

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No.06/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

ACIT-28(1) Room No.306, 3 rd Floor, 6 th Tower, Vashi Railway Station Complex, Vashi, Navi Mumbai-400703.	<u>बनाम/</u> Vs.	Gordon Bruce Gaspar Serrao Tracy Villa, Plot No.13, Sector-8, Vashi, Navi Mumbai-400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALWPS8430R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri T. S. Khalsa (DR)
Assessee by:	Shri Kshipra Singhvi

सुनवाई की तारीख / Date of Hearing: 23/09/2021
घोषणा की तारीख /Date of Pronouncement: 12/11/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 04.10.2019 passed by the Commissioner of Income Tax (Appeals) -26 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14.

2. The revenue has raised the following grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

(1) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O. to treat the



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profits from sale of flats as long term capital gain without appreciating the fact that assessee has merely paid booking amount to builder MIs. Platinum Properties but no purchase deed were executed or registered in the name of the assessee and no stamp duty or registration charges were paid by the assessee towards purchase of these flats"?

(2) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in holding that gains resulting from sale of flats is a case of appreciation of capital over a period of 5 years and the gains resulting there from are assessable under the "Capital Gains" only without appreciating the fact that assessee booked flats in year 2007 and immediately after OC was received for the project, builder started selling these flats on behalf of the assessee and collected sales proceeds which were later on transferred to assessee which in itself proves that the flats booked by assessee were not for residential purpose but the said transaction is nothing but 'Adventure in the nature of trade and the A.O. rightly treated the said income under the head 'Income from Business'?"*

(3) *The appellant prays that the order of Ld. CIT(A) on the above grounds be reversed and that of the Assessing officer be restored.*

(4) *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.?"*

3. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. We find that the assessment order was passed in view of the provisions u/s 143(3) on 22.03.2016 accepting the



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return income to the tune of Rs.1,58,43,130/-. The assessment was ordered to be set aside by the jurisdiction PCIT vide his order u/s 263 dated 15.03.2018. Thereafter, the assessment u/s 143(3) r.w.s. 254 r.w.s 144B of the I. T. Act, 1961 for the A.Y.2013-14 dated 15.03.2018 was framed. Thereafter, the order dated 26.12.2018 was passed u/s 143(3) r.w.s. 263 of the I.T. Act 1961 assessing the total income to the tune of Rs.4,34,53,133/-. The revision order u/s 263 was modified by the Hon'ble ITAT 'G' Bench vide its order dated 05.12.2019. In the said circumstances, the assessment order dated 26.12.2018 has become infructuous and the appeal under consideration dated 04.10.2019 has also become infructuous. In view of the order passed by the Hon'ble ITAT 'G' Bench dated 05.12.2019, The AO passed the order on 21.09.2021 copy of which has been filed. There is nothing on record, subsequent, to the said order i.e. 21.09.2021. Undoubtedly, in the said circumstances, the assessment order dated 26.12.2018 and the appeal of order dated 04.10.2019 has become infructuous, hence, is order to be dismissed being infructuous. We ordered accordingly.

4. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 12/11/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 12/11/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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