and sale of immovable properties, mainly commercial units. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has shown unsold completed inventory of Rs. 73,33,52,275/- for A.Y 2013-14, Rs. 70,13,85,239/- for A.Y 2014-15 and Rs. 65,89,91,868/- for A.Y 2015-16.

4. The Assessing Officer was of the firm belief that the deemed rent is taxable in respect of commercial property held as unsold stock. The following chart will given a bird's eye view :

		AY 2013-14	AY 2014-15	AY 2015-16
A	Sl. No	Category		Total Value
B	Stock used for business	5,80,97,120	NO DISPUTE	NO DISPUTE
C	Land/ Freehold converted plots	2,78,52,911	NO DISPUTE	NO DISPUTE
D	Disputed stock under litigation	11,79,40,543	11,79,40,543	11,79,40,543
E	Freehold/Leasehold Unfinished/ occupation certificate awaited	11,51,68,069	10,92,72,458	9,86,51,938
F	Freehold unfinished stock (Partly booked)	10,20,63,900	9,13,84,609	8,39,21,983
G	Leasehold unfinished stock (Partly booked)	29,86,29,732	26,70,37,598	24,09,27,373
	Total	73,33,52,275	58,56,35,208	54,14,41,837

5. Taking a leaf out of the aforementioned chart, the Assessing Officer made additions as follows:

PARTICULARS	AY 2013-14	AY 2014-15	AY 2015-16
ALV of unsold stock estimated @ 10%	7,33,35,228	5,85,63,520	5,41,44,183
Less: Deduction @ 30%	2,20,00,568	1,75,69,056	1,62,43,255
Total income from house property	5,13,34,660	4,09,94,464	3,79,00,928

6. The above action of the Assessing Officer was challenged before the Id. CIT(A). The Id. CIT(A) allowed relief to the assessee and restricted the additions to the extent of unsold inventories which could be let out and direct the Assessing Officer to estimate the additions following Unit Area Method under Municipal Act.

7. The decision of the Id. CIT(A) resulted into the following additions:

PARTICULARS	AY 2013-14	AY 2014-	AY 2015-16
ALV of unsold stock on the Method	38,54,066	47,61,380	40,03,606
Less: Deduction @ 30%	11,56,220	14,28,414	12,01,082
Total income from house	26,97,846	33,32,966	28,02,524

8. The captioned cross appeals by the assessee and the Revenue are against such findings of the Id. CIT(A).

9. We have given thoughtful consideration to the findings of the Id. CIT(A). We are of the considered view that the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Ansal Housing Finance and Leasing Co. Ltd 354 ITR 180 squarely apply on the facts of the case. The relevant findings read as under:

"13. In the present case, the assessee is engaged in building activities. It argues that flats are held as part of its inventory of stock in trade, and are not let out. The further argument is that unlike in the other instances, where such builders let out flats, here there is no letting out and that deemed income - which is the basis for assessment under the ALV method, should not be attributed. This Court is of the opinion that the argument, though attractive, cannot be accepted. As repeatedly held, in *East India, Sultan, and Karanpura*, the levy of income tax in the case of one holding house property is premised not on whether the assessee carries on business, as landlord, but on the ownership. The incidence of charge is because of the fact of ownership. Undoubtedly, the decision in *Vikram Cotton* indicates that in every case, the Court has to discern the intention of the assessee; in this case the intention of the assessee was to hold the properties till they were sold. The capacity of being an owner was not diminished one whit, because the assessee carried on business of developing, building and selling flats in housing estates. The argument that income tax is levied not on the actual receipt (which never arose in this case) but on a notional basis, i.e. ALV and that it is therefore not sanctioned by law, in the opinion of the Court is meritless. ALV is a method to arrive at a figure on the basis of which the impost is to be effectuated. The existence of an artificial method itself would not mean that levy is impermissible. Parliament has resorted to several other presumptive methods, for the purpose of calculation of income and collection of tax. Furthermore, application of ALV to determine the tax is regardless of whether

actual income is received; it is premised on what constitutes a reasonable letting value, if the property were to be leased out in the marketplace. If the assessee's contention were to be accepted, the levy of income tax on unoccupied houses and flats would be impermissible - which is clearly not the case.

14. As far as the alternative argument that the assessee itself is occupier, because it holds the property till it is sold, is concerned, the Court does not find any merit in this submission. While there can be no quarrel with the proposition that "occupation" can be synonymous with physical possession, in law, when Parliament intended a property occupied by one who is carrying on business, to be exempted from the levy of income tax was that such property should be used for the purpose of business. The intention of the lawmakers, in other words, was that occupation of one's own property, in the course of business, and for the purpose of business, i.e. an active use of the property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. This contention is, therefore, rejected. Thus, this question is answered in favour of the revenue, and against the assessee."

10. In our considered opinion, the findings of the Id. CIT(A) are in line with the aforementioned decision of the Hon'ble Jurisdictional High Court of Delhi [supra]. Therefore, we do not find any merit in these cross appeals. Accordingly, all the appeals of the assessee and the Revenue are dismissed.

11. In the result the appeals of the assessee in ITA Nos. 1792, 1793 and 1794/DEL/2019 as well as the appeals of the Revenue in ITA Nos. 3408, 3227 and 3228/DEL/2019 are dismissed.

The order is pronounced in the open court on 18.09.2023.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 18th SEPTEMBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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