

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	618/PUN/2019	Shivsamarth Group, G-1, Gogate Marathe Complex, Devgad, Sindhudurg- 416613. PAN : ABSFX3579A	PCIT-2, Kolhapur	2013-14
2	619/PUN/2019	Prakash Vishnu Bodas, G-1, Gogate Marathe Complex, Devgad, Sindhudurg- 416613. PAN : AHPPB5341M	PCIT-2, Kolhapur	2013-14

Assessee by : Shri Pramod Shingte  
Revenue by : Shri Navin Gupta

Date of hearing : 29.04.2022  
Date of pronouncement : 11.05.2022

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the appeals filed by the different assessees directed against the separate orders of Id. Pr. Commissioner of Income Tax - 2, Kolhapur ('PCIT') dated 25.03.2019 passed u/s 263 of the Income Tax Act, 1961 ('the Act') for the assessment year 2013-14 respectively.

2. Since the identical facts and issues are involved in the above captioned two appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.618/PUN/2019 for the assessment year 2013-14 in the case of Shivsamarth Group are stated herein.

**ITA No.618/PUN/2019 :**

4. The appellant raised the following grounds of appeal :-

*“1. On the facts and circumstances of the case and in law the Ld Pr.CIT, in his order u/s 263, erred in setting aside the assessment order holding the same to be erroneous and prejudicial to the interest of the revenue on the ground that the surplus from sale of the project work in progress is:*

- a. Taxable as capital gains u/s 50B as slump sale AND*
- b. In AY 2013-14*

*as against the claim of the appellant that:*

- a. The sale being that of project work in progress (i.e. inventory of the business) surplus arising there from was rightly offered by it as income from business which was duly accepted by the AO in his assessment order.*
- b. The agreement from sale having taken place in A Y 2012-13 the revenue from the sale was rightly recognised by the appellant and was duly accepted by the AO in his assessment order as belonging to A Y 2012-13 and not A Y 2013-14.*

*2. On the facts and circumstances of the case and in law the LdPr.CIT, in his order u/s 263, erred in setting aside the assessment order holding the same to be erroneous and prejudicial to the interest of the revenue, claiming that the AO accepted the claim of the appellant without proper enquiry, though after due enquiries the AO had taken one of the possible legal stands in the facts of the case.*

*3. On the facts and circumstances of the case and in law the LdPr.CIT, in his order u/s 263, erred in setting aside the assessment order holding the same to be erroneous and prejudicial to the interest of the revenue, though the impugned assessment was completed by the*

*ITO by taking one of the possible views in the matter, after due consideration of material placed before him.*

*The appellant therefore prays that the order of the Pr-CIT be annulled.*

*The appellant craves leave to add to, amend, alter, modify, delete or add a new ground of appeal before or at the time of hearing.”*

5. Briefly, the facts of the case are as under :

The appellant is a firm engaged in the business of real estate. The return of income for the assessment year 2013-14 was filed on 26.03.2014 declaring total income of Rs.1,97,640/-. Apparently, there was no scrutiny assessment. Subsequently, on receipt of the information from the Sub-registrar, Devgad, the Assessing Officer formed an opinion that the income escaped assessment to tax on the ground that the assessee firm had sold plot of land situated at Survey No.316A, Hissa No.1A at Village Jamsande admeasuring 0H 93R for a total consideration of Rs.34.50 lakhs during the year under consideration i.e. A.Y. 2013-14. Accordingly, the Assessing Officer issued a notice for reassessment u/s 148 on 24.08.2015 after recording the reasons for reopening of assessment. After receiving the reasons recorded for issuance of notice u/s 148, the assessee objected the reassessment proceedings on the ground that the income on sale of plot was offered to tax in the assessment year 2012-13 as the consideration was received as well as sale deed was also executed in the financial year 2011-12 relevant to the assessment year 2012-13. The Assessing Officer after considering

the above explanation had dropped the reassessment proceedings vide order dated 30.09.2016.

Subsequently, the ld. PCIT on examination of the assessment record formed an opinion that the order dropping the reassessment proceedings is erroneous and prejudicial to the interests of the revenue as the assessee firm had failed to offer the income on the profit arising on sale of 82 guntas out of 270 guntas sold on 29.03.2012 for a consideration of Rs.84,00,000/-. In-fact, the assessee sold the entire project sale consideration and, therefore, the profit arising on sale of the entire project should be offered to tax under the provisions of section 50B of the Act. Accordingly, the ld. PCIT issued a show-cause notice u/s 263 of the Act. On due consideration of the explanation filed by the assessee, ld. PCIT set-aside the order dropping the reassessment proceedings u/s 147 of the Act.

6. Being aggrieved by the above decision of the ld. CIT(A), the assessee is in appeal before us.

7. We heard the rival submissions and perused the material on record. Admittedly, in the present case, the order which is sought to be revised is the order dropping the reassessment proceedings u/s 147 of the Act. On carefully going through the material on record, it would be clear that the original reassessment proceedings were

initiated with view to tax the sale proceeds of Rs.34,50,000/-. On due consideration of the explanation filed by the assessee, the Assessing Officer was satisfied that there was no escaped assessment of income to tax and, accordingly, dropped the reassessment proceedings u/s 147 of the Act. The original reopening of assessment was not made on the ground of escaped assessment of income to tax in respect of receipt of sale of remaining 270 guntas of land. If the ld. PCIT was of the opinion that the income had escaped assessment to tax on account of sale of 270 guntas of land, the ld. PCIT is not estoppel from directing the Assessing Officer to initiate the fresh reassessment proceedings as there is no bar under the law to initiate the fresh reassessment proceedings again as reassessment proceedings may be initiated more than once under the provisions of section 147 in respect of the same assessee for the same assessment year in respect of different items of income which may have escaped assessment in the same assessment year subject to satisfaction of the conditions precedent for issue of notice u/s 148. But, it is not the case of the ld. PCIT that there is an illegality in dropping the original reassessment proceedings. Therefore, the present revision proceedings u/s 263 are not valid in law. Accordingly, the grounds of appeal filed by the assessee stands allowed.

8. In the result, the appeal filed by the assessee in ITA No.618/PUN/2019 stands allowed.

**ITA No.619/PUN/2019 :**

9. Since the facts and issues involved in both the above captioned appeals are identical, therefore, our decision in ITA No.618/PUN/2019 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.619/PUN/2019. Thus, the appeal of the assessee in ITA No.619/PUN/2019 stands allowed.

10. Resultantly, both the appeals of the assessee stands allowed.

Order pronounced on this 11<sup>th</sup> day of May, 2022.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> May, 2022.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-2, Kolhapur.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.