

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.448/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Arihant Vastunirman Private Limited, Office No.1, Siddhivinayak Community Hall, Shivaji Nagar, Siddhivinayak Nagar, Ratnagiri- 415612. PAN : AAKCA4408K	Vs.	ACIT, Circle-1, Kolhapur.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Ramnath P. Murkude
Date of hearing : 14.08.2024
Date of pronouncement : 23.10.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 16.02.2024 passed by LD. CIT(A)/NFAC for the assessment year 2017-18.

2. The appellant has raised the following grounds of appeal :-

"1. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition by the A.O. of Rs.34,14,922/- representing notional rental income in respect of unsold flats forming part of closing inventory of the appellant.*

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.”

3. The facts of the case, in brief, are that the assessee is a private limited company engaged in the business of construction of residential and commercial projects. The assessee has e-filed its return of income on 31.10.2017 declaring total income at Rs.3,75,91,950/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) and 142(1) were issued to the assessee along with questionnaire. During the course of assessment proceedings, the Assessing Officer found that number of unsold flats and commercial property (shops) were held as unsold stock in hand. Accordingly, the Assessing Officer asked the assessee in the light of section 23(4) of the IT Act that why not deemed rental income is declared by the assessee on unsold flats and commercial property (shops) held as stock in trade. In reply, the assessee submitted that he is engaged in the business of construction of residential and commercial projects and whatever unsold stock is held as per the balance sheet is related to business and admittedly stock in trade. It was also submitted that regarding calculation of deemed rent on unsold stock in trade a new section 23(5) of the IT Act has been introduced w.e.f. assessment year 2018-19 only & no

such section was in existence during the relevant period under consideration. Being unsatisfied with the reply of the assessee, the Assessing Officer determined deemed rent of Rs.15,06,808/- on unsold flats and deemed rent of Rs.22,27,496/- was determined on unsold commercial property (shops) and gave relief of Rs.4,19,832/- towards rent declared by the assessee himself. Accordingly, the Assessing Officer in the light of section 23(4) of the IT Act determined taxable deemed rent of Rs.34,14,922/- and completed the assessment vide order dated 30.12.2019 by determining total taxable income at Rs.4,10,06,872/- as against the income returned by the assessee at Rs.3,75,91,950/-.

4. After considering the reply of the assessee ld. CIT(A)/NFAC dismissed the appeal vide order dated 16.02.2024. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR submitted before us that the order passed by ld. CIT(A)/NFAC is not correct. It was submitted by ld. AR that the assessee company is engaged in the business of construction of residential and commercial projects. At the end of the year under consideration, the assessee company was holding closing stock of unsold residential flats as well as commercial shops. It was submitted by ld. AR that deemed rent/notional rent should not be

determined on either residential flats or commercial shops since they are stock in trade and whenever they are sold the income generated will be business income. Alternatively, it was also submitted by Ld. Counsel of the assessee that the notional rent/deemed rent was calculated on the annual letting value determined by the Assessing Officer is on higher side. Ld. Counsel of the assessee also submitted that a new section i.e. section 23(5) of the IT Act was introduced w.e.f. assessment year 2018-19 only, which suggest to calculate deemed rent/notional rent on the unsold closing stock held in stock in trade. It was submitted that the introduction of this new section itself suggests that prior to assessment year 2018-19 Legislature does not intend to calculate any notional rent/deemed rent on the value of closing stock held as stock in trade. It was also submitted that section 23(4) of the IT Act talks about the property (i.e. house) and do not use word commercial property (i.e. shops) or “stock in trade”. It was also submitted that the property held as stock in trade was used for the purposes of business, therefore, section 23(4) does not apply. Ld. Counsel of the assessee further submitted that when the Hon’ble High Court decided the case of CIT vs. Ansal Housing Finance Ltd, section 23(5) was not on statute book. Ld. Counsel of the

assessee relied on following various decisions passed by jurisdictional Co-ordinate Bench of this Tribunal :-

- (i) Jayant Avinash Dave vs. DCIT, 156 taxmann.com 458.
- (ii) Malpani Estates vs. ACIT, ITA No.820/PUN/2022 dated 09.12.2022.
- (iii) Sai Spaceon India Pvt. Ltd. vs. DCIT, ITA No.2824/PUN/2017 dated 10.01.2022.
- (iv) M/s Cosmopolis Construction vs. ACIT, ITA No.191/PUN/2022 dated 11.01.2023.

6. In the light of above decisions, ld. AR requested before the bench to delete the deemed/notional rents determined by the Assessing Officer and sustained by ld. CIT(A)/NFAC.

7. Ld. DR vehemently relied on the order passed by ld. CIT(A)/NFAC and requested to confirm the same.

8. We have heard ld. Counsels from both the sides and perused the material available on record as well as case laws relied on by both the parties. We find that while dismissing the appeal of the assessee, ld. CIT(A)/NFAC relied on various decisions such as (i) CIT vs. Ansal House Finance Ltd. 29 taxmann.com 303 (Delhi), (ii) Dimple Enterprises vs. DCIT, 129 taxmann.com 66 (Mumbai) and (iii) DCIT vs. Inorbit Malls (P) Ltd., ITA No.2220/Mum/2021

order dated 11.10.2022. We also find that ld. Counsel of the assessee along with other decisions relied on decision in the case of CIT vs. Neha Builders Pvt. Ltd., 164 taxmann.com 342 (Gujarat). It is an admitted fact that Income Tax Appellate Tribunal, Pune Benches, Pune is consistently of the view that prior to assessment year 2018-19 notional rent/deemed rent cannot be calculated on the unsold flats/properties held as stock in trade. In a latest decision passed in the case of Jayant Avinash Dave vs. DCIT, 156 taxmann.com 458 (Pune Trib.) order dated 30.10.2023, appeal of the assessee was allowed by observing as under :-

“30. The only other ground which survives in the appeal of the Revenue is against the deletion of addition of Rs.92,159/- made by the AO towards deemed rent on vacant property. The assessee was having a proprietorship concern by the name and style of M/s Aarushi Developers, which was engaged in the business of properties. The AO observed that the built up area of 550 sq.ft., which was part of stock in trade, was vacant throughout the year. He computed the deemed rent of such area at Rs.93,559/-. The ld. CIT(A) deleted the addition by relying on the order dated 12.09.2018 passed by the Pune Bench of Tribunal in M/s Cosmopolis Construction vs. ITO (ITA Nos.230 & 231/PUN/2018) dated 12-9-2018. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

31. Having heard the rival contentions and perused the material on record, it is found as an admitted position that the vacant property, in respect of which deemed rent was calculated by the AO, was stock in trade of the assessee. The Pune Bench of Tribunal in M/s Cosmopolis Construction (supra) has held that no income from house property can result in respect of unsold flats held by the builder as stock in trade at the year-end. Insertion of sub-clause (5) to section 23 by the Finance Act, 2017 w.e.f. 01.04.2018, requiring determination of the ALV in respect of building and land appurtenant thereto which is held as stock in trade, is prospective and cannot apply to the assessment year 2015-16 under consideration. We, therefore, uphold the impugned order on this score.”

9. Therefore, respectfully following the above decision passed in the case of Jayant Avinash Dave vs. DCIT (supra), we hold that during the period under consideration deemed rent/notional rent on the annual letting value of flats/shops held as stock in trade cannot be calculated. Therefore, we direct the Assessing Officer to delete the addition of Rs.34,14,922/- made on account of deemed rent/notional rent on the property held in closing stock as stock in trade. Thus, the ground of appeal raised by the assessee is allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 23rd day of October, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

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

Sujeet

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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.