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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 553/2024

ANSAL HOUSING LTD (FORMERLY KNOWN AS ANSAL HOUSING AND CONSTRUCTION LTD)

.....Appellant

Through: Ms Kavita Jha, Sr Advocate with Mr Vaibhav Kulkarni and Mr Akash Shukla, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX

.....Respondent

Through: Mr Sanjay Kumar, SSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **14.11.2024**

1. The appellant (hereafter *the assessee*) has filed the present appeal impugning an order dated 26.07.2024 passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No. 2731/Del/2010 in respect of the assessment year (AY) 2007-08 rendered in the appeal preferred by the Revenue against the order dated 30.03.2010 passed by the learned Commissioner of Income Tax (Appeal)-1 [hereafter *the CIT(A)*].

2. The Revenue had challenged the decision of the learned CIT(A) in deleting an addition of ₹58,09,780/- made on account of gross notional Annual Letting Value (ALV) in respect of unsold spaces / flats and treating the same as income from house property.

3. The assessee is engaged in the development of real estate and

contended that the said vacant flats/spaces held by it were stock-in-trade and therefore, Section 22 of the Income Tax Act, 1961 (hereafter *the Act*) was not applicable. According to the assessee, its income is required to be assessed under the head 'profits and gains of business or profession' and not under the head of 'income from house property'. The said contention was accepted by the learned CIT(A). The relevant extract of the order dated 30.03.2010 is set out below:-

> "10.After going through the grounds of appeal as well as the order of the appellate Authorities, I am of the view that as the business of the appellant company was construction and sale of immovable property, the income arising from the unsold spaces / flats could only be taxed under the head business income and it was not open to the Assessing Officer to tax the notional value under the head income from house property in respect of flats / spaces lying in the closing stock of the company. It is noticed that the A.O. has based the additions on the ground that department has not accepted the appellate decisions of the higher authorities and that the matter is pending before the Hon'ble High Court of Delhi. Following the decisions of the ITAT and my predecessor CIT (A)- 1 in the case of appellant for the earlier assessment years the addition of Rs. 82,99,685/- made by the Assessing Officer is deleted."

4. However, the learned ITAT did not concur with the said view. Notwithstanding, that the assessee held immovable property as a part of the stock-in-trade, the ALV was chargeable to tax under the head of 'income from house property'.

5. Concededly, this issue stands concluded in favour of the Revenue by this Court in the assessee's own case in an earlier assessment year - ***Ansal***

Housing & Construction Limited v. Assistant Commissioner of Income Tax: [2018] 89 taxmann.com 238 (Delhi).

6. In view of the above, no substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 14, 2024

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Click here to check corrigendum, if any