



14

§~36 to 40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITA 933/2005**

COMMISSIONER OF INCOME TAX Appellant
 Through: Mr. N.P. Sahni and Ms. Suruchi
 Aggarwal, Advocates.

Versus

ANSAL BUILDWELL LTD. Respondent
 Through: Mr. Satyen Sethi and Mr. Arta
 Trana Panda, Advocates.

WITH+ **ITA 148/2007**

COMMISSIONER OF INCOME TAX Appellant
 Through: Mr. N.P. Sahni and Ms. Suruchi
 Aggarwal, Advocates.

Versus

ANSAL BUILDWELL LTD. Respondent
 Through: Mr. Satyen Sethi and Mr. Arta
 Trana Panda, Advocates.

WITH+ **ITA 169/2008**

COMMISSIONER OF INCOME TAX Appellant
 Through: Mr. N.P. Sahni and Ms. Suruchi
 Aggarwal, Advocates.

Versus



15

ANSAL BUILDWELL LIMITED Respondent
Through: Mr. Satyen Sethi and Mr. Arta
Trana Panda, Advocates.

WITH

ITA 1071/2008

COMMISSIONER OF INCOME TAX DELHI Appellant
CENTRAL-I
Through: Mr. N.P. Sahni and Ms. Suruchi
Aggarwal, Advocates.

Versus

ANSAL BUILDWELL LTD. Respondent
Through: Mr. Satyen Sethi and Mr. Arta
Trana Panda, Advocates.

AND

ITA 582/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. N.P. Sahni and Ms. Suruchi
Aggarwal, Advocates.

versus

ANSAL BUILDWELL LTD Respondent
Through: Mr. Satyen Sethi and Mr. Arta
Trana Panda, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR



16

ORDER**29.11.2012**

%

1. The common question which arises for consideration in these appeals is as follows:

“Whether the ITAT was correct in law in deleting the addition made by the Assessing Officer on account of notional annual letting value of unsold flats and spaces owned by the assessee by applying the provisions of sections 22 & 23 of the Income Tax Act, 1961?”

2. The instant question has been decided in respondent's own sister concern, namely, Ansal Housing Finance and Leasing Company Limited in ITA No. 18 of 1999 and other connected cases by a common judgment dated 31st October 2012. The discussion answering the question is extracted as follows:

13. In the present case, the assessee is engaged in building activities. It argues that flats are held as part of its inventory of stock in trade, and are not let out. The further argument is that unlike in the other instances, where such builders let out flats, here there is no letting out and that deemed income – which is the basis for assessment under the ALV method, should not be attributed. This Court is of the opinion that the argument, though attractive, cannot be accepted. As repeatedly held, in East India, Sultan, and Karanpura, the levy of income tax in the case of one holding house property is premised not on whether the assessee carries on business, as landlord, but on the ownership. The incidence of charge is because of the fact of ownership. Undoubtedly, the decision in Vikram Cotton indicates that in every case, the Court has to discern the intention of the assessee; in this case the



17

intention of the assessee was to hold the properties till they were sold. The capacity of being an owner was not diminished one whit, because the assessee carried on business of developing, building and selling flats in housing estates. The argument that income tax is levied not on the actual receipt (which never arose in this case) but on a notional basis, i.e. ALV and that is therefore not sanctioned by law, in the opinion of the Court is meritless. ALV is a method to arrive at a figure on the basis of which the impost is to be effectuated. The existence of an artificial method itself would not mean that levy is impermissible. Parliament has restored to several other presumptive methods, for the purpose of calculation of income and collection of tax. Furthermore, application of ALV to determine the tax is regardless of whether actual income is received; it is premised on what constitutes a reasonable letting value, if the property were to be leased out in the marketplace. If the assessee's contention were to be accepted, the levy of income tax on unoccupied houses and flats would be impermissible – which is clearly not the case.

14. As far as the alternative argument that the assessee itself is occupier, because it holds the property till it is sold, is concerned, the Court does not find any merit in this submission. While there can be no quarrel with the proposition that "occupation" can be synonymous with physical possession, in law, when Parliament intended a property occupied by one who is carrying on business, to be exempted from the levy of income tax was that such property should be used for the purpose of business. The intention of the lawmakers, in other words, was that occupation of one's own property, in the course of business, and for the purpose of business, i.e. in active use of the property, (instead of mere passive possession) qualifies as "own" occupation for business purpose. This contention is, therefore, rejected. Thus, this question is answered in favour of the revenue, and against the assessee."

3. Learned counsel for the respondent-assessee urged that even though on



18

facts, for some years, the Revenue cannot seek to assess the property since they had already sold the same. It is urged that this position arose for the Assessment Year 2004-05 when the assessee's contention in that regard was accepted by the Commission of Income Tax (Appeals) [CIT(A)]. It is further submitted that this question being purely factual should be recorded and the concerned lower authorities should be directed to conduct proper inquiries while finally assessing the tax liability of the assessee.

4. This Court has considered the submissions of learned counsel for the parties.

5. The record would indicate that the only question of law which was considered and framed on 5th October 2010 pertained to whether the notional annual letting value can be adopted in respect of the flats, held as stock-in-trade, lying unsold at the end of the year. According to the assessee, relief was accorded by the CIT(A) for the Assessment Year 2004-05 having regard to the facts of the case. However, that year was not under consideration before this Court.

6. In view of the above developments and position, the question is answered in favour of the Revenue and against the assessee.



19

7. These appeals are, accordingly, allowed.

S. Ravindra Bhat
S. RAVINDRA BHAT, J.

R. V. Easwar
R. V. EASWAR, J.

NOVEMBER 29, 2012

AK