

# Judicial Analysis of Income Tax on unsold flats owned by the Builder

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**Abstract:** *A company engaged in business of construction and sale of flats and if some of the flats remain unsold, the question may raised whether builder would be liable to pay tax on notional rent in respect of unsold flats, owned by the assessee . In view of the above Delhi High Court case of CIT v. Ansal Housing and Construction Ltd.(2013) 40 taxmann.com 305 (Del), the Finance Act, 2017 has inserted section 23(5) in the Income Tax Act, 1961, which provided that unsold flats held as stock-in-trade 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 as nil, afterwards they are liable to pay tax on notional rent in respect of unsold flats owned by the assessee.*

**Keywords:** House property, Notional rent, Stock-in-trade, Let out, Business income

**Introduction:** Under the head 'Income from House Property' the basis of charge

is the annual value of property. The property consist of any buildings or land appurtenant thereto, of which assessee is the owner, and which is not used for the purpose of assessee's business or profession. Income from one self-occupied house fully exempted from income tax. If a person is owner of more than one house then one of the house used for self-residence would be exempt from the income tax , and rest would be liable to charge to tax under the head the income from house property. Builders these day sold some of the flats and keep with him rest of the flats, then question may raised whether builder would be liable to pay income tax on the remaining unsold vacant flats owned by him under the head income from house property. The Delhi High court in the case of *CIT v. Ansal Housing and Construction Ltd.(2013) 40 taxmann.com 305 (Del)*, held that the assessee engaged in business of construction and sale of flats is liable to pay tax on notional rent in respect of

unsold flats, owned by the assessee at the end of the relevant financial year if these flats are not let out for the whole of the previous year. It means that if the assessee engaged in the business of construction of the flats or house and sold some of them and kept some of them in his hand so that he may sell them in the future at a higher price, then unsold flats he would be liable to charge to tax under the head of income from house property. Unsold flats in the hand of the builder would not be treated as stock in trade and they would be liable to pay tax on notional rent in respect of unsold flats.

Whereas, the Supreme Court in the case of *Chennai Properties & Investment Ltd. v. CIT (2015) 56 taxmann.com 456(SC)* held that where the assessee company was incorporated with main objectives, as stated in the Memorandum of Association, to acquire the properties in the city and to let out those properties as well as make advances upon security of lands and buildings or other properties or any interest therein and the assessee had rented out such properties and the rental income received therefrom was shown as income from business, but the assessing officer taxed such income as income from house

property which was accepted by the High Court, the Supreme Court on appeal held that the letting of the properties is in fact the business of the assessee. The assessee rightly disclosed the income under the head of income from business. It cannot be treated as income from house property.

In the case of *Rayala Corporation Pvt. Ltd. v. ACIT (2016) 386 ITR 500(SC)*, the Supreme Court held that where as the business of the company is to lease its property and to earn rent, it was held that the income so earned should be treated as its business income.

In the case of *Heritage Hospitality Ltd. v. DCIT (2016) 68 taxmann.com 150(Hyd) Trib*, Hyderabad Tribunal held that where as in terms of memorandum of association the main object of the assessee company was to carry on business of hotels, resorts, boarding, lodges, guest houses etc. and entered into agreement with various companies for accommodating their employees from time to time and received rent on a daily basis, it was held that said income would be taxed as business income and not as income from house property.

In view of the above Delhi High Court case of *CIT v. Ansal Housing and*

*Construction Ltd.*(2013) 40 *taxmann.com* 305 (Del), the Finance Act, 2017 has inserted section 23(5) in the Income Tax Act, 1961 , with effect from assessment year 2018-19 which provides as follows:

“(5) 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 upto 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 as nil.”

**Conclusion:** The provision of clause 23(5) would be applicable in case the builder held the building and the land appurtenant thereto is held as stock-in-trade. The unsold flats held as stock-in-trade 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 as nil, afterwards they are liable to pay tax on notional rent in respect of unsold flats owned by the assessee. If the builder held the building and land appurtenant thereto not as stock-in-trade

but as business purpose or for letting out that particular building then not entitled to take the benefit of section 23(5). Whereas in the case of *Rayala Corporation* and *Chennai properties* case the provisions of section 23(5) would not be applicable because the assessee was in the business of letting the building and would not held it as stock-in-trade but as a fixed asset which is meant for letting.

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