

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH,
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 4802/MUM/2024
(A.Y. 2015-16)

ITA No. 4803/MUM/2024
(A.Y. 2017-18)

ITA No. 4804/MUM/2024
(A.Y. 2016-17)

Oberoi Realty Limited, Mumbai, 3rd Floor, Commerz, International Business Park, Oberoi Garden City, Off. Western Express Highway, Goregaon (E) - 400 063, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Central Circle - 4(1), Room No. 419, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCK0235H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

ITA No. 5128/MUM/2024
(A.Y. 2016-17)

ITA No. 5130/MUM/2024
(A.Y. 2017-18)

Deputy Commissioner of Income Tax, Central Circle - 4(1), Room No. 418, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051, Maharashtra	v/s. बनाम	Oberoi Realty Limited, Mumbai, 3rd Floor, Commerz, International Business Park, Oberoi Garden City, Off. Western Express Highway, Goregaon (E) - 400 063, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCK0235H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Yogesh Thar,AR
Respondent by :	Shri Mahesh Pamnani (Sr. DR)

Date of Hearing	25.02.2025
Date of Pronouncement	10.03.2025



आदेश / ORDER

PER BENCH :-

The above captioned appeals have been filed by the Assessee and Cross appeals by the Revenue against the orders passed by the Learned Commissioner of Income-tax (Appeals), CIT (A) 52, Mumbai [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Years [A.Y.] 2015-16, 2016-17 and 2017-18. Since the issues are common and interlinked, these appeals are being taken up together for adjudication vide this composite order for the sake of brevity. **We take up assessee's appeal first as below as the 'Lead case'.**

2. The grounds of the appeals are as under:-

ITA No. 4802/MUM/2024 (A.Y. 2015-16)(Assessee)

1. Addition of Annual Let Out Value of Rs. 5,89,281/- u/s. section 22 of the Act:

The learned A.O. had erred in law and facts in adding Annual Let Out Value of Rs 23,57,122/- under the head Income from House Property as per the provisions of section 22 of the Act by estimating deemed rent at Rs.33,67,317/- at the rate of 10% on unsold Stock of Finished Goods ie, residential units of the Project developed and constructed by the Appellant and the Hon'ble Commissioner of Income-tax (Appeals) has erred in law and facts in confirming the aforesaid addition to the extent of Rs. 5,89,281/- by applying a rate of 2.50% on unsold Stock of Finished Goods ie, residential units of the Project developed and constructed by the Appellant by estimating the deemed rent at Rs. 8,41,830/-, and the learned A.O. and the Hon'ble Commissioner of



Income-tax (Appeals) have ignored the facts that Section 23(5) of the Act came into effect from Assessment Year 2018-19.

3. Facts in brief are that the assessee is in the business of construction and is a Builder and Developer of projects. The AO noticed on examining the Balance-sheet that under the head 'Inventories', the assessee was holding finished goods of Rs. 124,91,70,704/-. The stock of finished goods consisted of unsold immovable property in the projects developed by the assessee. It was stated by him that as per provisions of section 22 of the I.T. Act, the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from House Property". The Annual value has to be determined as per section 23 of the Act. He referred to the decision of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co Ltd [2013] 354 ITR 180 (Del). Also in order to arrive at the annual letting value of the property, reliance was placed on the ratio laid down by Hon'ble Allahabad High Court in the case of Radha Devi Dalmia 4 Taxmann 183 (All). The total investment of the assessee in two properties was worked out to Rs. 124,91,70,704/-. Therefore, the annual



letting value is worked out at **seven per cent** of the same i.e. Rs. 5,12,82,802/- was added to the income.

4. In the subsequent appeal, the ld.CIT(A) observed the property under reference is in the project named 'Oberoi Seven' which is located in Goregaon (East). The project was completed in AY 2011- 12 as per the appellant's own submission during the appellate proceedings for AY 2017-18. Thus, the property had remained in the possession of the appellant for the last 4 years. Taking into account the provisions of section Sec. 23(5) inserted w.e.f. 01.04.2018, he concluded that till AY 2017-18 the house property, even if held as stock-in-trade was liable to be taxed by computing the annual lettable value. It is only from AY 2018-19 that the Parliament in its wisdom has provided for certain exception of one year while computing the ALV. After taking into account certain decisions of the coordinate bench in the case of Inorbit Malls Pvt. The Hon'ble ITAT in ITA No. 2220/Mum/2021 Ltd. dt. 11.10.2022 and Dimple Enterprises v. DCIT, 154 taxmann.com 653 dt. 28.08.2023, which upheld the view that annual lettable value on notional rent on unsold stock was to be taxed, the action of the AO in computing the income from house property was affirmed by him.



4.1 He however, reduced the income worked out at the rate of 7% by the AO relying on the decision in the case of **Hon'ble ITAT in the case M/s. Chalet Hotels Ltd. in ITA No. 2505/Mum/2021 dt. 30.08.2023**. He directed the AO is directed to re-compute the income from House Property at the rate of 2.50% instead of 7% as a reasonable estimate.

5. Before us, the Id.AR has submitted that the issue in hand is squarely already covered by the decision of the coordinate bench in **ITA No.2771, 3258, 2793 and 2850/Mum/2017 dated 25.02.2019** in its own case in AY 2012-13 and 2013-14. The relevant paras of the order are reproduced as below:

“The 2nd ground of appeal

2. *The AO has erred in law and facts in adding annual let out value of Rs.44,76,011/- under the head "Income from House Property under the provisions of section 22 of the Act by estimating deemed rent at Rs.63,94,301/- on unsold property of the Project developed and constructed by the appellant held as stock in trade for sale and, the Commissioner of Income-tax (Appeals) has erred in confirming the above actions of the learned A.O.*

4. The above ground relates to the addition of Rs.44,76,011/- by estimating deemed rent at Rs.63,94,301/- by the AO under the head “income from house property” as per provisions of section 22 of the Act. In the balance sheet under the head "inventories" the assessee has shown finished goods in the nature of apartments/flats of Rs.9,13,47,158/-. The AO following the decision in Ansal Housing Finance & Leasing Co. Ltd. (2013)354 ITR 180 (Del) computed the income from house property assessable in the hands of the assessee for in respect of such property at Rs.44,76,011/-, after allowing



deduction of Rs.19,18,290/- u/s 24(a) of the Act. In appeal, the CIT(A) also following the above decisions confirmed the disallowance made by the AO.

5. Before us, the Ld. counsel of the assessee relies on the **order dated 16.05.2018 of the ITAT in the case of Progressive Homes v. ACIT (ITA No. 5082/Mum/2016 for AY 2012-13) and ACIT v. M/s Haware Construction Pvt. Ltd. (ITA No. 3321/Mum/2016 for AY 2009-10 and ITA No. 3172/Mum/2016 for AY 2011-12). Also reference is made by him to the decision in CIT v. Neha Builders Pvt. Ltd. 296 ITR 661 (Guj).**

On the other hand, the Ld. DR relies on the decision in *Ansal Housing Finance & Leasing Co. Ltd* (supra) and thus supports the order of the CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The same issue arose in the orders of the Tribunal referred by the Ld. counsel. In the case of *M/s Haware Construction Pvt. Ltd. (supra)*, the **Tribunal vide order dated 31.08.2018** held:

“4.5 We have heard the rival submissions and perused the relevant materials on record. On the above issue, we come across one decision for the assessee and another decision for the revenue. The decision in *Neha Builders Pvt.Ltd.(supra)* is for the assessee, whereas the decision in *Ansal Hsg. Finance & Leasing Co. Ltd., (supra)* is for the Revenue. The Hon'ble Supreme Court in the case of **CIT vs. Vegetable Products 88 ITR 192 (SC)** has held that “if two reasonable constructions of a taxing provisions are possible, that construction which favours the tax payer must be adopted.”

In view of the above facts, we will follow the decision in *Neha Builders Pvt.Ltd.(supra)*.

4.5.1. We now come to the relevant provisions in the Act. The following sub-section (5) has been inserted after sub-section (4) of section 23 by the Finance Act, 2017, w.e.f. 01.04.2018:

“(5) Where the property consisting any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to nil.”

Thus, in order to give relief to Real Estate Developers, section 23 has been amended w.e.f. AY 2018-19 (FY 2017-18). By this amendment, it is provided that if the assessee is holding any house property as his stock-in-trade which is not let out for the whole or part of the year, the annual value of such property will be considered as Nil for a period up to one year from the end of the financial year in which a completion certificate is obtained from the competent authority.

In view of the above amendment to section 23, we are not adverting to the other case laws relied on by the Ld. counsel.

In the instant case, the assessee is a builder and developer. The issue of taxability is with regard to unsold flats. The AY is 2011-12. In view of the insertion of sub-section



(5) in section 23 by the Finance Act, 2017, w.e.f 01.04.2018 narrated hereinbefore, we uphold the order of the Ld. CIT(A) and dismiss the second Ground of appeal filed by the revenue.”

In the instant case, the assessment year is 2012-13. Facts being identical, we follow the above order of the Co-ordinate Bench and allow the 2nd ground of appeal.

9. In the result, the appeal is partly allowed.”

6. We find that the facts and the circumstances involved in the present appeal are identical to the decision cited above barring figures. Respectfully, we follow the above orders of the coordinate bench and allow the above ground of the assessee.

ITA No. 4804/MUM/2024 (A.Y. 2016-17)(Assessee)

ITA No. 4803/MUM/2024 (A.Y. 2017-18)(Assessee)

7. The ground of appeal for the AY 2016-17 and 2017-18 are similar to the ground of appeal in AY 2015-16 decided in favour of the assessee vide para 6 above. Facts being identical, our decision for AY 2015-16 applies *mutatis mutandis* to AY 2016-17 and AY 2017-18 allowing appeals of the assessee in these years as well.

ITA No. 5128/MUM/2024 (A.Y. 2016-17) (Revenue)

1. “Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is justified in not 'sustaining the disallowance u/s 14A of the I.T Act, 1961 and restricting it to Rs.8,89,136/- without considering the Circular No.5 of 2014 dated 11.02.2014 and decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [328 ITR 81]?”



2. “Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in restricting the annual letting value to 2.5% to the tune of Rs. 1,83,15,286/- as against Rs. 5,12,82,802/- made by the AO at the rate of 7% of the book value of the property?”

8. **Ground no.1** pertains to disallowance u/s 14A of the Act. The contention of the assessee that ad-hoc disallowance of Rs. 1,00,000/- had been made in the computation of total income was found to be unacceptable by the AO in view of prescribed formula as per Rule 8D wherein assessee has to work out the disallowance u/s 14A r.w. In the present case, assessee had claimed dividend income and share of profit as exempted income. However, it did not quantify any amount for disallowance in terms of section 14A of the I.T. Act 1961. Accordingly, the AO computed the disallowance at a sum of Rs. 1,58,08,301/- as per section 14A of the Act and added to the income.

9. In the subsequent appeal, the ld.CIT(A) observed that in the present case, a search action u/s. 132 of the Act was conducted on 20.08.2019. Pursuant to the same, the appellant filed an application before the Hon’ble Income Tax Settlement Commission on 22.01.2021. The said application was decided by the Hon’ble Interim Board for Settlement-I, New Delhi (IBS-I) dated 28.04.2023. The appellant has offered an additional sum of Rs. 8,89,136/- for disallowance both under Regular and MAT provisions. The IBS-1 consists of 3 officers of the rank



of Chief Commissioner of Income Tax. It is also seen that the appellant has made the offer of additional income which has been accepted by the Hon'ble IBS-1. Hence, the total disallowance u/s. 14A was restricted by him to Rs.9,89,136/-under both regular and MAT provisions deleting the balance excess.

10. Before us, it the ld.DR has relied on the assessment order. Before us, the ld.AR has submitted that the assessee preferred a Settlement Application u/s 245C of the Act before the hon'ble Settlement Commission on 22.01.2021 for AYs 2010-11 to 2020-21 and in the said application, the issue of disallowance u/s 14A was also offered for settlement. The hon'ble Interim Board of Settlement-I has settled the application by accepting the above disallowance offered by the assessee in its order dated 28.04.2023. A copy of the above order u/s 245C(4) in MH/MUCC-2/012/2020-21/IT is placed on record. Paras 5.1.9 to 5.1.9.3 deal with the matter involving disallowance u/s 14A of the Act. The hon'ble Bench has accepted the offer of the assessee for several years which is inclusive of the assessment year under consideration also. Respectfully following the said decision, we uphold the conclusion of the ld.CIT(A) and thus, **dismiss the ground.**

11. **Ground no.2** pertains to the addition in respect of Annual value of unsold stock. The rate adopted by the ld.CIT(A) has been



agitated by the revenue. However, as the addition itself has been deleted in toto in the preceding paras in appeals of the assessee, the ground being infructuous is **dismissed**.

ITA No. 5130/MUM/2024 (A.Y. 2017-18)

1. “Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is justified in not sustaining the disallowance u/s 14A of Income Tax Act, 1961 and restricting it to Rs. 11,75,962/- without considering the Circular No.5 of 2014 dated 11.02.2014 and decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [328 ITR 81]?”

2. “Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in restricting the annual letting value to 2.5% to the tune of Rs. 1,78,00,054/- as against Rs. 4,98,40,151/- made by the AO at the rate of 7% of the book value of the property?”

3. “Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs.41,69,400/- u/s 37(1) of the IT Act, 1961 on account of payment of fine for regularization of club house extension made by the AO being penal in nature?”

12. **Ground nos.1 and 2** are already dealt with in the appeal for AY 2016-17 dismissing the ground of the revenue. The above order would therefore, be applicable *mutatis mutandis* to AY 2017-18 also. Both the grounds stand **dismissed**.

13. The assessee paid Rs 41.69 lakh to BMC as fine for regularization of the Club house extension which has been disallowed by the AO u/s 37 of the Act. The ld.CIT(A) deleted the addition by placing reliance on order of co-ordinate Bench of ITAT, Mumbai in the case of Oberoi Construction Ltd



in ITA NO.502/Mum/2018 dated 20.08.2019 for AY 2014-125 holding that the impugned sum by holding that the said amount pertained to regularization of construction and was not penal in nature as there was no contravention of law was done.

14. We find that the issue in hand is already decided in assessee own case in appeal for AY 2009-10 by the coordinate bench in **ITA No.1050/M/2013 dated 04.11.2015** holding that such expenses for regularization of the Club house is not an offence under the statutory and by-laws of BMC. Respectfully following this order, we uphold the appellate order and the departmental ground is **dismissed**.

15. In the result, the appeals of the **assessee in ITA No. 4802, 4803, 4804/Mum/2024 are allowed** and **Revenue's appeals in ITA No. 5128 & 5130/Mum/2024 are dismissed**.

Order pronounced in the open court on **10/03/2025**.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 10.03.2025

Lubhna Shaikh / Steno

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

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



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2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
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