

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "G" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 4167/Mum/2023 (A.Y. 2013-14)

Shweta Infrastructure Housing (I) Private Ltd. Office No. 204, 2 <sup>nd</sup> Floor Veena Beena, Opp. Bandra Railway Station Bandra West, Mumbai 400 050.  PAN : AAJCS4306F (Appellant)	Vs.	ACIT, Circle 13(2)(2) Room No. 146 1 <sup>st</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Pramod Shingte (virtual)
Department by	Shri Virabhadra Mahajan
Date of Hearing	23.07.2024
Date of Pronouncement	26.08.2024

ORDER

Per Omkareshwar Chidara (AM) :-

The above appellant company is in the business real estate activities and originally assessment was completed under section 143(3) of the Income Tax Act and subsequently it was reopened u/s. 147.

2. The appellant company has not offered "house property income" on unsold flats. Placing reliance on the Judgment of Hon'ble Delhi High Court in the case of Ansal Housing Finance and Leasing Company Ltd., learned Assessing Officer (Ld. AO for short) made addition of Rs. 65,30,905/- being 8% of closing stock of Rs. 11,66,23,320/-. It was mentioned by Ld. AO that the appellant has not filed Return of Income in pursuance of notice issued u/s. 147 of the Income Tax Act (the Act for short). But the appellant company made a submission vide letter dated 9.12.2019 in response to

notice u/s. 142(1) of the Act dated 4.12.2019. In this letter, the appellant has stated that no addition can be made based on the decision cited above by Ld. AO. The Ld. AO rejected the explanation of the appellant company and stated that section 23(5) of the Act relied upon by the appellant was inserted in the Income Tax Act and it comes into effect from 1.4.2018 whereas the impugned assessment year is A.Y. 2013-14. Hence appellant's argument was rejected and addition was made by Ld. AO while completing the assessment.

2. Aggrieved by the addition made by the Ld. AO, the appellant filed an appeal before the learned Commissioner of Income Tax [Ld. CIT(A) for short] on 21.1.2020 and consequently the Ld. CIT(A) issued notice u/s. 250 of the Act. Three e-mail notices were sent calling for objections from the appellant on various occasions. During the appeal proceedings, neither appellant nor Ld. AR submitted any written submissions till completion of the appeal order. Hence, reproducing the assessment order, the Ld. CIT(A) dismissed the appeal of appellant and confirmed the addition made by Ld. AO.

3. Subsequently, appellant filed an appeal before the ITAT with following grounds :-

1. "On the facts and the circumstances of the case and in law, lower authorities erred in passing an ex-parte order and erred in deciding the issue only on the basis of material available with them, this action is being violative of principal of natural justice. Your appellant prays for granting opportunity of hearing before lower authorities.

Without prejudice to the above grounds appellant intends to raise the following additional grounds.

2. On the facts and circumstances of the case and in law Learned Assessing Officer erred in passing the order under section 144 rws 147 dated 22/12/2019, without generating the DIN (Document Identification Number) which is requisite for validity of order as per CBDT circular dated 14/08/2019 in view of this order is invalid and deserves to be quashed.
3. On the facts and circumstances of the case and in law Learned Assessing Officer erred in initiating reassessment proceedings under section 147 for A.Y. 2013-14 by issuing notice under section 148

dated 28/03/2019, notice is admittedly issued beyond the period of 4 years for completed assessment under section 143(3) and since all the material facts were disclosed by the Assessee. The entire reassessment proceedings are invalid and consequential order is void -ab-initio.

4. On the facts and circumstances of the case and in law Learned Assessing Officer erred in making addition of Rs. 93,29,865 being 8% of unsold flats valued at Rs.11,66,23,320/- as deemed house property income without appreciating the facts of the case, your appellant prays for deletion of entire addition.
  5. Without prejudice to Ground No.-4, on the facts and circumstances of the case and in law, the Learned Assessing Officer ought to have considered the figure of fair market rent instead of ad hoc percentage of value of unsold inventory.”
4. During the appellate proceeding before the Bench, Ld. AR of the appellant, pleaded that another opportunity may be afforded to the appellant to explain all facts and circumstances as no effective hearing took place before Ld. AO and the Ld. CIT(A). It is decided to remit the issue back to the Ld. CIT(A) with the direction that two more effective opportunities should be given to the appellant and the appellant is directed to cooperate with the Department and file all required particulars. The Ld. CIT(A) may pass fresh appeal order after taking into consideration all the facts and material furnished before him at the time of hearing.
5. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open court on 26<sup>th</sup> August, 2024.

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 26.08.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

*Shweta Infrastructure  
Housing (I) Private Ltd.*

3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

*PS*