



ITA.No.7155/Mum/2016
Haware Engineers & Builders Pvt.Ltd
Assessment Year-2012-13

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
श्री रविश सूद, न्यायिक सदस्य
के समक्ष।

BEFORE SHRI MANOJ KUMAR AGGARWAL, AM
AND
SHRI RAVISH SOOD, JM

आयकरअपीलसं./I.T.A. No.7155/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

Haware Engineers & Builders Private Limited 413/416, Vardhman Market Sector-17, DBC, Vashi Navi Mumbai- 400 705	बनाम/ Vs.	Deputy Commissioner of Income Tax Central Circle-4(2) Air India Building 19 th Floor, Nariman Point Mumbai-400 021
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACH-2577-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	J.P.Bairagra, Ld. AR
Revenue by	:	Manoj Kumar Singh, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	19/09/2018
घोषणा की तारीख / Date of Pronouncement	:	10/10/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-52 [CIT(A)], Mumbai, *Appeal No.CIT(A)-52/DCIT-CC-4(2)/44/2015-16 dated 02/09/2016* by raising following ground of appeal:-



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On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) has grossly erred in law as well as on facts in confirming the action of the Assessing Officer (AO) in charging notional income as income from house properties in respect of unsold units (both residential / commercial), which were held by the appellant as its stock in trade. Without prejudice to the ground taken above, the CIT(A) has grossly erred in upholding the ALV of the unsold units (both residential / commercial) held by the appellant as stock in trade at Rs.1,22,32,745/-, the estimation so made is highly exorbitant.

The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax, Central Circle-4(2), Mumbai [AO] u/s 143(3)* on 27/03/2015 wherein the income of the assessee was assessed at Rs.14.79 Crores under normal provisions after certain additions / disallowances as against returned income of Rs.13.77 Crores *e-filed* by the assessee on 28/09/2012. As evident from grounds of appeal, the sole subject matter of present appeal is addition of notional rental income against unsold properties which happens to be held as *stock-in-trade* by the assessee. The assessee being *resident corporate entity* was engaged as *Real Estate Developer* during impugned AY.

2. During assessment proceedings, upon perusal of details of *closing stock-in-trade*, it was found that the assessee had unsold stock of completed units in the shape of flats / shops at various projects being carried out by the assessee during impugned AY. The cost of construction of these units was reflected as Rs.14.39 Crores. The *Ld. AO*, in terms of judgment of Hon'ble Delhi High Court rendered in *CIT Vs. Ansal Housing Finance & Leasing Co. Ltd. [354 ITR 180]*, opined that notional rental value of the said units was chargeable under the head *Income from House Property*. The assessee defended its stand vide reply dated 19/03/2015. However, not convinced, *Ld. AO* computed



notional rental value of these units @8.5% of cost of construction i.e. Rs.14.39 Crores which came to Rs.1.22 Crores. After providing statutory deduction of 30% as per Section 24(b), the net addition thus worked out came to Rs.85.62 Lacs, which was added to the income of the assessee. The stand of Ld. AO, upon confirmation by first appellate authority, is under appeal before us.

3. The Ld. Authorized Representative for assessee, *Shri J.P.Bairagra*, at the outset, drew our attention to the recent decision of the Tribunal rendered in the case of assessee's sister concern to submit that the issue has been delved upon at length and the same has been settled in assessee's favor. Per *Contra*, Ld. Departmental Representative [DR], *Shri Manoj Kumar Singh*, submitted that the issue stood squarely covered against assessee's favor by the cited decision of Hon'ble Delhi High Court and therefore, the same should be followed.

4.1 We have carefully heard the rival contentions and perused relevant material on record including the orders of lower authorities and judicial pronouncements as cited before us. We find that the basic facts are not under dispute. The material on record reveals that the assessee is engaged as *Real Estate Builder* and carries out project at various places. The year-end inventory shown in the Balance Sheet comprises-off of certain unsold completed units in the shape of Flats / shops valued at Rs.14.39 Crores. The notional rental value of these units, in the opinion of Ld. AO, was to be taxed under the head Income from House Property. The strength for the same has been derived from the decision of Hon'ble Delhi High Court rendered in *CIT Vs. Ansal Housing Finance & Leasing Co. Ltd. [354 ITR 180]*.



4.2 Proceeding further, we find that the Ld. AR has placed on record the recent judgment of this Tribunal rendered in the case of assessee's sister concern titled as *ACIT Vs. Haware Construction Private Ltd. [ITA Nos.3321/Mum/2016 & 3172/Mum/2016 dated 31/08/2018]* to submit that the issues under similar facts and circumstances, has been adjudicated in assessee's favor after considering the conflicting judicial precedents. For ease of reference, at the outset, we deem it appropriate to reproduce the relevant extract of the said decision as follows:-

4.1. As stated earlier, the assessee is a builder and developer and at the end of the year it had inventory of stock-in-trade which are not sold and lying vacant of Rs.12,10,05,508/-. The AO relied upon the judgment of the Hon'ble Delhi High Court in CIT vs. Ansal Hsg. Finance & Leasing Co. Ltd., (ITA No.18/1999 dtd. 31/10/2012) and computed deemed income from house property by estimating @8.5% of cost of construction and after allowing the deductions of 30%, computed the income.

4.2. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A). We find that the Ld. CIT(A), relying on the decision in Shyam Burlap Co. Ltd. vs. CIT, 61 taxmann.com 121 (Calcutta High Court), M/s. Chennai Properties and Investment Ltd. (supra) and the order of the Tribunal in C.R. Development Pvt. Ltd. (ITA No.4277/Mum/2012 dtd. 13/05/2016), deleted the addition as per para 2.460 of his appellate order dtd.01/02/2016.

4.3. The Id. DR relies on the decision in Ansal Hsg. Finance & Leasing Co. Ltd., (supra), and submits that the order passed by the AO may be restored.

4.4. On the other hand, the Id. counsel of the assessee relies on the judgment of the Hon'ble Gujarat High Court in CIT vs. Neha Builders Pvt. Ltd. 296 ITR 661 (Guj.) and the order of the Tribunal in M/s. Runwal Constructions vs. ACIT (ITA No.5408/Mum/2016 dtd.22/02/2018) and Progressive Homes vs. ACIT (ITA No.5082/Mum/2016 dtd. 16/05/2018).

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 position of law, we shall 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:



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“(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 2009-10. 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 2nd ground of appeal filed by the revenue.

Upon perusal of the same, we find that finding two contrary binding judicial pronouncements-one rendered by Hon'ble Delhi High Court and another rendered by Hon'ble Gujarat High Court, the co-ordinate bench preferred to follow the view which was favorable to the assessee in terms of ratio of decision of Hon'ble Apex Court rendered in *CIT vs. Vegetable Products 88 ITR 192 (SC)*. Similar favorable view has been taken by this Tribunal rendered in *Runwal Constructions vs. ACIT (ITA No.5408/Mum/2016 dated 22/02/2018)* and *Progressive Homes vs. ACIT (ITA No.5082/Mum/2016 dated 16/05/2018)*, the copies of which are on record.

4.3 Keeping in view the consistent stand of this Tribunal and respectfully following the same, we hold that if a immoveable property in the shape of flats / shops is held as stock-in-trade, then it becomes part of trading operations for the assessee and as a natural corollary, any income derived *there-from* would be *Business Income* and not *Income from House Property*. Resultantly, the impugned additions as confirmed by first appellate authority stand deleted.



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5. The appeal stands allowed in terms of our above order.

Order pronounced in the open court on 10th October, 2018.

Sd/-
(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated 10.10.2018

Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai