

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.644/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2015-16)

Pratik Enterprises K/49, APMC Phase 1, Sector No.19, Navi Mumbai, Thane-400703.	बनाम/ Vs.	PCIT Mumbai-27
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFP5443M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nilesh T. Dedhia
Revenue by:	Shri H. N. Singh (DR)

सुनवाई की तारीख / Date of Hearing: 12/05/2022

घोषणा की तारीख /Date of Pronouncement: 27/05/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax-27, Mumbai dated 17.03.2021 for the assessment year 2015-16.

2. The main grievance of the assessee is against the action of the Ld. PCIT for invoking his jurisdiction u/s 263 of the Income Tax Act [hereinafter ('the Act')].

3. The brief facts of the case are that the assessee is a firm which had undergone scrutiny assessment u/s 143(3) of the Act on 21.12.2017 wherein the total income of the assessee was determined at Rs.4,99,21,810/- as against the return of income of Rs.5,02,89,100/-. Later, the Ld. PCIT observed after perusal of the assessment order that an amount of Rs.5,61,500/- has been paid by the assessee to a customer (Shri Sangram Singh) during the year on account of profit on



ITA No.644/Mum/2021
A.Y. 2015-16
Pratik Enterprises

cancellation of the flat. According to the Ld. PCIT, on this payment TDS was not deducted by assessee u/s 194A of the Act, which according to him the assessee should have done, because the payment made was nothing but an income on account of interest payment to the party. According to the Ld. PCIT though the assessee had claimed that payment on account of cancellation of flat, it was expenditure in the assessee's hands and according to him, the nature of receipt in the hands of recipient is not material. And for him to come to such conclusion, he noted that the person (Shri Sangram Singh) to whom the assessee had entered into an understanding with the assessee for purchase of flat has paid money to the assessee (advance) which has been outstanding with the assessee; and since the transaction was cancelled, the assessee had to pay interest in respect of advance/amount outstanding with him. Therefore, in the aforesaid circumstances according to the Ld. PCIT, the AO has not verified the details of this transaction, so he found the order of the AO dated 21.12.2017 to be erroneous as well as prejudicial to the interest of the revenue and issued show cause notice to the assessee proposing action u/s 263 of the Act. Pursuant to the show cause notice, the assessee submitted that the issue of payment of Rs.5,61,500/- which has been paid to a customer (Mr. Sangram Singh) was on account of the profit accrued to him on account of the sale of the flat [*which was allotted to him initially, however was cancelled on the agreement that profit of the sale of the flat would be given to him*] of the flat] According to assessee, this issue relating to payment of Rs.5,61,500/- to Mr.



ITA No.644/Mum/2021
A.Y. 2015-16
Pratik Enterprises

Sangram Singh had been thoroughly inquired by the AO during the assessment proceeding after issuing notice u/s 142(1) of the Act and after considering the reply of the assessee and supporting documents on it, the AO has accepted the expenditure of Rs.5,61,500/-. So it was asserted by the assessee that therefore, there was no occasion for the Ld. PCIT to invoke his jurisdiction u/s 263 of the Act on this issue. However, the Ld. PCIT was not satisfied with the reply of the assessee and was pleased to set aside the assessment order dated 22.12.2018 by holding as under: -

“8.2 In absence of any explanation during proceedings u/s 263, it is presumed that the assessee has nothing to explain. Therefore, it is held that the order dated 22.12.2018 passed u/s 143(3) of the I. T. Act, 1961 is erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of investigation and examination, the assessment order considering the issues failed to conduct proper inquiries, investigation and examination, the assessment order is set aside to the Assessing Officer with the direction to pass a fresh assessment order considering the issue raised in the notice u/s 263 of the Act, in accordance with law and after affording an opportunity of the Act, if being heard to the assessee.”

4. We have heard both the parties and perused the record. We note that the AO during the assessment proceedings had issued the notice to the assessee u/s 142(1) of the Act dated 28.11.2017 (refer page no. 22 to 24) wherein on this issue he asked the question no. 15 which reads as under: -



ITA No.644/Mum/2021
A.Y. 2015-16
Pratik Enterprises

“15. During the course of assessment proceedings, it is seen that premium on surrender of flat No.0301, Darrodil paid to Sri Sangram Anant Singh amounting to Rs.5,61,500/. In this respect, please furnish the copy of allotment letter along with copy of ledger a/c of the party who surrender the flat with copy of MOU. Also furnish the copy of sale deed of the property later.”

5. And the assessee had replied to the aforesaid query of AO by answering it vide letter dated 19.12.2017 placed at page no. 19 to 21 of the paper book wherein it has stated as under: -

“2. Clause 15 of notice dated 28.11.17:

The assessee had issued allotment letter Mr Sangram singh for flat number 301 Daffodils (Pratik Gardens). The total agreed consideration was 41,65 000. Copy of the allotment letter is enclosed herewith. Out of the said consideration, Rs. 10,30,170 was received till March 2014. Thereafter, in FY 2014-15, owing to personal reason, possibly financial crisis, he requested for cancellation of the booking on mutual terms. He agreed to surrender his rights in the said Mrs. Pillai. the assessee entered into an agreement with Mrs. Pillai for Rs. 47,27,295. As per the mutual agreement with Mr. Singh, assessee was liable to repay entire amount received from him by way of advance and further profit which would be earned by the assessee on selling the flat at a higher value to Mrs. Pillai. Accordingly, the assessee repaid him (Mr. Singh), the amount received from him, along with differential profit of Rs. 5,61,500 in FY 2014-15. Copy of the ledger account of Mr. Sing an relevant extract of bank statement highlighting the payment is enclosed herewith.

The amount received from Mr. Singh is shown under the head advance received from customers Pratik Gardens. The assessee also received



ITA No.644/Mum/2021
A.Y. 2015-16
Pratik Enterprises

advance from Mrs. Pillai which is also shown under the head advance received from customers ~" Prati ardens. Since the assessee follows percentage completion method, it has offered revenue by way of valuation of WIP of (Daffodils) Pratik Gardens. Thus, since the assessee has offered revenue Daffodils Pratik Gardens it has rightly debited the premium paid of Rs. 5,61,500 on surrender of flat under the head 'cost of project' (Schedule I profit and loss account). The flat sold to Mrs. Pillai was registered in March 2017 and the assessee has recorded the sale of said flat No. 301 Daffodils in FY 2017-18. We therefore request your good office accept our submission based on the facts and evidences furnished to you and allow us the claim of premium paid of Rs. 5,61,500/-."

6. From a perusal of the aforesaid query & reply of the assessee on the issue, we note that the AO has inquired about the expenditure claimed by the assessee to the tune of Rs.5,61,500/- which the assessee has claimed to have given to Shri Sangram Singh which was the profit from the flat which was cancelled by him [Flat No. 0301 Daffodil (Pratik Garden)]. It is noted that the AO has inquired about the expenditure in question by calling for the copy of allotment letter of flat, ledger account of the party (Mr. Sangram Singh), Copy of the MOU, Copy of the sale deed of the property with Mr Pillai (new buyer) to whom the flat no. 301 Daffodil was sold. We note that AO after going through the detailed reply of the assessee (supra) as well as after going through the confirmation given by the Mr. Sangram Singh as well as Mr Pillai which are found placed at page no.17 to 18 of the paper book, the AO has accepted the genuineness of the expenditure to



*ITA No.644/Mum/2021
A.Y. 2015-16
Pratik Enterprises*

the tune of Rs.5,61,500/- which action of the AO cannot be termed as a decision made without inquiry. Therefore, we find that the issue on which the Ld. PCIT has found fault with AO has been properly inquired by the AO and then only the AO has allowed the expenditure, which is a plausible view and at any rate cannot be held to be a view un-sustainable in law. The allegation of the PCIT for invoking the jurisdiction by stating that the said payment was nothing but interest in respect of advance paid by Mr Sangram Singh is a figment of imagination and not supported by any evidence/material, so it is devoid of merits. Therefore, we are of the opinion that in the facts and circumstances noted (supra), the Ld. PCIT erred in invoking his jurisdiction u/s 263 of the Act without validly holding the AO's action in respect of the issue which he has found fault with cannot be sustained. So the impugned action of Ld. PCIT u/s 263 of the Act is without jurisdiction and so is quashed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 27/05/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 27/05/2022.
Vijay Pal Singh, (Sr. PS)



ITA No.644/Mum/2021
A.Y. 2015-16
Pratik Enterprises

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**