

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI****BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER****ITA No.520/Mum/2021  
(A.Y. 2016-17)**

Olive Spaces 1 <sup>st</sup> Floor, Jeevan Deep, Building No.II, Opp. Bank of Baroda, Rajawadi, Ghatkoper, East, Mumbai – 400077	Vs.	Pr. Commissioner of Income Tax-27, Room No. 401, 4 <sup>th</sup> Floor, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, New Mumbai - 400703
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No: AACFO2135N		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Manoj Kumar

Date of Hearing	13.09.2022
Date of Pronouncement	29.09.2022

**आदेश / O R D E R****Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the Pr.CIT, Mumbai-27 which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2016-17. The assessee has raised the following grounds before us:

- “1. Under the facts and circumstances of our case, the learned PCIT 27 MUMBAI has erred in reopening of the assessment u/s. 263 which is

*unlawful, unwarranted misdirected and on totally erroneous facts and on facts which were misplaced and accepted by the Assessing Officer*

2. *The learned PCIT has, erred in stating that the redevelopment project has 6 number saleable flats, which the Assesse has proved with documentary evidence to the Assessing Officer during the course of Assesment proceeding vide letter dated 10-12-2018 that the project has 5 number of saleable flats and was proved the same to the PCIT 27, Mumbai.*
3. *The learned PCIT has erred in stating that neither service tax return nor agreement for sale during Asst Yr 2015-16 was available on record, when the Show Cause Notice is issued for Asst yr 2016-17 and the said fact is irrelevant for the proceedings u/s 263 for Asst year 2016-17.”*

2. This case was listed for hearing for more than 7 times but neither assessee has made any written submission nor attended the hearing before the ITAT, therefore, the appeal filed by the assessee is adjudicated after hearing the ld. D.R and the material on record.

3. The fact in brief is that return of income declaring income of Rs.15,400/- was filed on 11.10.2016. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 24.06.2017. The assessee was a partnership firm and engaged in the business of construction and property developers. The assessment u/s 143(3) was completed on 21.12.2008 accepting the total income filed as per return of income at Rs.15,400/-. Subsequently, the ld. Pr.CIT on the perusal of the record noticed that assessee has filed letter dated 17.11.2013 before the A.O stating that it had completed 18 flats redevelopment project namely LA SOLITA at Ghatkoper, Mumbai, out of which 6 flats were on resale, however it was noticed that assessee had sold 5 flats during F.Y. 2015-16 & 2016-17 and closing work-in-progress was shown in hand in assessment year 2016-17. The ld. Pr.CIT has further noticed that from the entire project assessee has not shown any profit.

The Pr. CIT further stated that assessee has followed percentage completion method, however on the completion of the project during A.Y. 2015-16 and 2016-17 there was a loss and neither service tax return nor agreement for sale made during the A.Y. 2015-16 was available on record. He further stated that because of absence of the copy of agreement compliance made to the provision of Sec.43CA for the A.Y. 2015-16 could not be ascertained. The ld. Pr.CIT further pointed out that no income was earned from the entire project as loss of Rs.1,11,96,250/- was shown in the assessment year 2015-16. Therefore, the Pr.CIT was of the view that order passed by the A.O u/s 143(3) is erroneous as far as it is prejudicial to the interest of revenue within the meaning of Sec.263 of the Income Tax Act. Therefore show cause notice was issued to the assessee. In response the assessee had filed its submission vide letter dated 08.03.2022. In its submission the assessee has given detail of redevelopment of the project, detail onsale for the A.Y. 2015-16 and 2016-17 along with copies of approved BMC. The assessee also submitted that all the business which assessee commenced did not result in earning profit. The assessee further submitted that always there was a probability of incurring losses in business and therefore the term loss was accepted even in the Income Tax Act, 1961. However, the ld. Pr.CIT had not agreed with the submission of the assessee stating that assessee had failed to establish the genuineness of the claim made by it with copies of sale agreement. The ld. Pr. CIT held that A.O failed to consider issue as discussed above in this order.

4. We have heard the ld. D.R and perused the material on record. The ld. Pr.CITstated that A.O has not verified the following aspects of the project LA SOLITA Ghatkoper:

Addition during F.Y. 2013-14	Rs.5,00,07,334 (closing balance as on 31.03.2014 = Rs.5,42,16,039/-)
Opening WIP as on 1.04.14	Rs.5,42,039
Addition during F.Y. 2014-16	Rs.3,40,94,619
WIP sold during F.Y. 2014-15 (3 flats) (closing balance as on 31.03.2015 = Rs.3,57,24,408) WIP sold at loss of Rs.1,11,96,250 (full WIP sale closing balance)	Rs.4,13,90,000
Opening balance as on 1.04.2015	Rs.3,57,24,408
Addition during F.Y. 2015-16	Rs.64,86,925
Net WIP as on 31.3.2016	Rs.4,22,11,333
Full WIP sold (2 flats) Profit shown in the F.Y. 2015-16 Rs.1,07,91,172	Rs.5,10,00,000 (Closing balance NIL)

The ld. pr.CIT stated the assessee had accounted sale on project completion method, however on completion of the Project there was a loss which had not verified by the A.O. During the course of appellate proceedings neither the assessee has made any written submission nor attended appellate proceedings to disprove the facts reported by the ld. Pr.CIT, therefore, we don't find any reason to interfere in the decision of ld. Pr.CIT in treating order u/s 143(3) of the Act as erroneous insofar as it is prejudicial to the interest of the revenue. Therefore, all the grounds of appeal of the assessee stand dismissed.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 29.09.2022

Sd/-

(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 29.09.2022

PS: Rohit

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ The CIT(A)
4. आयकरआयुक्त(अपील) / Concerned CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,  
सत्यापितप्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai