



ITA No.1085 /Mum/2019  
Vrutti Developers LLP  
Assessment Year: 2014-15

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.1085/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>Vrutti Developers LLP</b> 4 <sup>th</sup> Floor, Neptune Magnet Mall Near Mangatram Petrol Pump LBS Marg, Bhandup (W) Mumbai-400 078.	<b>बनाम/</b> Vs.	<b>Pr.CIT -29</b> C-10, 3 <sup>rd</sup> Floor Pratyakshkar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai-400 051.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAJFV-2326-H</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Paresh Shaparia-Ld. AR
<b>Revenue by</b>	:	Shri Gaurav Batham-Ld. CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	17/12/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/03/2021

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. By way of this appeal, the assessee challenges validity of revisional Jurisdiction u/s 263 as exercised by learned Pr. Commissioner of Income Tax -29 [Pr.CIT ] for Assessment Year (AY) 2014-15 vide order dated 17/01/2019. The effective ground read as under: -



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1. The learned Pr. CIT erred in treating the order passed by A.O. u/s.143(3) dated 28.12.2016 as erroneous and prejudicial to the interest of revenue.
2. The learned Pr. CIT ought not to have treated order passed u/s. 143(3) as erroneous or prejudicial to the interest of revenue.
3. The order passed u/s. 263 is bad in law.

2. We have carefully heard the rival submissions and perused relevant material on record including submissions made by the assessee during the course of assessment proceedings as well as during revisional proceedings. The various judicial precedents as cited during the course of hearing have duly been deliberated upon by us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The material facts are that the assessee being resident LLP was assessed for the year under consideration u/s 143(3) on 28/12/2016 accepting returned loss of Rs.2.44 Lacs. The assessment order takes note of the fact that the assessee is a builder & developer engaged in the construction of building. The projects were in preliminary stage and the assessee has not sold any flat during the year under consideration but received advances against sale of flats.

4.1 Subsequently, Ld. Pr. CIT, upon perusal of case records, opined that the order was erroneous and prejudicial to revenue and hence, would require revision u/s 263. Accordingly a show cause notice was issued to the assessee during the course of revisional proceedings which was duly responded to by the assessee. The allegations were two folds- (i) The assessee following percentage of completion method, did not recognize any revenue and not offered income from the project; (ii) Though it paid interest on borrowed loans and claimed interest



expenditure under work-in-progress (WIP) but it did not charge any interest on capital withdrawn by the partners during the year.

4.2 The assessee defended the assessment order, inter-alia, by submitting that all the requisite details were placed before Ld. AO during the course of assessment proceedings and Ld.AO accepted the same after due consideration. Therefore, the order was passed with due application of mind. Regarding revenue recognition, it pointed out that the sole project being undertaken by the assessee was in initial stages and expenditure on construction was only 4.25% during the year. The condition that construction cost should not be less than 25% of estimated cost to recognize the revenue was not met. Similarly, the condition that 25% saleable project area is to be secured by contracts / agreements were also not fulfilled since percentage of area booked by the assessee was less than 18% during the year. Regarding charging of interest on partner's capital balances, the attention was drawn to the fact that the assessee recovered interest of 12% from partners for AYs 2014-15 to 2017-18 and suo-moto reduced closing WIP in AY 2017-18 and therefore, ultimately there would be no impact on assessee's profitability.

4.3 However, the aforesaid pleas were rejected in the light of the observation that Ld. AO did not inquire into evidences and architects' certificates in order to examine the percentage of construction during AY 2014-15. No such record was placed by the assessee in support of the same. Similarly, Ld.AO failed to make inquiry on the interest aspect. Therefore, it was concluded that the assessment was completed without making requisite inquiries or verifications which should have been made.



Finally, invoking the provisions of Sec.263, Ld. AO was directed to frame the assessment de-novo.

Aggrieved as aforesaid, the assessee is in further appeal before us assailing invocation of revisional jurisdiction u/s 263.

5. Upon careful consideration of material on record, we find that during the course of assessment proceedings, notices u/s 142(1) were issued on 07/11/2016 & 30/11/2016 wherein various details were called from the assessee. In notice dated 07/11/2016, the assessee was asked, inter-alia, to file a note on business activities with project under implementation and percentage of completion as on 31/03/2014 duly certified by the Architect. Party-wise details of interest & finance expenses were also called from the assessee. In point no.13, a specific query was raised regarding charging of interest on overdrawn capital of the partners. In response thereto, it was submitted that there were no sales during the year. The copies of partner's capital account as well as details of unsecured loans were furnished. Party-wise details of interest & finances expenses were also submitted. In submission dated 30/11/2016, a note on business activity with detail of project under implementation and commencement certificate was filed. It was submitted that interest on capital was not charged as per partnership deed. It was reiterated that no sales were made during the year.

In notice dated 30/11/2016, the assessee was directed to file details of total saleable area, built up area and super built up area. The percentage of work completed in each year from the commencement of project was also called for. The assessee was directed to furnish a certificate from Architect regarding percentage completed backed by detailed working.



In response thereto vide submissions dated 05/12/2016, the assessee filed details of saleable area as called for by Id. AO. The attention was drawn to the fact that the sole project being carried on by the assessee in the name of *Neptune Lotus Project* was in initial stages. The certificate from Architect stating that excavation work was in progress was also filed. It was submitted that there were no sales during the year and the assessee merely received advances, the details of which were furnished. In subsequent submissions dated 09/12/2016, it was explained that Architect's certificate was not obtained as commencement certificate was received on 07/10/2013 and approval of floors was granted only on 16/02/2015. During this period, the work completed was only excavation and piling work which was reflected under WIP. The stage of percentage of completion was stated to be not applicable since the project was in inception stage.

Finally, after due consideration of assessee's submissions as above, an assessment was framed on 28/12/2016 wherein Ld. chose to accept assessee's return of income without disturbing the same.

6. All the aforesaid facts would show that Ld. AO was clinched with the specific issues of percentage of completion achieved by the assessee during the year as well as clinched with the issue of interest expenditure. The requisite details as well as documentary evidences were furnished by the assessee as called for by Ld. AO during the course of assessment proceedings. Since the submissions / explanations were found to be satisfactory, no further information was called from the assessee which is also evident from the fact that the returned loss has been accepted by taking note of the fact that the



project was in preliminary stage and the assessee has not sold any flat during the year under consideration but received mere advances. In view of the foregoing, it could be concluded that the view of Ld AO, could not be said to be contrary to law, in any manner, on both the issues as alleged by Ld. Pr. CIT. There was proper application of mind by Ld. AO on both the issues.

7. Another pertinent fact to be noted is that notional interest on overdrawn capital for AYs 2014-15 to 2017-18 has already been reduced by the assessee from financial expenses in AY 2017-18 which have ultimately reduced the closing WIP held by the assessee for that year. The case for AY 2017-18 has already been assessed u/s 143(3) on 29/12/2019 and the assessee's closing WIP has not been disturbed in that year. This being the case, even otherwise there would be no loss to the revenue.

8. The Hon'ble Supreme Court in Malabar Industrial Co. Ltd. V/s CIT (243 ITR 83 10/02/2000) has held that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by



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Hon'ble Court in its subsequent judgment titled as CIT V/s Max India Ltd. (295 ITR 282). Similar principal has been followed by jurisdictional High Court in Grasim Industries Ltd. V/s CIT (321 ITR 92).

The Hon'ble Delhi High Court, CIT V/s Vikas Polymers (194 Taxman 57 16/08/2010) observed that as regards the scope and ambit of the expression "erroneous", Hon'ble Bombay High Court in CIT vs. Gabriel India Ltd. [1993 203 ITR 108 (Bombay)], held with reference to Black's Law Dictionary that an "erroneous judgment" means "one rendered according to course and practice of Court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles" and thus it is clear that an order cannot be termed as "erroneous" unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as "erroneous" by the Commissioner simply because, according to him, the order should have been written differently or more elaborately. The Section does not visualize the substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is not in accordance with law.

9. Therefore, on the facts and circumstances, the revisional jurisdiction could not be held to be valid under law. By quashing the order dated 17/01/2019, we allow assessee's appeal.

10. The appeal stands allowed in terms of our above order.

*Order pronounced on 03<sup>rd</sup> March, 2021*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



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मुंबई Mumbai; दिनांक Dated : 03/03/2021  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.