

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBERT AND
SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.4863/Mum/2025
(Assessment Year: 2017-18)**

Paramjit Singh Mohansingh Obhan, Flat No. 002, Guru Nanak Niwas, Plot No.62, Sector 21, Nerul, Navi Mumbai-400 706 PAN: AADPO2005L	vs	Astt. Commissioner of Income Tax Circle 28(2), Navi Mumbai Room No.307, Tower No.6, Vashi Railway Station, Commercial Complex, Vashi, Navi Mumbai-400 703
APPELLANT		RESPONDENT

Assessee by : Shri Ashok J Patel
Respondent by : Shri Virabhadra Mahajan (SR.DR.)
(virtually heard)

Date of hearing : 16/10/2025
Date of pronouncement : 10/11/2025

ORDER

Per Anikesh Banerjee (JM):

The instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeal) ADDL / JCIT(A)-1, Vishakhapatnam [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for assessment year 2017-18, date of order 04/06/2025. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income-tax,

Circle 28(2), Mumbai (for brevity, the “Ld.AO”) passed u/s 143(3) of the Act, date of order 19/12/2019.

2. The brief facts of the case is that the assessee filed the return of income for the impugned assessment year by declaring total income at Rs.10,36,590/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act by determining total income at Rs.1,25,43,050/-. In the assessment order, the Ld.AO made an addition of Rs.7,37,275/- under the head “Income from house property”; Rs.4,07,686/- on account of profit element for capitalization of shop; and also Rs.3,61,500/- for disallowance of payment to related party. The aggrieved assessee filed an appeal before the CIT(A). The Ld.CIT(A) deleted the addition relating to Rs.3,61,500/- on account of disallowance of payment to related party. The rest of the additions were upheld. Being aggrieved, the assessee filed an appeal before us by challenging two additions.

3. The Ld.AR argued and filed a legal paper book, which is kept on record. During the argument, Ld.AR stated that the assessee is a promoter and developer and some of the flats were booked in the closing stock during the impugned assessment year. The Ld.AO considered the deemed rent on the closing stock of flats in two projects at Karanjade and Ulwe is valued at Rs.1,31,65,668/-. The assessee had not offered any deemed rent while computing total income. The Ld.AO, by applying the decision of Hon’ble Delhi High Court in case of **CIT vs Ansal Housing & Construction (2016) 389 ITR 373 (Del)** and another case **CIT vs Ansal Housing Finance & Leasing Ltd 354 ITR 180 (Del)** calculated the annual rent @8% of the unsold flats which comes to Rs.10,53,250/-. After deduction of standard

deduction @30% amount to R. 3,15,9745/-, the balance amount is treated as 'Income from house property' which comes to Rs.7,37,275/- which is added back to the total income of the assessee.

4. The Ld.AR argued that the assessee booked all flats in closing stock which will come under the head 'business income'. The Ld.AO wrongly taken it under the head 'Income from house property'. He respectfully relied on the order of the co-ordinate bench of ITAT, Mumbai in the case of **Shri Rajendra Godshalwar vs ITO in ITA No.7470/Mum/2017, A.Y. 2012-13**, date of pronouncement **31/01/2019**. The relevant paragraphs of the decision are extracted below:-

"6. We have carefully considered the rival submissions. The short point involved in this appeal is the validity of addition sustained by the CIT(A) on account of notional ALV of the unsold flat, which is held by the assessee as stock-in-trade. Factually speaking, it is not in dispute that the flat in question is not yielding any rental income to the assessee, as it has not been let-out. It is also not in dispute that the project in question has been completed during the year under consideration, and the said flat is shown as stock-in-trade at the end of the year. At the time of hearing, the learned representative also pointed out that the flat has been ultimately sold on 06.11.2012. We find that our coordinate Bench in the case of C.R. Developments Pvt. Ltd. (supra) dealt with charging of notional income under the head 'Income from House Property' in respect of unsold shops which were shown by assessee therein as part of 'stock-in-trade'. As per the Tribunal "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.”

7. In our view, the aforesaid observation of our coordinate Bench squarely applies to the facts of the present case. In the case of M/s. Runwal Constructions (supra) also, similar issue has been dealt with by our coordinate Bench. In the case of M/s. Runwal Constructions (supra), the Bench noted the judgment of the Hon'ble Gujarat High Court in the case of CIT vs Neha Builders Pvt. Ltd., 296 ITR 661 (Guj.) as also the judgment of the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd., 354 ITR 180 (Delhi) and finally observed as under :-

“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 house property’. Thus, we direct the AO to delete the addition made under Section 23 of the Act as income from house property.”

Following the aforesaid precedents, we find merit in the plea of the assessee, which deserves to be upheld.

8. Insofar as the judgment of the Hon'ble Bombay High Court in the case of Sane & Doshi Enterprises (supra) relied by the CIT(A) is concerned, the same, in our view, does not help the case of the Revenue. Quite clearly, the case before the Hon'ble High Court was relating to actual rental income received on letting out of unsold flats. The dispute pertained to the head of income under which such income was to be taxed – whether as ‘Business Income’ or as ‘Income from House Property’. In the present case, the facts are quite different inasmuch as the unsold flat in question has not yielded any rental income as the flat has not been let-out, and is being held by the assessee purely as stock-in-trade; and, what the Assessing Officer has tried to do is to assess only a notional income thereof. Thus, the ratio of the judgment of the Hon'ble Bombay High Court in the case of Sane & Doshi Enterprises (supra) has been rendered in the context of qualitatively different facts, and is not applicable in the present case.

9. Apart therefrom, we find that Sec. 23(5) of the Act has been inserted by the Finance Act, 2017 w.e.f. 01.04.2018. In terms of the said section, it is prescribed that “where the property consisting of 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 be nil”. Though the said provision is effective from 01.04.2018, yet even if one is to see the present case from the standpoint of Sec. 23(5) of the Act, no addition is permissible in the instant year. It may be relevant to note that the completion certificate is stated to have been obtained on 28.11.2011 and going by the provisions of Sec. 23(5) of the Act, no addition is permissible in the instant assessment year. Be that as it may, we are only trying point out that the assessability of notional income in respect of unsold flat, which is taken as stock-in-trade, is not merited in the instant case. Thus, we set-aside the order of CIT(A) and direct the Assessing Officer to delete the addition.

10. In the result, appeal of the assessee is allowed, as above.”

5. The Bench asked to clarify the recent decisions of co-ordinate bench of ITAT-Mumbai in the case of **DCIT, CC-4(2), Mumbai vs M/s Inorbit Malls Pvt Ltd, ITA No.2220/Mum/2021, A.Y. 2017-18**, date of pronouncement **11/10/2022**. The relevant paragraphs are extracted below: -

“It is trite that the said amendment has to be given effect prospectively from 01.04.2018 as mentioned in the Explanatory Notes to the provisions of the Finance Act, 2017. It is a cardinal principle of the interpretation that the normal presumption which respect to an amendment is that is applicable prospectively unless and until specifically stated otherwise. The logic behind such as interpretation is that the law should govern current activities; i.e. to say “**lex prospicit non respicit**”, which means that “The Law looks forward and not backward.”

19. Now, that specific provision has been brought in the statute which provides that, if building or land held as stock in trade and the property has not been let out during the whole or any part

of the previous year, then annual value of such property after the period of one year (which was increased 2 years), shall be computed as income from house property and up to period of one year/two years income shall be taken to be „nil“. Thus, when specific provision has been brought with the effect from 01.04.2018 which cannot be applied retrospectively, then in our humble opinion it cannot be imputed that ALV of the flats held as stock in trade should be taxed on notional basis prior to AY 2018-19. Without any legislative intent or specific provision under the Act, such notional or deeming income should not be taxed as cardinal principle, because assessee is not aware that any hypothetical income is to be shown when he has not received any real or actual income. In our view of Hon^{ble} Delhi High Court is too harsh an interpretation.

20. Since, even prior to the amendment, there is one High Court judgment of Hon^{ble} Delhi High Court which is directly on this issue and against the Assessee, therefore same needs to be followed. Accordingly, we hold that Assessing Officer is correct in computing ALV on notional rent on unsold stock, but with following riders and directions to the AO as discussed herein after.

21. **Firstly**, the flats or units on which assessee has received any advance in this year or in the earlier years but has not delivered or given final possession of the said flat/unit to the buyer, then no notional rent can be charged as it tantamount to sale. **Secondly**, if unit of flat is shown as work-in-progress in the books then also no notional rent can be computed. And **Lastly**, Ld. Assessing Officer is not justified in making estimate of 8.5% of investment as ALV which is unsustainable in view of the decision of Hon^{ble} Bombay High Court in the case **CIT Vs. Tip top Typography** reported in 368 ITR 330, wherein, it has been held that rent should be computed at Municipal ratable value. We accordingly direct the AO to ascertain the Municipal ratable value for computing the notional rent. This is also been held by ITAT Mumbai Bench in the case of **Dimple Enterprise Vs. DCIT (Supra)**, in the following manner:-

“Now the question is of the rental value. The assessing officer has not levied the deemed rent on municipal ratable value or any nearly similar instance. The reliability of municipal ratable value has been duly upheld in several decisions. The Assessing Officer cannot make any ad hoc computation of deemed rent. Honorable Bombay High Court decision in the case of **CIT vs. Tip Top Typography** [2014] 48 taxmann.com 191/[2015] 228 Taxman 244 (Mag.)/[2014] 368 ITR 330 duly supports this proposition. Thus assessing officer has made

an ad hoc estimate of 8.5% of investment on the plea that assessee has not been able to provide the municipal ratable value. This is not sustainable on the touchstone of Hon'ble Bombay High Court decision in the case of Tip Top Typography (supra). In our considered opinion nothing stops the assessing officer from obtaining the municipal ratable value from Departmental or government machinery. Hence we direct the assessing officer to compute the valuation of deemed rent in accordance with our observation as above and take into account the Hon'ble Jurisdictional High Court decision as above. Since we have decided the issue by duly taking note of Hon'ble Jurisdictional High Court decision and have also applied Hon'ble High Court decision, the reference to other decision in this case is not considered relevant to adjudication in this case."

22. Thus, AO is directed to compute accordingly as per direction given above. Accordingly, ground No.1 of the revenue is partly allowed for statistical purposes."

6. The Ld. AR further proceeds his argument related to the addition on notion profit on capitalisation of stock. The assessee has capitalized shop at the cost of R.40,76,861/-. The assessee is in the business of real estate and the said shops are retained as part of the existing stock in trade of immovable properties. The Ld. AO after verifying the same has calculated the 10% of the shop value and added back the same to the total income for protection of revenue. The matter was carried before the CIT(A). The Ld.CIT(A) taken the observations in following manner:-

"6.2.2 In this case, assessee has capitalized shops at cost amounting to Rs. 40,76,861/-. The assessee, who is in the business of real estate, has retained part of the existing stock-in-trade of immovable properties (shops) of the business with him and held it as an investment. Hence, it has become his capital asset. On account of conversion of stock-in-trade to capital asset, there will be no business income. However, if he later sells the same capital asset then the gain arising there from might be a long-term capital gain and the assessee will enjoy the benefit of indexation and paying of tax @ 20% instead of normal rate. The assessee has capitalized the shops valued at Rs. 40,76,861/-. However, the assessee has not offered the profit element (difference between the

fair price and the cost price) embedded in such capitalization of the shops. Therefore, AO is justified in making addition on estimating the profit element arising on account of capitalization the shops by the assessee @10% of the cost of the shops which comes to Rs. 4,07,686/- Accordingly, the ground of the appellant on this issue is 'Dismissed'."

7. The Ld.DR argued and stands in favour of the orders of revenue authorities.

8. We have heard the rival submissions and carefully perused the material available on record.

Ground No. 1 – Addition on Account of Deemed Rent

1 In respect of the first ground relating to the addition towards deemed rent, we observe that the issue is no longer res integra and stands well settled by several decisions of the Hon'ble ITAT, Mumbai Benches. The assessee has placed reliance on the order of the Co-ordinate Bench in the case of **Shri Rajendra Godshalwar** (supra), wherein the Tribunal had duly considered the decision of the Hon'ble Delhi High Court in **Ansal Housing Finance** and noted that the provisions of section 23(5) were inserted by the Finance Act, 2017 with effect from 01.04.2018 to govern the computation of deemed rent in respect of unsold stock of flats held as inventory. On perusal of the latest order of ITAT-Mumbai in **Inorbit Malls Pvt. Ltd.** (supra), we find that the Tribunal therein had comprehensively considered the judgments of the Hon'ble Gujarat High Court in **CIT v. Neha Builders (2008) 296 ITR 661 (Guj)**, **Ansal Housing & Construction Ltd.** (supra), and **Ansal Housing Finance & Leasing Co. Ltd.** (supra), and had ultimately relied upon the decision of the Hon'ble jurisdictional High Court in **CIT v. Sane & Doshi Enterprises (2015) 377 ITR 165 (Bom)**. In that case, the Hon'ble High Court held that rental income derived from

the unsold portion of property constructed by a real-estate developer is assessable under the head “Income from House Property” and not as “Business Income.” The Hon’ble Bombay High Court further observed that the treatment given in the books of account, such as showing such property as stock-in-trade, would not alter the true character of the income for tax purposes. The Co-ordinate Bench of the ITAT, Mumbai, in **Inorbit Malls Pvt. Ltd.** (supra), also followed the ratio of the Hon’ble jurisdictional High Court in **CIT v. Tip Top Typography (2014) 48 taxmann.com 191 (Bom)**, wherein it was held that the Assessing Officer cannot make an ad-hoc estimate of notional rent at a fixed percentage of investment (such as 8%), and that the annual value must be determined on the basis of the Municipal Rateable Value (MRV). Respectfully following the aforesaid decisions, we set aside this issue to the file of the Ld. AO with a direction to recompute the deemed rent on the basis of the MRV of the unsold flats.

Accordingly, **Ground No. 1** raised by the assessee is allowed for statistical purposes.

8.1. **Ground No. 2** – Conversion of Stock-in-Trade into Capital Asset

In respect of Ground No. 2, the assessee has converted certain shops, earlier shown as stock-in-trade, into capital assets. The relevant statutory provision dealing with such conversion is section 28(via) of the Act, which was inserted by the Finance Act, 2018 with effect from 01.04.2019. Since the assessment year under consideration is A.Y. 2017-18, the said provision does not apply to the present case. On examining the order of the Ld. AO, we note that the conversion of stock-in-trade into capital asset was treated as a protective measure to safeguard the interest of revenue. However, there is nothing on record to show that the books of account maintained by the assessee were rejected or that the conversion was effected in contravention

of law. Hence, the addition made by the Ld. AO is not in accordance with law. The Ld. DR was unable to rebut by filing any contrary order against the submission of the Ld. AR. Considering that section 28(via) of the Act has no application to the impugned assessment year, the addition made on this account is hereby deleted. Consequently, **Ground No. 2** raised by the assessee is allowed.

9. In the result, the appeal of the assessee bearing **ITA No.4863/Mum/2025** is partly allowed for statistical purpose.

Order pronounced in the open court on 10th November 2025

Sd/-

(OM PRAKASH KANT)

ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/11/2025

Pavanan

sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, MUMBAI
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Asstt. Registrar), ITAT, MUMBAI