

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.As. No.1983 & 1984/Mum/2019
(Assessment years 2014-15 & 2013-14)

M/s Runwal Constructions 5 th Floor, Runwal & Omkar Esquare Off. Eastern Express Highway, Sion Chunabhatti Signal, Sion, Mumbai PAN : AAAGR1211Q	vs	Dy.Commissioner of Income-tax Central Circle-4(1), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Gaurav Kabra, AR
Respondent by	Shri Bharat Andhle, DR

Date of hearing	02-09-2021
Date of pronouncement	14-09-2021

ORDER

Per Saktijit Dey (JM)

Captioned appeals by the same assessee arise out of two separate orders, both dated 10-08-2017, of learned Commissioner of Income Tax (Appeals)-52, Mumbai for the assessment years 2013-14 and 2014-15.

2. The only common dispute arising in the appeal relates to addition of notional annual letting value (ALV) in respect of unsold flats held as stock-in-trade.

3. Briefly the facts are, the assessee, a partnership firm, is engaged in the business of builders and developers. In course of assessment proceedings, the assessing officer, on verifying the balance-sheet of the assessee noticed that under the head, 'Inventories', the assessee is holding unsold flats in projects developed by it. Noticing the above, the assessing officer asked the assessee to explain and furnish the break-up of stock of unsold flats. After verifying the details furnished by the assessee, the assessing officer observed, as per sections 22 and 23 of the Income Tax Act, 1961, the assessee has to be treated as the owner of such flats and ALV of such flats has to be determined and taxed at the hands of the assessee as 'Income from house property'. Though, the assessee objected to the proposed addition; however, the assessing officer was not convinced and proceeded to compute ALV of the unsold flats and added to the income of the assessee. Learned Commissioner (Appeals) also sustained the additions.

4. Learned counsel for the assessee submitted, the issue is squarely covered in favor of the assessee by the decision of the Tribunal.

5. Though, learned departmental representative agreed that identical issue has been decided by the Tribunal in favour of the assessee; however, he relied upon the observations of learned Commissioner (Appeals).

6. We have considered rival submissions and perused materials on record. Undisputedly, the issue arising for consideration is, whether notional ALV can be computed on unsold flats held by the assessee as stock in trade. Pertinently, while deciding identical issue in assessee's own case in assessment year 2012-13 in ITA No.5408/Mum/2016 dated 22-02-2018, the co-ordinate bench has held as under:-

"7. We have heard the rival submissions and perused the orders of the authorities below and the decisions relied upon. It is an undisputed fact that the assesseees are in the business of builders, developers and construction. Both the assesseees have constructed various projects and the projects were treated as stock in trade in the books of account. Flats sold by the assesseees were assessed under the head 'income from business'. There were certain unsold flats in stock in trade which the AO treated as property assessable under the head 'income from house property' and computed notional annual letting value on such unsold flats placing reliance on the decision in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra). The action of the AO was upheld by the learned CIT(A).

8. The Hon'ble Gujarat High Court in the case of Neha Builders Pvt. Ltd. (supra) considered the question whether the rental income received from any property in the construction business can be claimed under the head 'income from property' even though the said property was included in the closing stock. The Hon'ble Gujarat High Court held that 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 house property. While holding so the Hon'ble High Court observed as under: -

Runwal Constructions & Runwal Builders "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'."

9. Similarly the Coordinate Bench has considered similar issue as to whether the unsold property which is held as stock in trade by the assessee can be assessed under the head 'income from house property' by notionally computing the annual letting value from such property and the Coordinate Bench considering the decision of the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) which the AO relied upon and the decision of the Hon'ble Supreme Court in the case of [Chennai Properties & Investments Ltd. vs. CIT](#) reported in 373 ITR 673, held that unsold flats which are in stock in trade should be assessed under the head 'business income' and there is no justification in estimating rental income from those flats and notionally computing annual letting value under [Section 23](#) of the Act. While holding so the Coordinate Bench observed as under: -

"3. The Id. AR placed the order of Bombay Tribunal in the case of M/s Perfect Scale Company Pvt. Ltd., ITA Nos.3228 to 3234/Mum/2013, order dated 6-9-2013, wherein it was held that in respect of assets Runwal Constructions & Runwal Builders held as business, income from the same is not assessable u/s.23(1) of the [IT Act](#).

4. On the other hand, Id. DR relied on the order of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd., 354 ITR 180 (Delhi) in support of the proposition that even in respect of unsold flats by the developer is liable to be taxed as income from house property.

5. We have considered rival contentions and perused the record. The issue under consideration has been restored by the CIT(A) to the file of AO to compute the annual value. Recently the Hon'ble Supreme Court in the case of M/s Chennai Properties & Investments Ltd. Vs. CIT, reported in (2015) 42 SCD 651, vide judgment dated 9-4-2015 has held that where assessee company engaged in the activity of letting out properties and the rental income received was shown as business income, the action of AO treating the rental income as income from house property in place of income from business shown by the assessee was held to be not justified. The Hon'ble Supreme Court held that since the assessee company's main object, is to acquire and held properties and to let out these properties, the income earned by letting out these properties is main objective of the company, therefore, rent

received from the letting out of the properties is assessable as income from business. On the very same analogy in the instant case, assessee is engaged in business of construction and development, which is main object of the assessee company. The three flats which could not be sold at the end of the year was shown as stock-in-trade. Estimating rental income by the AO for these three flats as income from house property was not justified insofar as these flats were neither given on rent nor the assessee has intention to earn rent by letting out the flats. The flats not sold was its stock-in-trade and income arising on its sale is liable to be taxed as business income. Accordingly, we do not find any justification in the order of AO for estimating rental income from these vacant flats u/s.23 which is assessee's stock in trade as at the end of the year. Accordingly, the AO is directed to delete the addition made by estimating letting value of the flats u/s.23 of the I.T.Act."

10. In the case on hand before us it is an undisputed fact that both assesseees have treated the unsold flats as stock in trade in the books of account and the flats sold by them were assessed under the head 'income from business'. Thus, respectfully following the above said decisions we hold that the unsold flats which are stock in trade when they were sold they are assessable under the head 'income from business' when they are sold and therefore the AO is not correct in bringing to tax notional annual letting value in respect of those unsold flats under the head 'income from Runwal Constructions & Runwal Builders house property'. Thus, we direct the AO to delete the addition made under [Section 23](#) of the Act as income from house property."

5. Facts being identical, respectfully following the aforesaid decision of the co-ordinate bench, we delete the addition made on account of notional ALV on the unsold flats held as stock-in-trade. Grounds are allowed.

6. In the result, appeals are allowed.

Order pronounced on 14/09/2021.

Sd/-

sd/-

(RAJESH KUMAR)	SAKTIJIT DEY
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 19/09/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai