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

BEFORE HON'BLE SH. SANDEEP GOSAIN, JM & HON'BLE SH. RAJESH KUMAR, AM

आयकरअपीलसं./ I.T.A. No. 1016/Mum/2013
(**निर्धारणवर्ष** / Assessment Year: 2000-2001)

आयकरअपीलसं./ I.T.A. No. 3662/Mum/2013
(**निर्धारणवर्ष** / Assessment Year: 2006-07)
&
आयकरअपीलसं./ I.T.A. No. 3238/Mum/2012
(**निर्धारणवर्ष** / Assessment Year: 2007-08)

Shree Mahant M. Mahatyagi, Sankat Mochan, Vijay Hanuman Tekri, Tapovan, Pathanwadi, Malad East, Mumbai-400097.	**बनाम**/ Vs.	DCIT 24(2) C-13, 6th floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AANPM8738N		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	None
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri R. Manjunatha Swamy, DR
सुनवाईकीतारीख/ **Date of Hearing**	:	01.04.2019
घोषणाकीतारीख / **Date of Pronouncement**	:	04.04.2019

आदेश / O R D E R

Per Bench:

Our of present three (3) Appeals, two appeal bearing ITA No. 1016 & 3662/Muj/13 have been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-34, Mumbai, dated 12.10.12 and 05.03.13 for AY 2000-01 and 2006-07 respectively and appeal ITA No. 3238/Mum/12 is against the order of Ld. CIT, Mumbai dated 20.02.12 for AY 2007-08.

2. Since the issues raised in two appeals i.e. ITA No. 1016 & 3662/Mum/13 are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

3. At the very outset, it is noticed that none has appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. From the record, we noticed that nobody was appearing on behalf of the assessee since 2015 and assessee was ordered to be served from time to time, in this respect, several notices issued by the registry is on the record.

The said notices were sent on the address mentioned by the assessee in Form No. 36, but even in spite of that nobody appeared. There is nothing on the record to suggest that, the assessee ever made any efforts to know the latest update of the present appeal. This conduct of the assessee shows that he is not interested in pursuing the present appeals. Therefore, we have no other option except to proceed the assessee ex-parte. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte with the assistance of the Ld. DR and the material placed on record.

I.T.A. No. 1016/Mum/2013 (AY 2000-01)

4. First of all we take up assessee's appeal in I.T.A. No. 1016/Mum/2013 (AY 2000-01).

5. At the very outset, we noticed that there is delay of 33 days in filing the present appeal. On perusal of the court file, we noticed that letter dated 22.02.13 was moved by the assessee, which relates to condonation of delay in filing the appeal.

6. Considering the contents of application filed by the assessee, supporting affidavit, whereby the assessee has mentioned the reasons in detail for not filing the appeal within limitation, therefore keeping in view the reasons mentioned in the affidavit and following the principles laid down by Hon'ble Supreme Court in case of **"Land Acquisition Collector Vrs. MstKitzi, AIR 1987 S.C. 1353/(1987) 167 ITR 471 (SC),** we condone the delay in filing the appeal. Resultantly, this application is **allowed** and appeal is admitted to be ***heard on merits.***

7. The solitary ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the penalty u/s 271(1)(c) of the I.T. Act, without looking into the merits and facts of the additions/disallowance made by the AO.

8. We have heard Ld. DR at length and we have also perused the material placed on record as well as the orders passed by the revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above ground raised by the assessee in para no. 4 to 6 of its order and the same is reproduced below:-

> *4. I have carefully considered the submissions made by the appellant and the impugned penalty order. As brought out in the earlier para, Shri Rambalakdasji Maharaj entered into an agreement with M/s.Deora Kedia Development Co. for development of plot at Malad(E). Accordingly the Developer had to develop 4 lacs sq.ft. of FSI including 6400 sq.ft FSI for shops on monthly lease basis. The lease agreed was for 99 years. The Developer has to pay monthly lease rent of 1.5 paise per sq.ft. per month. The developer had defaulted the payment of lease rent and hence there was a tripartite agreement entered into between the appellant, the Developer and the RBI dated 28.7.1999. Accordingly the appellant was allotted 12 flats and 14 shops free of cost by the Developer on 8.12.1999. It is relevant to point out here that the issue as to whether the above flats & shops received as compensation towards the lease rent was revenue or capital receipt was decided by the Jurisdictional Tribunal in appellant's own case in ITA No.3198/MUM/2006 dated*

9.10.2009. The findings of the Tribunal in para 6 is as under-

> *"6. We have considered the rival submissions with regard to the first proposition argued by the Ld.Counsel for the assesses. We find that the receipts of the assessee on account of damages and compensation from the "developer" were revenue in nature. We find that these receipts were in lieu of the rent receivable by the assessee. The developer party has failed to honour its obligation of constructing fiats within the stipulated time and in accordance with the rules and regulations, of the Government and, therefore, it paid the compensation/damages to the assessee. The lease rent receivable bv the assessee was undisputedly a revenue receipt The CIT(A1 has rightly observe that since the compensation/damages were received by the assessee in lieu of the lease tent these are also revenue receipts. The ownership of the land continues to be with the assessee. In these facts of the case we are unable to accept the proposition argued by the Ld.Counsel for the assessee and hold that the receipts in question were revenue on nature."*

Respectfully following the direction of the Hon'ble ITAT , the Assessing Officer had treated the value of 12 flats and 14 shops as revenue receipt and the value had been worked out at Rs.26,70,784/-.

5. In the assessment order itself the Assessing Officer had clearly brought out that the appellant failed to disclose the above receipt as income both in original as well as revised return of income filed. The Assessing Officer had discussed this fact in para 7(iii) of the assessment order. Even assuming that the appellant is following mercantile system of accounting the fact of receipt of the above should have been accounted in the books for 1985-86 but no evidence was produced by the appellant. The Assessing Officer had even examined the balance sheet for 1996-97 to 1999-2000 which did not reveal the flats and shops received as compensation as assets.

6. It is worth mentioning here the content of letter filed by the Authorized Representative of the appellant before the Assessing Officer in 11.8.2010 which has been brought out by the Assessing Officer in para 7(VI) of the assessment order. For the sake convenience, the same is reproduced as under:-

In this connection I have filed my detailed submission in the matter regarding year of assessability of the

value of the flats & shops received in F.Y.1999-2000 from M/s.Deora Kedia, in view of an agreement of July 1979 revised on 10.11.1985 and as mentioned therein I submit that the same cannot be assessed as income in A.Y.2000-01. As regards the Income tax papers for A.Y.1986-87 this is to inform that the said papers are not available as they are of 24 years old. All the papers of the years before 95 have been destroyed. To my understand one need not keep the I. T. papers for more than 8-10 years and hence I do not have papers beyond 1995-96. Copy of the papers for A.Y.1996-97 onwards are already filed with you. However the matter is old (more than 10 years) and has come back from the Tribunal and I being Dharma Guru, I do not want prolong litigation which diverts my mind and energy and hence to buy purely the peace of mind and to avoid prolong litigation with the Department, I hereby agree that the same may be taxed in the A.Y.2000-01 at the same rate (i.e. @ 300/- per sq.ft. of the ares received during the financial year relevant to A.Y.2000-01). This acceptance is purely to buy the peace of mind only and to avoid prolong litigation.Without prejudice to my consistent stand and claim that no income is taxable in the A. Y.2000-01 either by way of lease rent or by way of capital gain.with an understanding that no penalty will be levied for accepting the above additions in A.

Y.2000-01. This is in good faith and understanding that no penal action will be taken against me."

From the above, it is clear that the appellant do pot possess anv evidence to show that the compensation received from the developer in lieu of the lease rent payable was disclosed as income. Very conveniently the appellant is claiming that all the papers and records before 1995 have been destroyed and no papers are available for the period prior to 1995-96. Records were available only for 1995-96 onwards and subsequent years. The appellant also could not controvert the value of Rs 300 /sq. ft adopted by the AO in valuing the flats allotted and agrees the same. From the detailed discussion above, it is evident that the value of compensation received Rs. 24,70,784/- towards 12 flats and 14 shops given by the builder in lieu of the lease right was not admitted as income by the appellant. Hence this is a clear case of not only the concealment of income but also furnishing of inaccurate particulars by the appellant. In view of this, the penalty levied is hereby confirmed.

9. After having gone through the facts of the present case, we find that assessee was allotted 12 flats and 14 shops free of cost by the Developer on 8.12.1999. In respect of quantum

proceedings, the Coordinate Bench of ITAT in assessee's own case had held that the lease rent receivable by the assessee was a revenue receipt. The AO in the order of assessment had brought out that the assessee had failed to disclose the above receipt as income both 'in original as well as revised return of income' filed and even the assessee could not lead any evidence to show that the compensation received from the developer in lieu of the lease rent payable was disclosed as income. Therefore considering all these facts, the revenue authorities had rightly concluded that assessee had not only concealed the income, but also guilty of furnishing of 'inaccurate particulars of income'.

10. Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the assessee stands **dismissed**.

11. Consequently, the appeal filed by the assessee stands **dismissed.**

ITA No. 3662/Mum/2013 (AY 2006-07) filed by assessee

12. Now we take up assessee's appeals in **ITA No. 3662/Mum/2013 & 3238/Mum/2012 (AY 2006-07 & 2007-08).** Since we have already decided the similar grounds of appeal in **ITA No. 1016/Mum/2013 for AY 2000-01** on merits. Therefore, following our own decision in **ITA No. 1016/Mum/13**, we apply the same findings in these appeals in order to maintain judicial consistency which is applicable *mutatis mutandis.*

ITA No. 3238/Mum/2012 (AY 2007-08) filed by assessee

13. Now we take up assessee's appeals in **ITA No. 3238/Mum/2012 (2007-08).**

14. The solitary ground raised by the assessee relates to challenging the order of Ld. CIT u/s 263 of the Act.

15. After having heard Ld. DR and after perusing the records, we find that the AO while passing the order of assessment u/s 143(3) of the Act, had not verified the issue of applicability of section 45(2) of the Act on selling of flats and shops in lieu of development agreement entered for the land with the developer. The AO had only taxed capital gain without looking into as to whether the assessee had sold the land to the developer or it was also involved in adventure in the nature of trade. In the original assessment order, AO had not inquired or discussed the source of cash deposits in various bank accounts. Thus in such circumstances, the Ld. CIT had righty invoked the provisions of 263 of the Act as the assessment order suffered certain infirmities and thus was rightly considered prejudicial to the interest of justice. Hence, in our view, Ld. CIT had rightly set aside the order for limited purpose for verifications. We find no error or infirmity in the orders passed by Ld. CIT. Resultantly, the ground raised by the assessee stands dismissed.

16. In the net result, all the three appeals filed by the assessee stands **dismissed** with no order as to cost.

Order pronounced in the open court on 4th April, 2019.

Sd/-	*Sd/-*
(Rajesh Kumar)	(Sandeep Gosain)
लेखासदस्य / Accountant Member	न्यायिकसदस्य / Judicial Member

मुंबई Mumbai;दिनांकDated : 04.04.2019
Sr.PS. Dhananjay

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**