

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 2779/Mum/2023
(Assessment Year: 2012-13)**

**ITA No.2777/Mum/2023
(Assessment Year:2014-15)**

M/s Shamdarshan Properties Pvt Ltd, 112/113 Mittal Towers B, Wing, Nariman Point Mumbai-400021.	बनाम/ Vs.	DCIT Circle 3(3)(1), Aayakar Bhavan, M.K.Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS5220R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri.H.S. Raheja.AR
प्रत्यर्थी की ओर से/Respondent by :	Ms.Bhumika Patel- Sr.DR

सुनवाई की तारीख / Date of Hearing	18/01/2024
घोषणा की तारीख /Date of Pronouncement	22/01/2024

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

These two appeals are filed by the assessee against the separate orders of National Faceless Appeal Centre(NFAC) Delhi/CIT(A passed under section 143(3) and U/sec 250 of the Income Tax Act, 1961 (“the Act”).

2. Since the issues in these two appeals are similar and identical, hence are clubbed, heard and a consolidated order passed. For the sake of convenience, we shall take up the ITA No. 2779/M/2023.A.Y. 2012-13 as a lead case and the facts narrated. The assessee has raised following grounds of appeal:-

1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) was not justified in confirming the addition of Rs. 32,92,135/- (rectified to Rs. 16,67,015/- u/s 154 of the IT Act by the AO) made by the Assessing Officer under the head "Income from Property" for the assessment year under appeal.

2. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) was not justified in confirming the addition of notional income in respect of 13 flats held by the appellant partly as stock in trade and partly as fixed assets holding that the appellant was liable to notional income on the same under the provisions of S. 22 of the Income-tax Act 1961.

3. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) has grossly erred in applying the decision of the Delhi High Court in the case of Ansal Housing Finance Leasing Co. Ltd. WITHOUT PREJUDICE

4. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) was not justified in confirming the estimation of the ALV of the flats on the basis of the proportionate rent received in respect of flat no. 20 without which was made by the Assessing Officer without issuing any show cause notice to the

5. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) has erred in conforming the addition based on the rent received for flat no. 20 without appreciating that the same could not form the basis of the ALV for all other flats in the building. WITHOUT PREJUDICE

6. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) has grossly erred in not adopting the Municipal rate able value as the basis of estimating notional income in respect of the 13 flats and confirming the c addition based on the rent received for flat no. 20. WITHOUT PREJUDICE

7. On the facts and in the circumstances of the case and in law the Commissioner of Income-tax (Appeals) has grossly erred in not granting (deduction) allowance (vacancy allowance) for the period during which the 13 flats were vacant in the financial year.

8. The appellant craves leave to add to, alter or vary the grounds of appeal at or before the hearing of the appeal.

3. The brief facts of the case are that, the assessee company is engaged in business of construction works. The assessee has filed the return of income for A.Y.2012-13 electronically on 21.09.2012 disclosing a total loss of Rs.6,24,226/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/sec 143(2) and U/sec 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and the submitted the details. The Assessing Officer (A.O) found that the assessee has

constructed 20 flats in a building known as “Sham Sharan” at TPS Sangamwadi, Pune and the assessee disclosed 6 flats as transferred to fixed assets and remaining 14 flats are treated as stock in trade and are disclosed in the balance sheet. The assessing officer on perusal of the Audited financial statements found that the assessee company has disclosed inventory value of 14 flats at cost of Rs.45,91,986/-. Whereas the remaining 6 flats are disclosed under the fixed Assets, and the assessee has offered the rental income after claiming vacancy allowance under income from house property as per the computation of income Rs.2,16,348/-. The A.O has issued letter dated 16.01.2015 to the submit detailed reasons for conversion of stock in trade into fixed assets and why flats shown should not be considered as deemed to be let out and the notional rent to be taxed under the head income from house property. In compliance to notice, the assessee has filed the reply by letter dated 29.03.2015 dealt at Para 4.3 of the order as under:-

“4.3.....

"In this regard, I have to state that the claim of vacancy allowance is very much a part of the Income-tax Act, 1961. S.23(c) dealing with the method of determination of Annual Value states that where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less

than the sum referred to in clause (1), the amount so received or receivable would be the annual rent.

The sum referred to in S.23(a) is the sum for which the property might reasonably be expected to let from year to year.

Hence since the property was intended to be let but the owner could not get any tenant / licensee and hence the said property was vacant during the whole year, the annual value of the same would be NIL as the assessee would be entitled to vacancy allowance."

"As regards the query relating to conversion of the stock in trade into fixed assets, and estimation of notional rent for the same, I have to state that the reply given in para 1 above will apply to the said flats as well since in case the same are vacant, the notional rent as per S.23(3) r.w.s23(1) would be NIL"

In view of the above, I have to submit that the returned income may be accepted and no notional income be added for the flats that were partly occupied or vacant"

4. Whereas the assessing officer was not satisfied with the explanations and dealt on the provisions under section 22 and U/sec 23(1) of the Act and computed the Annual let out value (ALV) of flats disclosed under stock in trade of Rs.

47,78,400/- and allowed deduction u/s 24(a) @ 30% and the balance amount was taxed under income from house property of Rs.32,92,135/- and assessed the total income of Rs. 26,67,910/- and passed the order u/s 143(3) of the Act dated 31.03.2015.

5. Aggrieved, by the order, the assessee has filed an appeal with the CIT(A). The CIT(A) has considered the grounds of appeal, statement of facts, submission of the assessee and findings of the assessing officer but has confirmed the action of the AO and dismissed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of assessing officer in computing the Annual let out value(ALV) of the flats disclosed under the stock in trade and the assessee made sincere efforts to sell the flats in the financial year but due to market conditions, the stock in trade consisting the flats could not be sold. The ALV determined without considering the factual aspects and actual rental value in respect of other flats. Further the amendment in finance Act 2017, in respect of provisions U/sec23 (5) of the Act is applicable to unsold inventory of flats disclosed under stock in trade is effective from A.Y.2018-19 and not to the present A.Y.2012-13. The Ld. AR substantiated the submissions with the factual paper

book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld. DR relied on the order of the CIT(A).

7. We have heard rival submissions and pursued the material on record. The sole matrix of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the action of the assessing officer in determining the ALV of flats disclosed in the stock in trade as per the Accounting standards and policies being followed consistently by the assessee. Further, the Ld. AR referred to the audited profit & loss account at Page 5 of the paper book, disclosing the revenue from operations as per note 12, includes rental income from flats disclosed under Fixed Assets and further in the computation of income of the assessee the rental income was excluded from business operations income and was disclosed separately under Income from House Property. We on perusal of the balance sheet find, under inventories note 8, were the assessee has disclosed the cost of flats of Rs. 45,91,896/- which is opening balance for the subsequent F.Y.2012-13. The Ld.AR relied on the Honble Tribunal decision on the similar and identical facts, on the determination of ALV of un sold flats disclosed under stock in trade is not sustainable. We find Honble Tribunal in the case of Unique Estates Development Co Ltd vs DCIT in ITA No. 4598/M/2019 for A.Y 2016-17 dated 22.03.2021 has dealt on

the provisions of the Act, judicial decisions and granted the relief observing at at Page 7 Para 6 to 9 of the order as under:-

“6. We have heard the rival submissions and perused the material available on record. The ld. AR has been emphasizing that the CIT(A) has erred in confirming the addition by the AO, in determining the ALV value of the unsold flats. Whereas, in identical and similar issue, the Hon’ble Tribunal in assessee’s own case has dealt on the disputed issue relied on the judicial decisions and granted the relief in ITA No. 2811 & 2812/Mum/2018 at page 3 para-5 read as under:

“5. After hearing both the parties and perusal of material available on record, we observe that the issue of estimation of notional rent in respect of unsold plots has been decided in the case of assessee’s sister concern Makewaves Sea Resort Pvt. Ltd (supra), wherein it has been held as under:

“8. We have heard the rival submissions of the parties and also perused the material on record including the decision relied upon by the assessee. As pointed out by the Ld. counsel the coordinate Bench has decided the identical issue in favour of the assessee in the case of Ferani Hotels Ltd. vs. ACIT (supra). The findings of the coordinate Bench are as under:-

“6. Under this issue the assessee has challenged the confirmation of the addition of Rs.13,22,90,044/- under the head of income from house property on account of deemed income from unsold unit/ flat which was closing stock of the appellant as per provisions of Sections 22 and 23 of the Act. At the very outset, the Ld. Representative of the assessee has argued that the assessee is deriving its income from hotel business and construction. The assessee was also deriving income from dividend, share of profit and sale of flats and due to the recession, the assessee failed to sold out all the flats, therefore, some flats remain vacant which was being treated

as stock in trade. The AO has wrongly assessed the notional rent and assessed the rent in view of the provision u/s 24 of the Act wrongly which can only be treated under the head of income from business, therefore, the finding of the CIT(A) is wrong against law and facts and is liable to be set aside. It is also argued that the case of the assessee is fully covered by the case of Runwal Construction Vs. ACIT in ITA. No. 5408/M/2016 & C.R. Developments Vs. JCIT in ITA. No. 4277/M/2012 dated 13.05.2015. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the facts of the case and relevant record on the file, we noticed that the object of the assessee is deriving of income from Hotel Business and Construction. The assessee company is running a five star hotel in the name and style of The Carlton at Kodaikannal, Tamil Nadu, having rooms and other facilities. The assessee also derived income from dividend, share of profit from partnership firm and profit from sale of flats. The assessee failed to sold the flat which was being treated by him as stock in trade. The AO assessed the notional income and brought to tax as income as house property which has no doubt confirmed by CIT(A). It is to be seen whether the income of the assessee is liable to be treated as house property or business income. It is necessary to discuss the finding in the case of M/s. Runwal Constructions Vs. ACIT in ITA. No.5409/M/2016 dated 22.02.2018 which has been given in para no. 7 to 10 and are hereby reproduced as under.: -

“7. We have heard the rival submissions and perused the orders of the authorities below and the decisions relied upon. It is an undisputed fact that the assesseees are in the business of builders, developers and construction. Both the assesseees have constructed various projects and the projects were treated as stock in trade in the books of account. Flats sold by the assesseees were assessed under the head ‘income from business’. There were certain unsold flats in stock in trade which the AO treated as property assessable under the head ‘income from house property’ and computed notional annual letting value on such unsold flats placing reliance on the

decision in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra). The action of the AO was upheld by the learned CIT(A).

8. The Hon'ble Gujarat High Court in the case of Neha Builders Pvt. Ltd. (supra) considered the question whether the rental income received from any property in the construction business can be claimed under the head 'income from property' even though the said property was included in the closing stock. The Hon'ble Gujarat High Court held that if the business of the assessee is to construct the property and sell it or to construct and let out the same, then that would be the business and the business stocks, which may include movable and immovable, would be taken to be stock in trade and any income derived from such stocks cannot be termed as income from house property. While holding so the Hon'ble High Court observed as under: -

"8. True it is, that income derived from the property would always be termed as 'income' from the property, but if the property is used as 'stock-in-trade', then the said property would become or partake the character of the stock, and any income derived from the stock, would be 'income' from the business, and not income from the property. If the business of the assessee is to construct the property and sell it or to construct and let out the same, then that would be the 'business' and the business stocks, which may include movable and immovable, would be taken to be 'stock-in-trade', and any income derived from such stocks cannot be termed as 'income from property'. Even otherwise, it is to be seen that there was distinction between the 'income from business' and 'income from property' on one side, and 'any income from other sources'. The Tribunal, in our considered opinion, was absolutely unjustified in comparing the rental income with the dividend income on the shares or interest income on the deposits. Even otherwise, this question was not raised before the subordinate Tribunals and, all of sudden, the Tribunal started applying the analogy.

9. From the statement of the assessee, it would clearly appear that it was treating the property as 'stock-in trade'. Not only this, it will also be clear from the records that, except for the ground floor, which has been let out by the assessee, all other portions of the property constructed have been sold out. If that be so, the property, right from the beginning was a 'stock-in-trade'." 9. Similarly the Coordinate Bench has considered similar issue as to whether the unsold property which is held as stock in trade by the assessee can be assessed under the head 'income from house property' by notionally computing the annual letting value from such property and the Coordinate Bench considering the decision of the Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) which the AO relied upon and the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. vs. CIT reported in 373 ITR 673, held that unsold flats which are in stock in trade should be assessed under the head 'business income' and there is no justification in estimating rental income from those flats and notionally computing annual letting value under Section 23 of the Act. While holding so the Coordinate Bench observed as under: -

"3. The ld. AR placed the order of Bombay Tribunal in the case of M/s Perfect Scale Company Pvt. Ltd., ITA Nos.3228 to 3234/Mum/2013, order dated 6-9-2013, wherein it was held that in respect of assets held as business, income from the same is not assessable u/s.23(1) of the IT Act.

4. On the other hand, ld. DR relied on the order of Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing Co. Ltd., 354 ITR 180 (Delhi) in support of the proposition that even in respect of unsold flats by the developer is liable to be taxed as income from house property.

5. We have considered rival contentions and perused the record. The issue under consideration has been restored by the CIT(A) to the file of AO to compute the annual value. Recently the Hon'ble Supreme Court in the case of M/s Chennai Properties & Investments Ltd. Vs. CIT, reported in (2015) 42 SCD 651, vide judgment dated 9-4-2015 has held

that where assessee company engaged in the activity of letting out properties and the rental income received was shown as business income, the action of AO treating the rental income as income from house property in place of income from business shown by the assessee was held to be not justified. The Hon'ble Supreme Court held that since the assessee company's main object, is to acquire and held properties and to let out these properties, the income earned by letting out these properties is main objective of the company, therefore, rent received from the letting out of the properties is assessable as income from business. On the very same analogy in the instant case, assessee is engaged in business of construction and development, which is main object of the assessee company. The three flats which could not be sold at the end of the year was shown as stock-intrade. 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." 10. In the case on hand before us it is an undisputed fact that both assessees 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.

7. In the case of titled as M/s. C.R. Developments P. Ltd. Vs. JCIT. The relevant para in 5 is hereby reproduced as under.: -

“5. We have considered rival contentions and perused the record. The issue under consideration has been restored by the CIT(A) to the file of AO to compute the annual value. Recently the Hon’ble Supreme Court in the case of M/s Chennai Properties & Investments Ltd. Vs. CIT, reported in (2015) 42 SCD 651, vide judgment dated 9-4-2015 has held that where assessee company engaged in the activity of letting out properties and the rental income received was shown as business income, the action of AO treating the rental income as income from house property in place of income from business shown by the assessee was held to be not justified. The Hon’ble Supreme Court held that since the assessee company’s main object, is to acquire and held properties and to let out these properties, the income earned by letting out these properties is main objective of the company, therefore, rent received from the letting out of the properties is assessable as income from business. On the very same analogy in the instant case, assessee is engaged in business of construction and development, which is main object of the assessee company. The three flats which could not be sold at the end of the year was shown as stock-intrade. 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 stockintrade 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.”

8. In the factual position of the present case is quite similar to the facts of the case mentioned above. In view of the law relied upon the law representative of the assessee i.e. M/s.

Runwal Constructions Vs. ACIT and M/s. C.R. Developments P. Ltd. Vs. JCIT (supra), we are of the view that the finding of the CIT(A) on this issue is wrong against law and facts whereas the case of the assessee has duly been covered by the law mentioned above, therefore, by honoring the orders mentioned above. We deleted the addition raised by assessee on account of notional income of vacant flats. Accordingly, this issue is decided in favour of the assessee against the revenue.”

9. The facts and the issue involved in the present case are similar to the facts of the case and the issue involved in the case of Ferani Hotels Pvt. Ltd. (supra). In the said case, the coordinate Bench has deleted the addition confirmed by the CIT (A) on account of notional rent determined by the AO by holding that the ALV of the unsold unit of assessee project is assessable under the head ‘income from house property’. Since, the findings of the Ld.CIT (A) is not in accordance with the decision of the coordinate Bench rendered in the case of Ferani Hotels Pvt. Ltd. (supra), we respectfully following the decision of the coordinate Bench set aside the order of the Ld. CIT (A) and allow the appeal of the assessee and direct the AO to delete the addition made under the head ‘income from house property’.

On perusal of the said order, we find that the issue is squarely covered in favour of the assessee and, hence, the order of the CIT(A) upholding the addition made by AO estimating the ALV in respect of unsold flats cannot be sustained. The decision relied upon by the learned DR in the case of CIT vs. Gundecha Builders (supra), is distinguishable on facts as in that case the unsold portion of the property constructed by the builder was given on rent and rental income was treated as business income. Whereas, in the present case, the assessee has not let out any flats and all were lying unsold as stock in trade. Accordingly, we are inclined to set aside the order of the CIT(A) and direct the AO to delete the addition on account of estimation of ALV in

respect of unsold flats for A.Y. 2013-14. The appeal of the assessee is allowed.

8. We follow the judicial precedence and apply the ratio of the decision to the facts of the present case. Accordingly We set-aside the order of CIT(A) and direct the AO to delete the addition and allow the grounds of appeal of the assessee.

9. In the result, the appeal filed by the assessee is allowed.”

8. The Ld.AR contentions are the amendment in finance Act 2017, in respect of provisions U/sec23 (5) of the Act is applicable to unsold inventory of flats disclosed under stock in trade is effective from A.Y.2018-19 and not to the present A.Y.2012-13. Therefore, there is no provision to assess notional rent/ALV of unsold flats u/sec 22 of the Income Tax Act in the year under consideration. We consider it appropriate to refer to the observations of the Coordinate Bench of the Hon'ble Tribunal in case of NMS Enterprises Vs Pr.CIT in ITA No. 1103/M/2022 for assessment year 2017-18 dated 25.01.2023, though in the context of revision U/sec263 of the Act has dealt on the applicability of provisions of section 23(5) of the Act prospectively and granted relief observing at Para 7 to 9 of the order read as under:-

“7. We heard the rival submissions and perused the material on record. The Ld. AR contentions are that the order passed by the AO does not satisfy the twin conditions being erroneous and prejudicial to the interest of the revenue. The Ld. AR also submitted that the Pr. CIT is of the opinion that AO has not conducted enquiry in respect of charging of annual value of closing stock of flats under the head income from house property and the AO has also overlooked the facts with

respect to the additions. Whereas the assessee has filed the explanations in respect of notice issued u/s 142(1) of the Act and referred to the submissions at page 15 to 26 of the paper book. Further, the contentions of the Ld. AR that when the charging of income under income from house property applying the deemed provisions is applicable from A.Y.2018-19 is a debatable and therefore revision proceedings shall not sustained. The Ld. AR substantiated the submissions relying on the judicial decisions:

- (i) M/s. C.R. Development Pvt. Ltd.-vs-JCIT, ITA No. 4277/M/2012 order dt. 13.05.2015*
- (ii) M/s Runwal Constructions -vs- ACIT ITA No.5408/Mum/2016, order dt.22.02.2018, Hon. Members, "G" Bench of the Mumbai Tribunal.*
- (iii) Progressive Homes-Vs-ACIT ITA No. 5082/Mum/2016 dated 16.05.2018, Hon. Members, "G" Bench, ITAT Mumbai.*
- (iv) ACIT-vs-Haware Construction Private Limited ITA No.3321/Mum/2016 and 3172/Mum/2016 dated 31.08.18, Hon. Members, "C" Bench, ITAT Mumbai.*
- (v) Haware Engineers and Builders Pvt. Ltd. -vs- DCIT ITA No.7155/Mum/2016 dated 10.10.2018, Hon. Members, "H" Bench, ITAT Mumbai.*
- (vi).M/s Cosmopolis Constructions Vs ACIT CC Pune ITA No 191/Pun/2022 dated 11-1-2013.*

8. Finally the Ld. AR explained that the disputed was dealt by the A.O. and the assessee has complied with the notices which cannot be ignored. The AO in the assessment proceedings having satisfied with the claim has not made any

comment on the issue. Further the contentions of the Ld. AR that the ALV of the house property held as stock in trade has to be considered on deeming provisions as per finance Act 2017 from the A.Y 2018-19 and whereas the current A. 2017-18. Further if any query is raised in the assesment proceedings and it was responded by the assessee, mere fact that it is not dealt with by the A.O. in the order cannot implied that there is no application of mind. Therefore considering the ratio of judicial decisions on applicability of provisions prospectively, the observations of the Pr.CIT cannot be acceptable as the order passed by the A.O. does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of the Pr.CIT and allow the grounds of appeal in favour of the assessee.

9. In the result, the appeal filed by the assessee is allowed.”

9. We considering the facts, circumstances and the amendment, the annual value of unsold flats held as stock in trade has to considered as per the amendment in the finance Act 2017 under section 23(5) of the Act is applicable from A.Y 2018-19 and the present case is A.Y.2012-13. Accordingly we fallow the judicial precedence and rely on the ratio of the legal decisions and the applicability of amendment U/sec 23(5) of the act and we set aside the order of the CIT(A) and direct the assessing officer to delete the addition of annual let out value (ALV) of the unsold flats and allow the grounds of appeal in favour of the assessee.

10. In the result, the appeal filed by the assessee is allowed.

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11. As the facts and circumstances in this appeal is identical to ITA No. 2779/M/2023 for the assessment year 2012-13 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis accordingly, we allow the grounds of appeal in favour of the assessee.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 22.01.2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 22/01/2024
Shubham Lohar

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / Concerned CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai