

**IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. No. 3835/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Parth Ajit Pawar Ground Floor, Datta Bhawan; Gokhale Road (N), Dadar (W), Mumbai – 400 028.	बनाम/ Vs.	Pr. Commissioner of Income-Tax -21 Mumbai
स्थायीलेखासं ./ जीआइआरसं ./ PAN/GIR No. AYEPP2240F		
(अपीलार्थी/Assessee)	:	(प्रत्यर्थी / Revenue)

अपीलार्थी की ओर से/Assessee by	:	Shri S.L Ratnaparkhi, A.R
प्रत्यर्थी की ओर से/ Revenue by	:	Shri. H.N Singh, CIT D.R

सुनवाई की तारीख/ Date of Hearing	:	11/09/2017
घोषणा की तारीख / Date of Pronouncement	:	14/09/2017

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER

The present appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income-tax-21, Mumbai (for short 'Pr. CIT'), under Sect. 263 of the Income tax act,

1961 (for short 'Act') dated 30.03.2017. The assessee assailing the order of the Pr.CIT had raised before us the following grounds of appeal:-

- “1. The learned Pr. CIT erred in framing the order u/s 263 on 30.03.2017 holding the order framed by the assessing officer u/s 143(3) of the I. Tax Act on 31.03.2015 to be erroneous and prejudicial to the interest of revenue and accordingly the assumption of jurisdiction by the Pr. CIT u/s 263 was not valid and justified.
2. The learned Pr. CIT erred in setting aside the assessment for A.Y. 2012-13 framed on 31.03.2015 by the ld. A.O u/s 143(3) of the I.Tax Act, 1961, with a direction:

 - (i). To verify the source of investment in acquisition of plot no. 21, admeasuring 1919.37 sq. mtrs at Pune, inspite of the fact that the investment by way of payment to vendors for the said plot was made in F.Y. 2008-09 and not in the previous year relevant to A.Y. 2012-13 and the source for such investment beyond doubt and
 - (ii). To verify the applicability of section 50C in the hands of the seller for which the assessment of the assessee could not be set aside.
3. The appellant craves leave to add, alter, amend and/or vary the grounds of appeal at any time before the decision of the appeal.”

2. Briefly stated, the facts of the case are that the assessee had e-filed his 'return of income' for A.Y. 2012-13 on 30.07.2012, declaring total income of Rs. 4,78,450/-. The 'return of income' of the assessee was processed as such under Sec. 143(1) of the 'Act'. That on the basis of 'AIR' information that the assessee had during the year under consideration purchased certain Immovable property for a consideration of Rs. 5,00,00,000/-, the case of the assessee was taken up for scrutiny assessment. The A.O vide his order passed under Sec. 143(3), dated. 30.03.2015 assessed the income of the assessee at Rs. 12,56,775/-.

3. That after the culmination of the assessment proceedings the Pr.CIT-21, Mumbai, called for the case records of the assessee. The Pr. CIT on perusing the case records observed that the assessee vide 'Agreement' dated. 18.11.2011 which was registered on the same day, had purchased a Plot no.21 at Pune admeasuring 1919.37 Sq.mtrs from Sh. Avinash Bhosale for a consideration of Rs. 5,00,00,000/-. The Pr.CIT while deliberating on the case records of the assessee observed that the assessee on being called upon by the A.O during the course of the assessment proceedings to furnish the details of the source of investment for purchase of the aforesaid property, had therein submitted that the same was made from the unsecured loan taken during the year from his mother Mrs. Suneeta Pawar. However, on perusal of the details and the bank statement it was gathered by the Pr. CIT that the loan of Rs. 5,00,00,000/- raised by the assessee from his mother Mrs. Suneeta Pawar on 14.05.2011 was paid to M/s Kalpavriksha Planation Pvt. Ltd on 19.05.2011 and not to the seller of the property, i.e Sh. Avinash Bhosale. The Pr. CIT observed that a perusal of Para 2 - Page 6 of the 'Agreement' revealed that the assessee had as a matter of fact already paid the purchase

consideration of Rs. 5 crore to the seller of the property, viz. Sh. Avinash Bhosale on 21.08.2008, vide Cheque No. 074080 and Cheque No, 074070, dated. 21.08.2008. That in the backdrop of the aforesaid factual matrix, it was thus concluded by the Pr. CIT that during the course of the assessment proceedings, neither the assessee had explained the source of investment made by him towards purchase of property, nor was the same verified by the A.O. The Pr. CIT further observed that though the property was purchased by the assessee for a consideration of Rs. 5 Crore, however, the value adopted by the Stamp-duty Valuation Authority was Rs. 5,38,45,100/-. The Pr.CIT on the basis of the aforesaid facts thus held a conviction that though the provisions of Sec. 50C were applicable in the hands of the seller of the property, however, the said aspect was also not deliberated upon by the A.O. The Pr. CIT on the basis of his aforesaid observations, therein holding a conviction that the assessment framed by the A.O vide his order passed under Sec. 143(3), dated.30.03.2015, was erroneous and prejudicial to the interest of the revenue, therefore, called upon the assessee to show cause as to why the said order may not be revised under Sec. 263 of the 'Act'.

4. The assessee in his reply submitted before the Pr. CIT that he had made a payment of the purchase consideration of Rs. 5 Crore to the seller of the aforesaid property, viz. Sh. Avinash N. Bhosale & Mrs. Gauri A. Bhosale on 21.08.2008, the source of which was a loan raised by him from his client, i.e M/s Kalpavruksha Plantation Pvt. Ltd. It was submitted by the assessee that because of certain reasons the agreement could not be executed and registered during the said year, therefore, the amount paid to the seller of the property, viz. Sh. Avinash N. Bhosale & Mrs. Gauri A. Bhosale was shown as an

advance, while for the loan raised from M/s Kalpavruksha Plantation Pvt. Ltd. was reflected as an unsecured loan in the 'balance sheets' of the assessee for the A.Y 2009-10 till 2011-12. The assessee further submitted before the CIT that as the lender, viz. M/s Kalpavruksha Plantation Pvt. Ltd. was pressing hard for the repayment of the loan, therefore, the assessee had raised a loan of Rs. 5 Crore from his mother Mrs. Suneeta Pawar on 14.05.2011, which was utilised for repaying the outstanding loan of Rs. 5 Crore to M/s Kalpavruksha Plantation Pvt. Ltd. It was submitted by the assessee that as on the date of filing of the 'return of income' for the year under consideration, viz. A.Y.2012-13 the loan of Rs. 5 Crore was outstanding, therefore, for the said reason, during the course of the assessment proceedings it was submitted by the assessee that the source of purchase of the property was the loan of Rs. 5 Crore raised by him from his mother Mrs. Suneeta Pawar. That in respect of the applicability of Sec. 50C, two fold submissions were made by the assessee, viz. (i). that as he had purchased the property, therefore, the provisions of Sec. 50C which were attracted in the case of the sellers would not be applicable to him; (ii). that as the property was purchased during A.Y. 2009-10, therefore, the stamp duty rates for A.Y. 2012-13 would have no relevance.

5. The Pr. CIT after deliberating on the contentions of the assessee, however, did not find favour with the same. The Pr. CIT held a conviction that the order of the A.O passed under Sec. 143(3); dated. 30.03.2015, was on both of the aforesaid counts found to be erroneous and prejudicial to the interest of the revenue. The Pr. CIT thus in exercise of his revisional jurisdiction under Sec. 263, therein set aside the assessment with a direction to the A.O to verify the

source of the investment in the aforesaid property, as well as to verify the applicability of the provisions of Sec. 50C in the hands of the seller of the property.

6. The assessee being aggrieved with the order passed by the Pr. CIT under Sec.263 had thus assailed the same before us. The ld. Authorised representative (for short 'A.R') for the assessee submitted that the A.O had during the course of the assessment proceedings only after making necessary verifications as regards the source of investment in purchase of the property by the assessee, accepted the same. The ld. A.R in order to drive home his aforesaid contention, drew our attention to the Notice u/s 142(1), dated. 09.10.2014, wherein the A.O had called upon the assessee to place on record the copies of the Purchase deed/Source/Bank Statement highlighting entries for payment made. It was thus averred by the ld. A.R that the A.O after making necessary verifications and application of mind in respect of the source of the investment in purchase of the property, had accepted the same. The ld. A.R submitted that the copy of the 'Agreement' dated. 18.11.2011 was furnished with the A.O, wherein the fact that the payment of the purchase consideration for the property was made by the assessee on 21.08.2008 was clearly mentioned. The ld. A.R in order to fortify his aforesaid contention took us through the relevant extract of the 'Agreement' (Page 42) of the 'Paper book' ('APB'). That in the backdrop of the aforesaid factual matrix, it was submitted by the ld. A.R that now when it remained as a matter of fact that the assessee had paid the purchase consideration on 21.08.2008, i.e the period relevant to A.Y. 2009-10, therefore, the CIT could not have held the assessment framed by the A.O for A.Y. 2012-13 as "erroneous". The ld. A.R further took us through the

'Balance sheet' of the assessee for A.Y. 2009-10 (Page 59 of 'APB'), wherein the amount paid by the assessee to the seller of the property stood reflected as an advance under the head "*Bungalow-JIAI-Advance for property: Rs. 5,00,00,000/-*", while for a corresponding liability for the same amount was shown against the name of the lender, viz. "*M/s Kalpavruksha Plantation Pvt. Ltd. : Rs. 5,00,00,000/-*". It was thus submitted by the ld. A.R that the fact that the purchase consideration of Rs. 5 Crore paid by the assessee to the seller could safely be gathered from the 'Balance sheet' of the assessee which was available before the A.O. It was thus submitted by the ld. A.R that the A.O being well conversant of the fact that as the purchase consideration of Rs. 5 Crore was paid by the assessee in the A.Y. 2009-10, therefore, the source of the said payment was not relevant to the year under consideration. The ld. A.R further drew our attention to the copy of the bank statement of the assessee with Axis bank, Mumbai, for the year under consideration (Page 12 of 'APB'), wherein the receipt of loan of Rs. 5 Crore from Mrs. Suneeta Pawar (mother of the assessee) and repayment of the outstanding loan of Rs. 5 Crore to the lender, viz. M/s Kalpavruksha Plantation Pvt. Ltd. stood reflected. It was further averred by the ld. A.R that even otherwise as the assessment framed by the A.O was in no way prejudicial to the interest of the revenue, therefore, the order passed by the A.O u/s 143(3) could not have been revised. The ld. A.R in support of his aforesaid contention relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom)**.

7. Per Contra, the ld. Departmental representative (for short 'D.R') submitted that the Pr. CIT duly appreciating that the order passed by

the A.O u/s 143(3) was erroneous and prejudicial to the interest of the revenue, had thus rightly revised the same u/s 263. The ld. D.R submitted that though the case of the assessee was taken up for scrutiny assessment on the basis of AIR information that the assessee had purchased an immovable property for a consideration of Rs. 5,00,00,000/- during the year, the A.O however did not even verify the source of the said investment while framing the assessment. It was further submitted by the ld. D.R that as the 'SCN' was issued by the Pr. CIT on 01.03.2017 and the order u/s 263 was passed on 30.03.2017, therefore, the *Explanation 2* of Sec. 263 was applicable to the present case. It was thus averred by the ld. D.R that as the A.O had failed to carry out necessary verifications which he should have made, therefore, the Pr.CIT had validly assumed jurisdiction u/s 263 and revised the order passed by the A.O u/s 143(3), dated. 30.03.2015.

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and find that though the case of the assessee was selected for scrutiny assessment on the basis of the AIR information that an investment of Rs. 5 Crore was made by the assessee for purchase of an immovable property during the year under consideration, however, the A.O while framing the assessment failed to make necessary verifications on the said material aspect itself. We find that the Pr.CIT while deliberating on the case records observed that the assessee on being called upon by the A.O to furnish the source of investment in the aforesaid property had submitted that the same was made from the unsecured loan of Rs 5 Crore raised from his mother

Mrs. Suneeta Pawar. However, the Pr. CIT on perusal of the details and the bank statement, therein gathered that the loan of Rs. 5,00,00,000/- raised by the assessee from his mother Mrs. Suneeta Pawar on 14.05.2011 was paid to M/s Kalpavriksha Planation Pvt. Ltd on 19.05.2011, and not to the seller of the aforesaid property, i.e Sh. Avinash Bhosale. We find that the Pr. CIT on a careful deliberation of the 'Agreement' observed that that the assessee had as a matter of fact already paid the purchase consideration of Rs. 5 crore to the seller of the property, viz. Sh. Avinash Bhosale on 21.08.2008, vide Cheque No. 074080 and Cheque No, 074070, dated. 21.08.2008. We find that the assessee on being cornered by the Pr. CIT with the aforesaid facts, therein tried to wriggle out of the same by claiming that as on the date of filing of the 'return of income' for the year under consideration, viz. A.Y.2012-13, the loan of Rs. 5 Crore raised from his mother was outstanding, therefore, for the said reason during the course of the assessment proceedings it was submitted that the source of purchase of the property was the loan of Rs. 5 Crore raised by him from his mother Mrs. Suneeta Pawar.

9. We have given a thoughtful consideration to the facts of the case, and would not hesitate to observe that it can safely be gathered that the assessee had during the course of the assessment proceedings consciously withheld the actual source of investment of Rs. 5 Crore for purchase of the aforesaid property. We are further of the view that the A.O without making any verification as regards the source of investment had misdirected himself by summarily accepting the claim of the assessee. We hold a strong conviction that now when the A.O had failed to make any verifications as regards the source of the investment of Rs. 5 Crore made by the assessee towards purchase of

property, therefore, the same clearly rendered the order passed by him u/s 143(3), as erroneous and prejudicial to the interest of the revenue. We are not persuaded to be in agreement with the contention of the Id. A.R that as the A.O had during the course of the assessment proceedings called for the Purchase deed, Source of investment and the copy of the bank statement of the assessee from where the purchase consideration was paid, therefore, it could safely be concluded that he had accepted the source of investment made by the assessee after due application of mind. We are rather of a strong conviction that in case the A.O would had applied his mind and made any verification as regards the source of the investment, then he would had surely observed that the investment made by the assessee for purchase of the property was not from the loan raised from the assessee's mother Mrs. Suneeta Pawar, as had been canvassed before him during the course of the assessment proceedings. We further find from a perusal of the 'Order sheet' of the assessment record that contrary to the claim of the Id. A.R that necessary verifications were made by the A.O during the course of the assessment proceedings, no such fact emerges from the record. However, the fact as it so remains is that the A.O merely placed on record the documents furnished by the assessee and did not make any verifications by deliberating on the same. We are of the firm conviction that from the withholding by the assessee of the actual source of the investment, viz. loan raised by him on 21.08.2008 from his client, i.e M/s Kalpavruksha Plantation Pvt. Ltd., during the course of the assessment proceedings, it can safely be inferred that the same had been so done with a purpose of avoiding verification of certain issues which would had a strong bearing on the income of the assessee. We are of the considered view that the acceptance of the claim of the assessee by the A.O without making any verification, thus clearly renders the order passed by the A.O on the

said aspect, as erroneous and prejudicial to the interest of the revenue. We also do not find ourselves to be in agreement with the contention of the Id. A.R that as the fact that the assessee had made the payment of the purchase consideration not from the loan raised from his mother Mrs. Suneeta Pawar was discernible from the 'Agreement', copy of bank statement, 'balance sheet' of the assessee on 31.03.2009, which were there before the A.O, therefore, it could safely be gathered that the A.O after perusing the said factual position and being conversant of the fact that the investment did not pertain to the year under consideration, but was relatable to A.Y. 2009-10, had thus after due application of mind accepted the claim of the assessee. We have further perused the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom)**, and are of the considered view that the same being distinguishable on facts would thus not assist the case of the assessee. We are further of the considered view that after the insertion of *Explanation 2* to Sec. 263 w.e.f 01.06.2015, which would be applicable to the case of the assessee, the order which in the opinion of the Pr. CIT had been passed by the A.O without making inquiries or verification, thus, on the said count would be rendered as erroneous in so far as it is prejudicial to the interest of the revenue, and as such amenable for revision u/s 263 of the 'Act'. We thus in light of our aforesaid observations uphold the revision of the order u/s 263 on the aforesaid issue under consideration. The **Ground of appeal No. 1** and **Ground of appeal No. 2(i)** are dismissed in terms of our aforesaid observations.

10. We have deliberated on the invocation of the revisional powers by the Pr. CIT on the ground that as the agreement was for a consideration of Rs. 5,00,00,000/-, however, the value adopted by the

Stamp Valuation authority was Rs. 5,38,45,100/-, therefore, the A.O had not verified the applicability of Sec. 50C in the hands of the seller. We are of the considered view that as the applicability of the provisions of Sec. 50C is not attracted in the hands of the assessee, viz, buyer, therefore, for the purpose of verifying the tax liability of the seller, viz. third party, the case of the assessee could not be revised. We thus set aside the exercise of the revisional jurisdiction by the Pr. CIT on the issue pertaining to verification of the applicability of Sec. 50C in the hands of the seller of the property. The **Ground of appeal No. 2(ii)** is allowed.

11. The appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced on the open court on 14.09.2017

Sd/-
(R.C SHARMA)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 14.09.2017
Ps. Rohit Kumar

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**