

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील स० / ITA No.1238/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Kolte Patil I-Ven Townships,
Pune Limited,
S.No.74, Marunji, Hinjewadi,
Marunji Kasarsai Road,
Hinjewadi, Pune – 411 057.

..... अपीलार्थी /
Appellant

PAN : AABC15807K.

बनाम v/s

The Asst. Commissioner of Income-Tax,
Circle – 14, Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Nikhil Pathak.

Revenue by : Shri Rajesh Gawali.

सुनवाई की तारीख / Date of Hearing : 24.06.2019	घोषणा की तारीख / Date of Pronouncement: 26.06.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 7, Pune dated 22.05.2018 for the assessment year 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of Real Estate and Developers. Assessee electronically filed its return of income for A.Y. 2014-15 on 26.11.2014 declaring total income of

Rs.107,78,02,634/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 144C of the Act vide order dt.22.12.2017 and the total income was determined at Rs.107,94,27,110/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.22.05.2018 (in appeal No.PN/CIT(A)-7/CIR-14/10259/2017-18) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. The learned CIT(A) erred in confirming the addition of Rs.16,24,476/- u/s 22 r.w.s. 23(4) on account of deemed rent in respect of unsold unit held by the assessee as stock in trade in respect of the project developed by it.

2. The learned CIT(A) failed to appreciate that the assessee company had held the said unsold units as its stock in trade and hence, since these units were occupied by the assessee for its business purposes, there was no reason to tax the annual value of such unsold units u/s 22 of the Act as income from house property.

3. Without prejudice to the above grounds, the assessee submits that assuming without admitting that the income of such unsold units was taxable as income from house property u/s 22, it is submitted that the unsold units were vacant for the entire year and accordingly, the income thereon was to be considered at Rs. NIL in view of the provisions of section 23(1)(c) and hence, the entire addition made by the learned A.O. may kindly be deleted.”

3. All the grounds being inter-connected are considered together.
4. During the course of assessment proceedings, AO noticed that assessee had ready possession of six unsold flats/bunglows but had not offered any deemed rent / notional rent on those flats/bunglows. Assessee was asked to show as to why income from those unsold flats/bunglows not be charged to tax. Assessee inter-alia submitted that the flats /bunglows were stock-in-trade and no income has been earned from those flats. The submission of the assessee was not found

acceptable to the AO. AO thereafter on the basis of the Annual Letting Value (ALV) worked out the deemed rent from those six flats at Rs.16,24,476/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who following the order of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co., Ltd., reported in 29 taxmann.com 303 and the decision of Hon'ble Punjab and Haryana High Court in the case of Susham Singla Vs. CIT reported in 244 Taxman 302, upheld the order of AO.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

5. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that identical issue arose in the case of its sister concern i.e., M/s. Kolte Patil Developers Limited in A.Y. 2012-13, wherein the Co-ordinate Bench of the Tribunal after considering the decision of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co., Ltd., (supra) and other decision cited in the order has decided the issue in favour of the assessee. He placed on record the copy of the aforesaid order and pointed to the relevant findings. He further submitted that the facts in the present case and that of the case facts of its sister concern are similar and therefore following the decision in the case of its sister concern i.e., M/s. Kolte Patil Developers Limited, the issue be decided accordingly. Ld. D.R. on the other hand, supported the order of AO and Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to taxability

of deemed rent in respect of six unsold flats / bungalows held in stock-in-trade by the assessee u/s 23 of the I.T. Act. We find that identical issue arose in the case of assessee's sister concern i.e., M/s. Kolte Patil Developers Limited (supra) in A.Y. 2012-13, wherein the issue was decided in favour of the assessee by the Co-ordinate Bench of the Tribunal by observing as under :

"10. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition under the head 'income from house property' on the 32 unsold flats/shops by the assessee. It is an undisputed fact that assessee is in the business of Civil Engineers, Builders and Developers and had in the closing stock of 32 unsold flats. It is also an undisputed fact that these 32 flats were vacant and no rental income was derived by the assessee during the year under consideration. We find that Hon'ble Gujarat High Court in the case of CIT Vs. Neha Builders Pvt. Ltd., reported in [2007] 164 Taxmann 342 has held that when the business of the assessee is to construct the property and sell it or to construct or let out then that would be the "business" and the business stocks which may include movable and immovable properties would be taken to be "stock-in-trade" and any income derived from such stocks cannot be termed as "income from house property". We further find that the Co-ordinate Bench of the Mumbai Tribunal in the case of C.R. Developments Pvt. Ltd., Vs. CIT in ITA No.4277/2012 order dt.13.05.2015, after considering the decision of Hon'ble Apex Court in the case of Chennai Properties and Investment Vs. CIT (2015) 373 ITR 673 (SC) has held that on the flats which were unsold, which were neither given on rent nor the assessee had intention to let out the flats, no deemed rental income could be considered in assessee's hands. We further find that the Co-ordinate Bench of Pune Tribunal in the case of M/s. Cosmopolis Construction (in ITA Nos.230 and 231/PUN/2018 dt.12.09.2018) after considering the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Neha Builders (P) Ltd., (supra), the decision of Mumbai Tribunal in the case of C.R. Developments Pvt. Ltd., (supra) after also considering the decision in the case of CIT Vs. Ansal Housing and Construction reported in [2013] 29 taxmann.com 303 has held that no notional annual rental value on unsold flats held in stock-in-trade can be made in assessee's hands. The relevant findings of the Co-ordinate Bench of the Tribunal is as under :

7. The issue before us for adjudication is whether the notional annual rental value on unsold flats held as stock-in-trade by the assessee is to be assessed under the head „Business Income" or under the head „Income from House Property". The Hon'ble Gujarat High Court in the case of Commissioner of Income Tax Vs. Neha Builders (P.) Ltd. (supra) has held that where the property is held as stock-in-trade any income derived from stock would be „income from business" and not „income from house property". The relevant extract of the findings of Hon'ble High Court are as under :

“7. From the order passed by the learned CIT(A), it would clearly appear that the case of the assessee was that the company was incorporated with the main object of purchase, take on lease, or acquire by sale, or let out the buildings constructed by the assessee. Development of land or property would also be one of the businesses for which the company was incorporated.

8. True it is, that income derived from the property would always be termed as 'income' from the property, but if the property is used as 'stock-in-trade', then the said property would become or partake the character of the stock, and any income derived from the stock, would be 'income' from the business, and not income from the property. If the business of the assessee is to construct the property and sell it or to construct and let out the same, then that would be the 'business' and the business stocks, which may include movable and immovable, would be taken to be 'stock-in-trade', and any income derived from such stocks cannot be termed as 'income from property'. Even otherwise, it is to be seen that there was distinction between the 'income from business' and 'income from property' on one side, and 'any income from other sources'. The Tribunal, in our considered opinion, was absolutely unjustified in comparing the rental income with the dividend income on the shares or interest income on the deposits. Even otherwise, this question was not raised before the subordinate Tribunals and, all of sudden, the Tribunal started applying the analogy.

9. From the statement of the assessee, it would clearly appear that it was treating the property as 'stock-in-trade'. Not only this, it will also be clear from the records that, except for the ground floor, which has been let out by the assessee, all other portions of the property constructed have been sold out. If that be so, the property, right from the beginning was a 'stock-in trade'.”

8. In the case of Commissioner of Income Tax Vs. Ansal Housing Finance And Leasing Co. Ltd. (supra) the Hon'ble Delhi High Court taking a contrary view has held that annual rental value on unsold flats built by assessee engaged in construction business is assessable as income from house property. It is a well settled law that when two divergent views of non-jurisdictional High Courts are available and there is no decision on the issue from the Jurisdictional High Court, the view in favour of the assessee has to be adopted [Commissioner of Income Tax Vs. Vegetable Products Ltd.(supra)].

9. In so far as the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) is concerned we find that the facts in the said case are at variance. In the said case the assessee was engaged in construction business. The assessee rented out unsold flats and suo-motu offered rental income from the flats under the head „Income from House Property“. On the contrary the Revenue wanted to tax rental income under the head „Business Income“. The matter travelled to the Tribunal. The Tribunal held that the income earned by the assessee from renting of flats is to be assessed under the head „Income from House Property“. The Department carried the matter in appeal before the Hon'ble High

Court. The Hon'ble High Court confirmed the findings of Tribunal and held that rental income received from unsold portion of property constructed by the assessee, is assessable as income from house property. The core difference between the case of the assessee and in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) is that in the case of assessee, it is notional annual rental income on flats held as stock which is sought to be taxed, whereas in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) it was the case of actual rental income earned by the assessee from renting of flats constructed by it. Hence, the decision rendered in the case of Commissioner of Income Tax Vs. Sane & Doshi Enterprises (supra) would not apply in the facts of the present case.

10. We further find that Mumbai Bench of the Tribunal in M/s. C.R. Developments Pvt. Ltd. Vs. JCIT (supra), M/s. Runwal Constructions Vs. ACIT (supra) and Shri Girdharilal K. Lulla Vs. DCIT (supra) under similar set of facts have taken a consistent view in holding notional annual rental value on unsold flats held as stock-in-trade by the assessee engaged in construction and development activities as "Business Income".

*11. Before us, no distinguishing feature in the facts of the present case and the case decided by Pune ITAT noted herein above has been pointed out by Revenue. In view of the aforesaid facts, we following the decision of Co-ordinate Bench of the Pune Tribunal in the case of M/s. Cosmopolis Construction Vs. ITO (supra) hold that in the present case, no addition on account of deemed rent of 32 unsold flats can be made in hands of the assessee. We therefore set aside the addition made by AO. **Thus, the ground of the assessee is allowed.**"*

7. Before us, no distinguishing feature in the facts of the present case and that of assessee's sister concern i.e., M/s. Kolte Patil Developers Limited (supra) for A.Y. 2012-13 has been pointed out by Revenue. Further Revenue has also not placed any material to demonstrate that the order of Tribunal in the assessee's sister concern for A.Y. 2012-13 has been set aside / stayed or overruled by Higher Judicial Forum. In view of the aforesaid facts, we following the order of the Co-ordinate Bench of the Tribunal in the case of assessee's sister concern i.e., M/s. Kolte Patil Developers Limited for A.Y. 2012-13 and for similar reasons hold that in the present case, no addition on account of deemed rent of 6 unsold flats/bunglows can be made in the

hands of assessee. We therefore set aside the addition made by the AO.

Thus, the grounds of assessee are allowed.

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

Order pronounced on the 26th day of June, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 26th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-7, Pune.
4. Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.