

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
SHRI GIRISH AGRAWAL, AM**

**I.T.A. No.2507/Mum/2024**  
(Assessment Year: 2013-14)

<b>Vamona Developers Pvt. Ltd.,</b> Market City Resources Pvt. Ltd., Ground Floor, R.R. Hosiery Bldg., Shree Laxmi Woollen Mills Estate, Mumbai- 400011. <b>PAN : AACCV3425B</b>	Vs.	<b>Principal Commissioner of Income Tax (Cenral-2),</b> Room No. 1920, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Vijay Mehta, AR

**Revenue / Respondent by** : Shri Ankush Kapoor, CIT-DR

**Date of Hearing** : 22.07.2024

**Date of Pronouncement** : 18.10.2024

O R D E R

**Per Amit Shukla, JM:**

The aforesaid appeal has been filed by the assessee against the order dated 28.03.2024 passed by Principal Commissioner of Income Tax (Central-2), Mumbai [in short 'the PCIT'] in his revisionary jurisdiction under section 263 of the Income Tax Act, 1961 (the Act) for Assessment Year (AY) 2013-14. In grounds of

appeal, the assessee has challenged the order of the PCIT under section 263 of the Act setting aside the assessment order passed by the Assessing Officer (AO) under section 147, dated 07.03.2022 holding it to be erroneous insofar as it is prejudicial to the interest of the Revenue. Further, the PCIT has erred in directing the Ld. A.O. to consider the deemed rental income to Rs. 1,34,05,113/- being 5% of the closing stock of finished premises aggregating to Rs. 38,30,03,232/- after allowing deduction u/s. 24(a) of the Act.

2. Brief facts qua the issue involved are that the assessee company is engaged in development and operation of commercial, retail and entertainment complex. The assessee had filed the original return of income on 28.11.2023 which was subsequently revised on 27.03.2015 declaring the total loss of Rs. (-) 48,48,76,602/-. The said return was selected for scrutiny and assessment under section 143(3) of the Act was completed on 21.03.2016 accepting the returned loss filed by the assessee. Later on the assessee's case was reopened under section 147 and notice under section 148 of the Act was issued on 30.03.2021 on the ground that assessee has not offered to tax the deemed rental income from the closing stock of finished premises. The assessee before AO claimed that it has only offered rental income from commercial building which was actually let out and same has been offered to tax. With regard to finished stock, assessee submitted that it has received advances for several units out of total area and these unsold units had already been allotted to the prospective

buyers. Regarding small portion which was left with the assessee on which it had not received advance, it was submitted that deemed rent to be applied on inventory. However, the AO held that Annual Letting Value (ALV) has to be determined for deemed rent on unsold area, and inventory against which advances have been received, deemed rent cannot be taxed. The relevant observation and the findings of the AO read as under:

“5. The assessee’s submission has been considered, however, the same is not acceptable because-

The Hon'ble Delhi High Court in the case of **Ansal Housing Finance & Leasing CO. Ltd. vs. CIT [354 ITR 180]** held that ALV of flats, built by assessee engaged in construction business, lying unsold, is assessable as income from house property. The same ratio was followed by the Hon'ble Delhi High Court in the case of *New Delhi Hotels Ltd. vs. ACIT (2014) 360 ITR 187 (Del.)*. The ALV of the said flats/shops will have to be taxed as income from House Property. For the purpose of section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonable by expected to let from year to year.

The Hon'ble Delhi High Court in the case of *CIT vs. Ansal Housing & Construction Ltd. [ITA 212/2005]* pronounced on 31.10.2012 held that assessee was liable to pay income tax on the annual letting value of unsold flats owned by it under the head 'Income from House property' under section 23(1) of the Act.

Further, the Hon'ble High Court of Delhi held that the tax incidence did not depend upon whether the assessee had actually rented out the property with an intention of carrying on business but on the factum of ownership.

In the case of Radha Devi Dalmia vs. CIT (1980) 125 ITR 134 and the decision of the Gujarat High Court, in the case of Bipin Vadilal Family Trust vs. CIT(1994) 208 ITR 1005, wherein 5% of the cost of the house property is treated as value at which property might reasonably be expected to be let out during the year as per the section 23(1)(a) of the Act.

Further, as per the case records, that the assessee has earned rental income out of building(in Pune) whose closing WDV as on 31.03.2013 is 2,87,03,25,402/- and the same has been offered income under the head House property.

In the instant case, assessee's project had a total saleable area of approximately 2,49,164 sq. ft. Out of the total area available, area admeasuring to 182,120 Sq. Ft. has already been sold by the assessee up till 31.03.2013. Now, area of 67,045 Sq. Ft. was lying with the assessee as its inventory having cost of Rs. 38,30,03,232. Out of the area of 67,045 sq ft, the assessee had received advances of Rs. 35,31,15,357 for 59,537 Sq. Ft. For the remaining unsold area of 7,508 Sq. Ft., the assessee should have offered the Annual Letting Value for tax.

6. In view of the above-referred decision of the Hon'ble Gujarat High Court, 5% of the Annual Letting Value for the unsold area is added to the total income as under:

<b>Particulars</b>	<b>Area</b>	<b>Amount (Cost)</b>
Total inventory	67,045	38,30,03,232
Inventory against which advances received	59,537	34,01,12,811
Balance Inventory	7,508	4,28,90,421
5% of Cost		21,44,521
Less: 30% Standard deduction		6,43,356

Deemed rent on House Property		15,01,165
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In view of the above, deemed rent of Rs. 15,01,165/- is added to the total income of the assessee.”

3. The PCIT based on revenue audit objection issued show-cause under section 263 of the Act and held that AO has failed to conduct necessary enquiry or verification regarding the deemed rent as the AO should have taken the deemed rent even for the inventory on which advances were received and units were allotted to the prospective buyers. The relevant findings and observations of the PCIT reads as under:

“9. On merit of the case, the assessee relied upon the judgement of ITAT Jaipur in the case of Krishna Build Home Pvt. Ltd., wherein it was held that the builders take booking advance from several parties against the units and is under obligation to deliver possession of unsold stock to the concerned parties and such units cannot be let out by the builder and therefore in the absence of any specific provision of law, annual lettable value in stock in trade cannot be taxed. The submission of the assessee is not acceptable. As already mentioned the unsold stock in possession of assessee is 67,045 sq. ft. having inventory cost of Rs. 38,30,03,232/- and the assessee received advance of Rs. 35,31,15,357/- against area of 59,537 sq. ft and the balance area remaining with the assessee is 7,508 sq. ft. In view of this, following the judgment in the case of Krishna Build Home Pvt. Ltd. (supra), the assessee argued that the area against which advances have

been received from the parties must be excluded for working out annual lettable value. This argument of the assessee is not correct. The assessee continues to be the owner in respect of the units against which it had received advances. These units against which advances have been received are appearing in the Balance sheet of the assessee company. If the assessee argues that these units have been sold to the prospective buyers then these units shall not be reflected in the balance sheet of the assessee. The very fact that it is only advance and the assets are continued to be reflected in the balance sheet of the assessee and possession of such units have not been given to the buyers, the ownership continues to be with the assessee. The Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd., cited supra, held that the tax incident did not depend upon whether the assessee has actually rented out the property with an intention of carrying on business but the factum of ownership. The owner of the units ought to be taxed in respect of units which are in his possession. The argument given by the Tribunal, Jaipur in the case of Krishna Build Home Pvt. Ltd., is that the assessee will not be in a position to let out such units to third parties when it has to give delivery of possession of such unsold stocks to the parties who paid advances, whereas the Delhi High Court in the case of Ansal Housing Finance and Leasing Company Ltd., held that the application of ALV to determine the tax regardless of whether actual income is received. Section 23(1)(a) is premised on what constitutes a reasonable letting value if the property were to be leased out at the market place. The assessee is required to pay tax on the notional rental value even if the property is not leased out or the assessee is not in a position to lease out whatever could be the reason. Therefore, I am of the view that the Assessing Officer did not properly analyse the issue and took a wrong decision by excluding the value of stocks/units against which advances

have been received, for the purpose of working out annual lettable value. The decision of the Assessing Officer is not in terms of decision of Delhi High Court in the case of Ansal Housing Finance & Leasing Pvt. Ltd. Therefore, I am of the view that the decision of the Assessing Officer in respect of this issue is erroneous in so far as it is prejudicial to the interests of the revenue.”

4. The other contentions raised by the assessee have also rejected. Finally, he set-aside the order of the AO holding it to be erroneous being prejudicial to the interest of revenue and set-aside the assessment order to the AO completing fresh assessment in line of his direction.

5. We have heard both the parties and also perused the relevant findings given in the impugned order. Here in this case the assessment was completed under section 143(3) of the Act. Such an assessment was reopened by the AO u/s 147 purely to examine the deemed rental income of the closing stock of finished premises. The AO raised specific details and assessee's entire explanation has been reproduced from pages 2 to 5 of the assessment order. The AO has duly considered the submissions and held that insofar as inventory against the assessee has received advances, there is no question of any deemed rent, because already those units were allotted to the buyers and same was pending registration to be made. Rest for the balance inventory AO has taken the ALV @ 5% which was based on the judgment of Hon'ble Gujarat High Court. Thus, the AO has taken a possible view while framing the

assessment under section 147/143(3) of the Act. The ld. PCIT purely on the basis of some audit objection held that since the units against which advances has been received are appearing in the balance-sheet of the assessee-company and the ownership continues with the assessee because final sale-deed has not been executed, then ratio of the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) would also be applicable and held that AO was wrong by excluding the value of stock/units against which advances have been received for the purpose working out only lettable value.

6. It is seen that the assessee had total inventory of 67,045 sq. ft. area, out of which, assessee had received advances for area of 59537 sq. ft. and only balance inventory of 7508 sq. ft. was available. Once the assessee had received advances and has allotted the units to the prospective buyers and such advance is appearing as current liability in the balance-sheet, then how it can be treated as premises available with the assessee to impute deemed rent. Because, by virtue of allotment buyers get some vested rights in the said unit and assessee cannot even rent such premise to some other parties. Before us, the ld. Counsel had referred and relied upon the decision of the Tribunal in the case of **DCIT Vs. M/s Inorbit Malls Pvt. Ltd. (ITA No. 2220/Mum/2021 (order dated 11.10.2022))** wherein the Tribunal though upholding the proposition of the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) held that flats and

units on which assessee has received any advance in this year or in the earlier years but has not delivered or given final possession of the said flat/unit to the buyers then no notional rent can be charged, as it tantamount to sale; and secondly, if unit or flat is shown as work in progress in the books then also no notional rent can be computed. Thus, we hold that the units on which assessee had received advances, then notional or deemed rent on such units cannot be taxed. Thus the view taken by the AO is correct and possible view. Therefore, different view taken by the PCIT purely based on some audit objection cannot be sustained. Hence, on this count the direction of the PCIT is quashed.

7. Further insofar as ALV applied by the AO @ 5% the same has not been disputed by the PCIT for the balance inventory of 7508 therefore, same is not disturbed.

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

*Order pronounced in the open court on 18-10-2024.*

**Sd/-**  
**(GIRISH AGRAWAL)**  
**Accountant Member**

**Sd/-**  
**(AMIT SHUKLA)**  
**Judicial Member**

**Date... 18/10/2024**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**