

Deemed rent not applicable on unsold flats by builder treated as stock-in-trade

The ITAT, Pune in *Pride and Expert Properties Pvt. Ltd. v. ACIT [ITA No.860/PUN/2022 dated February 14, 2023]* has held that the order passed by the Appellate Authority, confirming the view of the Revenue Department is not justified on the grounds that the assessee had treated its unsold flats as stock-in-trade, thereby implying, that the profits on its sale would be offered as business income as no rental income was received by the assessee and hence, Section 23 (4) of the Income Tax Act, 1961 (“**the IT Act**”) would not be levied on the assessee.

Facts:

Pride and Expert Properties Pvt. Ltd. (“**the Appellant**”) is a company engaged in the business of property development. During the course of assessment proceedings, the Appellant was asked to explain that why the deemed rent in respect of unsold flats should not been brought to tax under the head “Income from house property”. The Appellant stated that, the 15 unsold flats (“**the Impugned Property**”) cumulatively admeasuring 17341 sq. ft. were not sold during the Assessment Year (“**A.Y**”) 2017-18 and they were treated as closing stock. Further stated that, the Impugned Property was not let out and hence, no deemed rent under Section 23(4) the IT Act could be levied under the head “Income from house property”. The Revenue Department (“**the Respondent**”) stated that the Appellant was not in occupation of the Impugned Property, and having mere passive possession of the stock-in-trade does not qualify as own occupation for its business and hence, the provisions of Section 23(4) of the IT Act would be leviable. Subsequently, the Respondent made an addition to the extent of INR 25,20,000/- by ascertaining fair market annual letting value to the total income of the Appellant. The Appellant preferred an appeal, but it was rejected vide Order dated October 31, 2022 (“**the Impugned Order**”).

Being aggrieved, this appeal has been filed.

Issue:

Whether the deemed rent under Section 23(4) of the IT Act can be levied on the Impugned Property?

Held:

The ITAT, Pune in **ITA No.860/PUN/2022** held as under:

- Noted that, the Appellant treated the Impugned Property as stock-in-trade which means that the profits on its sale would be offered as business income and no rental income was received by the Appellant from the Impugned Property.
- Relied on its earlier judgment in the matter of **Sai Spacecon India Pvt. Ltd v. DCIT [ITA No. 2824/PUN/2017]**, wherein, it was noted that, no addition on account of deemed rent on unsold flats could be made in the hands of the assessee.
- Held that, the Impugned Order passed by the Appellate Authority is not justified in confirming the view of the Respondent.

Relevant Provisions

Section 23(4) of the IT Act:

“Annual value how determined

Where the property referred to in sub-section (2) consists of more than two houses-

(a) the provisions of that sub-section shall apply only in respect of two of such houses, which the assessee may, at his option, specify in this behalf;

(b) the annual value of the house or houses, other than the house or houses in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.”

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