(2013) 05 DEL CK 0368

In the Delhi High Court

Case No : ITA 238, 239 and 240 of 2013

New Delhi Hotels Ltd. APPELLANT

Vs

ACIT RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2014) 360 ITR 187

Hon'ble Judges : Vibhu Bakhru, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Anoop Sharma, for the Appellant; Abhishekh Maratha, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—The present appeals have been filed on behalf of the assessee u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") challenging the order dated 07.12.2012 passed by the Income Tax Appellate Tribunal. The Tribunal had, by the order dated 07.12.2012, disposed of three appeals being ITA Nos. 3742/DEL/2012, 3743/DEL/2012 and 1462/DEL/2012 which had been preferred by the revenue relating to the assessment year 2004-05, 2009-10 and 2008-09, respectively. These appeals raise a common question and thus, have been taken up together.

2. The issue sought to be raised in the present appeals is:-

Whether the rental income derived from the unsold flats which are shown as stock-in-trade in the books of the appellant/assessee would fall within the head "Profits and gains from business and profession" or under the head, "income from house property.

3. The Tribunal held that it would fall under the head of "profits and gains from business and profession", whereas it is the appellant/assessee''s contention that it would fall within the head "income from house property". It appears that this

issue is no longer debatable in view of the decision in the case of CIT v. Ansal Housing Finance & Leasing Co. Ltd. decided on 31.10.2012 in ITA No. 18/1999. That decision has, subsequently, been followed in CIT v. Discovery Estates Pvt. Ltd. (in ITA Nos. 1089/11 and 1090/2011) and CIT v. Discovery Holding Pvt. Ltd. (in ITA No. 1097/2011) decided on 18.02.2013. One of the questions raised in Discovery Estates Pvt. Ltd. and Discovery Holding Pvt. Ltd. (supra) was "whether the income tax Appellate Tribunal was right in holding that the rental income should be assessed in the income from the business and not under the head "income from house property"?" This court answered that question in the negative by following the decision in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra).

4. Mr. Maratha appearing on behalf of the revenue contended that Ansal Housing Finance & Leasing Co. Ltd. (supra) was a decision where the question was with regard to deemed rent on the basis of annual letting value (ALV) whereas in the present appeals, the issue is with regard to the actual rent received in respect of flats let out by the appellant/assessee. However, we find that in Discovery Estates Pvt. Ltd. and Discovery Holding Pvt. Ltd. (supra) the issue was in the backdrop of actual rent receipts and not on the basis of deemed rent. Therefore, the decision of this court in Discovery Estates Pvt. Ltd. and Discovery Holding Pvt. Ltd. (supra) would govern the present case also.

5. Consequently, while framing the question as to whether the income tax Appellate Tribunal was right in holding that rental income should be assessed under the head of "profits and gains from business and profession" and not under the head "income from house property", we answer the same in the negative. We may add, however, that the learned counsel for the appellant had also taken the plea of consistency but, we have not examined the same as it was not necessary for us to do so because of the position indicated above. These appeals are allowed as above.