

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1313/PUN/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Surana Mutha Bhansali Developers,
236, Patil Plaza, Near Saras Baug,
Parvati S.O., Pune City,
Pune – 411009

PAN : ABGFS1894K

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward – 5(4),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Neelesh Khandelwal
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 22-12-2023
घोषणा की तारीख / Date of Pronouncement : 23-01-2024

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 17-10-2023 passed by the National Faceless Appeal Centre ("NFAC"), Delhi for assessment year 2014-15.

2. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A), NFAC,

Delhi justified in confirming the addition made by the AO on account of deemed rent on unsold stock of flats in the facts and circumstances of the case.

3. We note that the assessee is a firm, conducts its business under the name and style as “M/s. Surana Mutha Bhansali Developers”. The assessee is engaged in the business of construction of residential project and sale of flats. The assessee filed return of income declaring a total income of Rs.11,94,990/-. Under scrutiny, notices u/s. 143(2) and 142(1) of the Act issued, in response to which authorized representative on behalf of the assessee appeared and filed details as called for. The AO determined the total income of the assessee at Rs.2,86,98,790/- inter alia making disallowance u/s. 80IB(10) of the Act and on account of deemed rent vide its order dated 30-12-2016 u/s. 143(3) of the Act. The NFAC, Delhi allowed deduction u/s. 80IB(10) of the Act on proportionate basis by following the order of this Tribunal in assessee’s own case in ITA No. 568/PUN/2017 for A.Y. 2012-13 and confirmed the addition made on account of deemed rent on unsold flats.

4. Before us, the ld. AR filed assessee’s contention by way of written submissions which is on record. The ld. AR submits that the AO levied deemed rent on unsold flats which is confirmed by the CIT(A) is not justified. The ld. AR drew our attention to the order dated 12-09-2018 of this Tribunal in the case of M/s. Cosmopolis Construction in ITA Nos. 230 & 231/PUN/2018 for A.Ys. 2013-14 and 2014-15 which is on record. The ld. DR argued that there was no evidence rebutting the finding of AO and supported the order of CIT(A).

5. Heard both the parties and perused the material available on record. As stated above, the only issue is to be considered as to whether the deemed rent could be imposed on unsold flats which were treated as stock-in-trade. We find that the assessee relied on two decisions of Hon'ble High Courts of Gujarat and Orissa in the cases of Neha Builders (P.) Ltd. reported in 296 ITR 661 (Gujarat) and M.P. Bazaz & Ors. reported in 200 ITR 131 (Orissa), respectively before the AO for the proposition that the income from finished stock of flats is to be computed under the head income from business. The AO rejected the same, but however, placing reliance on the decision of Hon'ble High Court of Delhi in the case of Ansal Housing Finance & Leasing Co. Ltd. reported in 354 ITR 180 (Delhi) imposed ALV on account of deemed rent on finished stock by adopting annual letting value at 7% of the investment cost of flats (WIP value). The CIT(A) confirmed the view of AO. On careful examination of the order dated 12-09-2018 in the case of M/s. Cosmopolis Construction (supra) by this Tribunal, we find the Tribunal considered the decisions of Hon'ble High Court of Delhi in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) and in the case of Neha Builders (P.) Ltd. (supra) of Hon'ble High Court of Gujarat in detail. The Tribunal held the decision of Hon'ble High Court of Delhi in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) is against the assessee therein and followed the decision of Hon'ble High Court of Gujarat in the case of Neha Builders (P.) Ltd. (supra) which is in favour of the assessee. We find the Tribunal by discussing the issue in detail and also by referring to various decisions which were relied on by the rival parties therein, but however, following the decision of Hon'ble High Court of Gujarat in the case of Neha Builders (P.) Ltd. (supra) which is in favour to the assessee held no annual rental value could be levied on unsold flats which were shown as finished stock (stock-in-trade).

The ld. DR did not bring on record any view contrary to the view taken by the Tribunal in the case of M/s. Cosmopolis Construction (supra). Therefore, as discussed above, admittedly, the assessee shown unsold flats as finished stock and no annual letting value of deemed rent could be imposed on such unsold stock which were treated as stock-in-trade. Thus, the order of CIT(A) is not justified and it is set aside. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 23rd January, 2024.

Sd/-
(Dr. Dipak P. Ripote)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 23rd January, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" 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