

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.898/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Mr. Rafiahamad Rasul Patel
Plot No.60/5, "Khatun Villa",
Shivaji Nagar, Miraj,
Dist. Sangli - 416410
PAN : ABPPP5774L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 1(5), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Uday Kakne

सुनवाई की तारीख / Date of Hearing : 23.12.2019

घोषणा की तारीख / Date of Pronouncement : 23.12.2019

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(Appeals)-1, Kolhapur on 10.04.2019 in relation to the assessment year 2015-16.

2. The only issue raised in this appeal is against the taxation of notional rental income of Rs.5,54,400/- on unsold stock-in-trade as Business income.

3. Brief facts of the case are that the assessee is a builder and developer. During the course of assessment proceedings it was found that the assessee was having unsold flats/shops. The Assessing Officer computed notional rental on such stock-in-trade under the head 'Income from house property' at Rs.5,54,400/-. The assessee prayed before the CIT(A) that the income ought to have been considered under the head 'Profits and gains of business and profession'. The ld. CIT(A), relying on an order passed by Pune Bench Tribunal in the case of M/s. Cosmopolis Construction Vs. ITO in ITA Nos.230 & 231/PUN/2018, upheld the contention of assessee in taxing the income as income from Business. The assessee is aggrieved by the impugned order on the ground that even if the amount is taken as chargeable to tax as income from business, still the same should not be included in the total income.

4. Having heard both the sides and gone through the relevant material on record, it is seen that similar issue came up for consideration before the Pune Benches of the Tribunal in M/s. Cosmopolis Construction vs. ITO. Vide its order dated 12-09-2018, the Tribunal in ITA Nos. 230 & 231/PUN/2018 has held that no rental income can be computed when flats are held as stock in trade. In reaching this conclusion, the Tribunal relied on certain other judgments and the orders. In the absence of any distinguishing fact having been brought to my notice by the ld. DR and respectfully following the precedent, I overturn the impugned order on this score and direct to delete the addition. Similar view has been taken by the Pune benches of the Tribunal in M/s. Tricon

Builders vs. ITO / ITA No.475/PUN/2018 vide its order dated 4.12.2018.

5. At this stage, it is pertinent to note that the Finance Act, 2017, w.e.f. 1.4.2018 has inserted sub-section (5) of section 23 providing that : 'Where the property consisting of 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 two years 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 be nil.' This amendment has the effect of providing that from the A.Y. 2018-19, stock in trade of buildings etc. shall be liable to be considered for computation of annual value under the head 'Income from house property' after two years from the end of the financial year in which the certificate of completion of construction of the property is obtained. As the assessment year under consideration is 2015-16, the amended section 23 will not apply and the case will be governed by the decisions as discussed above.

6. In the result, the appeal is allowed.

Order pronounced on 23rd day of December, 2019.

Sd/-

R.S. SYAL

उपाध्यक्ष / VICE-PRESIDENT

पुणे / Pune; दिनांक / Dated : 23rd December, 2019.
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent
3. The CIT (Appeals)-1, Kolhapur.
4. The Pr. CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच, पुणे / DR, ITAT, “**SMC**” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//True copy//

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

		Date	
1	Draft dictated on	23.12.2019	Sr. PS/PS
2	Draft placed before author	23.12.2019	Sr. PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr. PS/PS
6	Kept for pronouncement on		Sr. PS/PS
7	Date of uploading of order		Sr. PS/PS
8	File sent to Bench Clerk		Sr. PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		

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