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

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

आयकर अपील सं. / ITA No.458/PUN/2020
निर्धारण वर्ष / Assessment Year : 2014-15

Anand Developers, 365/3/2/2, Sharayu, Nagraj Colony, Vishrambaug, Sangli- 416416. PAN : AAQFA4833M	Vs.	ITO, Ward-2(1), Sangli.
Appellant		Respondent

आयकर अपील सं. / ITA No.67/PUN/2021
निर्धारण वर्ष / Assessment Year: 2014-15

DCIT, Sangli Circle, Sangli.	Vs.	Anand Developers, 1448, Rajaram Apartments, Timber Area, Sangli- 416416. PAN : AAQFA4833M
Appellant		Respondent

C.O. No.15/PUN/2023
(Arising out of ITA No.67/PUN/2021)
निर्धारण वर्ष / Assessment Year: 2014-15

Anand Developers, 365/3/2/2, Sharayu, Nagraj Colony, Vishrambaug, Sangli- 416416. PAN : AAQFA4833M	Vs.	ITO, Ward-2(1), Sangli.
Appellant		Respondent

Assessee by	:	Shri Kishor B. Phadke
Revenue by	:	Shri Keyur Patel & Shri Ramnath P. Murkunde
Date of hearing	:	05.06.2023
Date of pronouncement	:	20.06.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross appeals filed by the assessee as well as by the Revenue directed against the order of ld. Commissioner of Income Tax (Appeals)-1, Kolhapur ['the CIT(A)'] dated 06.03.2020 for the assessment year 2014-15. The Cross Objection filed by the assessee against the appeal of the Revenue.

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

The assessee is a partnership firm engaged in the business of real estate. The Return of Income for the assessment year 2014-15 was filed on 23.02.2015 declaring total income of Rs.8,30,500/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2(1), Sangli ('the Assessing Officer') vide order dated 30.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.13,19,96,790/-.

While doing so, the Assessing Officer made addition of Rs.3,58,69,978/- on account of alleged gains on undisclosed sale of immovable property, namely, “Magnolia Prime Site”, Kolhapur to M/s. Prarthana Infra, Kolhapur for a consideration of Rs.8,53,00,000/- as per Sale Deed registered on 14.03.2014 and allowed receipt of on-money of Rs.8,47,00,000/- in cash. The brief facts of the case are as under :

During the previous year relevant to the assessment year under consideration, the assessee firm had sold the work-in-progress of project, namely, “Magnolia Prime Site” to M/s. Prarthana Infra, Kolhapur for a consideration of Rs.8,53,00,000/- vide Sale Deed Registration No.47/1910 dated 14.03.2014. However, the gains arising on sale of the said property were not offered to tax in the return of income filed by the assessee firm, as it is stated to be under the impression that the transaction of sale of the said property was not completed during the previous year relevant to the assessment year under consideration for the reason that the purchaser of the said property had failed to discharge full value of consideration as stipulated in the sale deed, in terms of the clause 2.3 of the sale

deed, as the possession of the property had not passed on to the buyers during the previous year relevant to the assessment year under consideration. It is further stated that the assessee firm had also issued a legal notice for cancellation of the sale deed in terms of power to cancel the sale deed in the event of failure of purchaser to make the payment to discharge the full consideration. However, the Assessing Officer, based on the AIR information generated through the Income Tax Department had come to know about this sale transaction, called upon the assessee firm to explain as to why the profit arising on sale of property should not be taxed for the year under consideration. In response to the said show-cause notice, the assessee firm filed a detailed explanation vide its letter dated 28.11.2016 stating that :

(i) Out of the total consideration of Rs.8,53,00,000/- only an amount of Rs.2,97,00,000/- was received as on 31.03.2014 and the balance amount of Rs.5,56,00,000/- was remained outstanding.

(ii) Attention of the Assessing Officer was also drawn to the clause 2.3 of the sale deed to say that the possession is to be given only after receipt of full sale consideration.

Thus, it was contended that since the assessee firm had not passed on the possession to the buyer, as full consideration was not received, there was no transfer of property. Hence, the question of offering gains arising on sale of such property to tax does not arise.

(iii) It was further brought to the notice of the Assessing Officer that full value of consideration was received during the previous year relevant to the assessment year 2016-17 and the gains arising on sale of property was offered to tax in the said assessment year i.e. A.Y. 2016-17. The assessee firm also placed reliance on the provisions of section 42, 54 and 55 of the Transfer Property Act, 1882.

3. The Assessing Officer rejected the above contentions of the assessee firm and proceeded to hold that there is a transfer of property giving rise to the taxable profits in terms of provisions of section 53A of the Transfer of Property Act, 1882 r.w.s. 2(47) of the Income Tax Act, 1961.

4. Subsequently, the Assessing Officer had also received a letter dated 23.12.2016 from the Assistant Commissioner of Income Tax, Central (Circle), Kolhapur (‘the ACIT, CC, Kolhapur’) passing on

information of receipt of on-money consideration of Rs.8,47,00,000/- on the sale of the said property. The copy of this letter addressed to the Assessing Officer by the ACIT, CC, Kolhapur is extracted by the Assessing Officer in para 4.7 of the assessment order. The substance of the said letter is that the search and seizure operations u/s 132 of the Act were conducted in the residential and business premises of the M/s Ramsina Group of cases on 19.12.2014. During such search seizure operations, it was found that M/s. Prarthana Infra had made several cash payments on various dates aggregating to a sum of Rs.8,47,00,000/- to Mr. Vihang Shah and Mr. Anand Shah as advance for purchase of land of "Magnolia Prime Site", Kolhapur, copy of the ledger account of land purchase for the period from 01.04.2013 to 01.12.2014 in the books of M/s Prarthana Infra as well as profit & loss account was also passed on to the Assessing Officer.

5. Based on this information, the Assessing Officer had issued summons u/s 131 of the Act to one Mr. Sachin Abhaykumar Oswal, partner of M/s Prarthana Infra and Shri Vihang Shah and Shri Anand Shah, all the three persons were stated to be present before

the Assessing Officer on 29.12.2016. When the Assessing Officer had confronted the ledger account of land purchase in the books of account, partner of M/s. Prarthana Infra i.e. Mr. Sachin Abhaykumar Oswal had stated that the said payments represent the on-money payments in cash made to partners of M/s. Anand Developers (assessee in appeal) in connection with the purchase of property, "Magnolia Prime Site" in reply to question no.4 and question no.5. He also confirmed that the notings were made in his handwriting as per the information given by his partner. He further stated that the said amounts were not handed over by him, but might have been handed over by his partner in reply to question no.6 and he had also pleaded ignorance as to the name of the partner, who was stated to have been made the payments to the assessee firm.

6. When this information was confronted to the partners of the assessee firm, Mr. Vihang Shah, who had cross-examined, denied that M/s. Prarthana Infra having made any on-money consideration was received by him. Similary, Mr. Anand Shah, who was working as Marketing Sales Executive in the assessee firm, had denied having transacted any business with the said M/s. Prarthana Infra, as

he started working with the assessee firm only in the year 2016 onwards.

7. Based on the entries in the ledger account of M/s. Prarthana Infra and considering the cash flow statements submitted by M/s. Prarthana Infra before the Hon'ble Settlement Commission, Bombay, the Assessing Officer had concluded that the assessee firm was paid on-money consideration of Rs.8,47,00,000/- in cash by said M/s. Prarthana Infra and, accordingly, brought to tax a sum of Rs.8,47,00,000/- as unexplained money u/s 69A of the Act, apart from the profits of Rs.3,58,69,978/- arrived at by deduction of cost of acquisition of Rs.4,94,30,022/- from the sale consideration sated in the sale deed of Rs.8,53,00,000/-.

8. The Assessing Officer also received information from the ACIT, CC, Kolhapur that during the course of search and seizure operations in the case of M/s. Ramsina Group of cases, it is found that M/s. Anand Developers i.e. assessee firm had purchased a property bearing R.S.No.948/3, 948/7 and 948/10 at Kasaba Bavada, Kolhapur from one Ulpe Family for a consideration of Rs.2.76 crores. However, in the sale deed was executed and

registered on 21.06.2011 for a consideration of Rs.1,70,20,000/- only mentioned. Based on this information, the Assessing Officer summoned the partner of the assessee firm, namely, Mr. Vihang Ashok Shah and recorded the statement. When this information was confronted, he denied having paid any on-money payment at the time of purchase of the said property. However, disbelieving the statement given by Mr. Vihang Ashok Shah, the Assessing Officer had made addition of Rs.1,05,80,000/-. The Assessing Officer also disallowed a sum of Rs.16,313/- being 15% of the total expenses of Rs.1,08,782/- incurred on office, petrol, travelling, telephone and vehicle expenses.

9. Being aggrieved by the above disallowances, an appeal was filed before the ld. CIT(A) contesting *inter alia* that the profits of Rs.3,58,69,978/- on sale of immovable property had not accrued to the appellant. The Assessing Officer ought not to have made addition of Rs.8,47,00,000/- being the alleged receipt of on-money on sale of the said property in the absence of evidence on record. The assessee firm also challenged the addition of Rs.1,05,80,000/- made u/s 69C of the Act being alleged on-money paid by the

assessee firm at the time of purchase of property of at Kasaba Bavada, Kolhapur from Ulpe Family.

10. It was pleaded before the ld. CIT(A) that the property of the project, Magnolia Prime Site, which was work-in-progress, was sold to M/s. Prarthana Infra for agreed consideration of Rs.8,53,00,000/- vide the sale deed registered on 14.03.2014. In terms of the said sale deed, the possession of the property was not handed over to the buyers, as the full value of consideration stated in the sale deed was not received by the assessee firm during the previous year relevant to the assessment year under consideration. The full value of consideration was received by the assessee firm only during the previous year relevant to the assessment year 2016-17. It was further argued that the definition of transfer of capital asset given u/s 2(47) of the I.T. Act has no application for the reason that the subject "immovable property" was held as stock-in-trade. Placing reliance on the decision of the Hon'ble Supreme Court in the case of Kaliaperumal Vs. Rajgopal, AIR 2009 SC 2122, wherein, it is held that the transfer of property only on execution or registration of the sale deed is not sufficient to prove the passing on the title of

ownership in favour of the purchasers, whether there is a transfer of property or not to be decided, based on the intention of the parties be gathered from the terms of the deed.

11. As regards to the addition of receipt of on-money consideration of Rs.8,47,00,000/-, it is contended that there was no evidence on record to establish that the assessee firm had received on-money consideration on sale of said property. Without prejudice to the above, it is contended that there was no evidence to say that on-money was paid during the year under consideration placing reliance on the decision of the Hon'ble Bombay High Court in the case of Addl. CIT vs. Miss Lata Mangeshkar, 97 ITR 696 (Bom.), wherein, the Hon'ble High Court held that no addition can be made merely based on the entries found in the books of the third party without any corroborative evidence.

12. Similarly, as regard to the addition of Rs.1,05,80,000/- being the alleged on-money paid at the time of purchase of property at Kasaba Bavada, Kolhapur from Ulpe Family over and above, the apparent consideration of Rs.1,70,20,000/-, it was argued that no addition can be made in the absence of any documentary evidence

merely based on the information received from the ACIT, CC, Kolhapur. Without prejudice to the above, it is further argued that no addition can be made for the year under consideration, as the addition if at all is required to be made, it is only in the year in which the property was purchased.

13. The ld. CIT(A) on due consideration of the above submissions, deleted the addition of profits arising on sale of property, Magnolia Prime Site of Rs.3,58,69,978/- expressing agreement with the contention of the assessee firm that the sale deed entered into with M/s. Prarthana Infra is only a conditional sale deed and the transfer is completed only in the year in which the property was handed over to the purchasers and full value of consideration was received following the ratio of the decision of the Hon'ble Supreme Court in the case of Kaliaperumal (supra). Accordingly, the ld. CIT(A) held that the profits arising on sale of property cannot be brought to tax for the assessment year under consideration.

14. As regards, the addition on account alleged receipt of on-money consideration from M/s. Prarthana Infra on the sale of

property, Magnolia Prime Site, the ld. CIT(A) after discussing the factual background of the addition and considering the material found as result of search and seizure operations in the case of M/s. Prarthana Infra i.e. buyer of the property such as ledger copy, Pen Drive showing the payments of on-money consideration for the period from 01.04.2013 to 08.12.2014 concluded that the cash of Rs.6,97,00,000/- had been paid to Mr. Anand Shah during previous year 2013-14 relevant to the assessment year under consideration and balance consideration of Rs.1,50,00,000/- was paid during the financial year 2014-15 relevant to the assessment year 2015-16, therefore, restricted the addition for the year under consideration to Rs.6,97,00,000/-.

15. As regards, the addition of Rs.1,05,80,000/- on account of alleged payment on-money in cash to Ulpe Family at the time of purchase of property situated at R.S.No.948/3, 948/7 and 948/10 at Kasaba Bavada, Kolhapur, the ld. CIT(A) considering the contents of the letter of ACIT, CC, Kolhapur held that the said letter merely stated that the agreed consideration was Rs.2.76 crores and, accordingly held that no addition can be made merely based on the

letter of ACIT, CC, Kolhapur. Accordingly, the ld. CIT(A) proceeded to hold that since the transaction had taken place during the previous year relevant to the assessment year 2012-13, the on-money consideration, if any, could have been paid during that year, not for the year under consideration. Accordingly, the ld. CIT(A) directed the Assessing Officer to delete the addition of Rs.1,05,80,000/- made u/s 69C of the Act.

16. Being aggrieved by that part of the order of the ld. CIT(A), wherein, gains arising on sale of Magnolia Prime Site of Rs.3,58,69,978/- cannot be brought to tax as the transaction of sale of the property was not completed during the year under consideration, deleting the addition of Rs.1,05,80,000/- being the alleged on-money consideration paid at the time of purchase of property, the Revenue is in appeal before us in the present appeal in ITA No.67/PUN/2021.

17. The assessee is in appeal in ITA No.458/PUN/2020 challenging the decision of the ld. CIT(A) confirming the addition on account of on-money consideration on sale of property of Rs.6,97,00,000/-.

18. The Cross Objection in C.O. No.15/PUN/2023 was filed by the assessee challenging the very validity of proceedings of the assessment on the ground that no approval of the Pr. Commissioner of Income Tax was obtained for converting the limited scrutiny assessment to complete scrutiny assessment etc.

ITA No.67/PUN/2021 – By Revenue :

19. Now, we shall take up the appeal of the Revenue in ITA No.67/PUN/2021.

20. The Revenue raised the following grounds of appeal :-

> *"1. On the facts and in the circumstances of the case and in law, the CIT(A) -1, Kolhapur, in respect of Ground No. 1, has erred in deleting the addition of Rs 3,58,69,978/- made on account of undisclosed sale of immovable property not offered for taxation, ignoring the facts of the case in totality i.e. while deciding the Ground No.2, the CIT(A)-1, Kolhapur held that the AO was right in making addition on account of on-money amounting to the extent of Rs 6,97,00,000/- received by the assessee for the A.Y 2014-15. Whereas in respect of Ground No 1, treated the transaction incomplete for the A.Y 2014-15 stating the major consideration was not received in that year and the assessee had no intention to transfer in the A.Y 2014- 15.*
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> *2. Without prejudice to the above, the CIT(A)-1, Kolhapur, in respect of Ground No.1, has erred on facts and in law, in deleting the addition on account of undisclosed sale of immovable property not offered for taxation, though the reliance placed by the CIT(A) on the case viz.. Kaliaperumal Vs Rajgopal (AIR 2009 Supreme Court 2122) was misplaced since the facts of the case of the assessee are distinguishable.*
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> *3. On the facts and in the circumstances of the case and in law, the CIT(A)-1, Kolhapur, in respect of Ground No.3, has erred in deleting*

the addition of Rs 1,05,80,000/- made u/s 69C of the Act, though the CIT(A) has not conclusively proved the fact that the actual cash payment of Rs 1,05,80,000/- made by the assessee was confirmed to F.Y 2011-12.

4. On the facts and in the circumstances of the case and in law, the CIT(A)-1, Kolhapur has erred in deleting the addition of Rs 1,05,80,000/- made u/s 69C of the Act, by ignoring the provisions of section 292C of the income tax Act, 1961.

5. The appellant prays that the order of the CIT(A)-1, Kolhapur be vacated and that of the Assessing Officer be restored.

6. The appellant craves leave to add, alter, amend or delete any of the above grounds of the appeal at the time of proceedings before the Hon. Tribunal which may please be granted."

21. The ground of appeal nos.1 and 2 challenges the correctness of decision of the ld. CIT(A) deleting the addition of Rs.3,58,69,978/- on account of undisclosed profit on sale of immovable property placing reliance on the decision of the Hon'ble Supreme Court in the case of Kaliaperumal (supra). The admitted facts of the case are that the assessee firm is engaged in the business of real estate development. It had sold the work-in-progress of project titled as "Magnolia Prime Site", which is shown as work-in-progress in other words stock-in-trade in the books of accounts and the said immovable property was sold to one firm called M/s. Prarthana Infra vide sale deed dated 14.03.2014 for apparent consideration of Rs.8,53,00,000/-. It is an admitted position that the entire sale

consideration of Rs.8,53,00,000/- was not received as on 31.03.2014 but received only of Rs.2.97 crores, the balance of Rs.5,56 crores was outstanding. It is contention of the assessee firm that in terms of clause 2.3 of the sale deed, it is a conditional sale, as the transfer is complete only upon the receipt of full value of consideration as well as passing on the possession of the property. According to the assessee firm, the full value of consideration was received only during the previous year relevant to the assessment year 2016-17. Therefore, the profits arising on sale of said property were offered to tax for the assessment year 2016-17 which is not disputed by the Assessing Officer. However, the Assessing Officer rejected the above contention placing reliance on certain clauses of the sale deed i.e. clause nos.13, 16 and 17 of agreement to say that the purchaser had become the full owner of the property. Accordingly, the Assessing Officer brought to tax the profits arising on sale of the said property for the assessment year 2014-15.

On appeal before the ld. CIT(A), the ld. CIT(A) concurred with the contention of the assessee firm that there was no transfer of immovable property during the previous year relevant to the

assessment year under consideration. Therefore, the ld. CIT(A) held that the profits arising on sale of such property cannot be brought to tax for the assessment year under consideration.

22. Being aggrieved by the decision of the ld. CIT(A), the Revenue is in appeal before us in the present appeal.

23. The ld. CIT-DR contends that the ld. CIT(A) ought not to have held that no transfer of property had taken place during the previous year relevant to the assessment year under consideration, inasmuch as, the apparent consideration together with the on-money consideration was received during the previous year relevant to the assessment year under consideration. The ld. CIT-DR also submits that when the ld. CIT(A) held that receipt of on-money was held to be taxable for the year under consideration, the transfer is complete during the year under consideration.

24. On the other hand, ld. AR vehemently opposed the submission of the ld. CIT-DR and submits that there is no evidence brought on record by the Department suggesting that the receipt of on-money consideration received by the assessee firm. The issue whether there is a transfer of property or not can be judged only with

reference to the receipt of sale consideration in the sale deed, not on-money consideration.

25. We heard the rival submissions and perused the material on record. The dispute in the present ground of appeal no.1 and 2 raised by the Revenue is with regard to the year of taxability of gains arising on transfer of immovable property situated at Kolhapur. There is no dispute in the transfer itself but the year of transfer in which it took place. Apparently, the property was sold vide sale deed dated 14.03.2014 to M/s. Prarthana Infra for a consideration of Rs.8,53,00,000/- out of which only a sum of Rs.2.97 crores was received as on 31.03.2014. The balance consideration was received during the previous year relevant to the assessment year 2016-17, in which year the assessee firm had offered the profits arising on sale of said property to tax. In this context, it is relevant to extract clause 2.3 of the sale deed dated 14.03.2014 :-

> *"2.3 Even though the amount of consideration to be paid by party No. 1 to party No. 2 is in a phased manner on installment basis by postdated cheques, still Party No. 2 has given a limited right of development to Party No. 1. Party No. 1 is responsible for payment given by post-dated cheques on said dates to party No. 2. After receipt of payment to party No. 2, party No. 1 will get possession of said*

property and, for the same, separate Possession document is to be executed."

26. On perusal of the clause 2.3 as well as relevant clauses of the sale deed, it would reveal that the sale consideration was to be discharged by post-dated cheques in installments. The buyer of the property had only limited rights of development i.e. license to commence the work and the possession of the property to be handed over to the buyers only upon the receipt of the entire consideration. It is further stipulated vide clause 2.5 of the sale deed that the name of the assessee firm continues to be entered in 7/12 extracts till the entire consideration received.

27. Having regard to the recitals made in the above clauses of the sale deed, we are now required to examine the issue of year of transfer. Admittedly, the subject immovable property was held as stock-in-trade, therefore, the definition of word "transfer" given in section 2(47) of the I.T. Act have no application in relation to the asset which is held as stock-in-trade. Therefore, the issue of transfer in relation to the immovable property held as stock-in-trade has to be decided under the general law. As the year of transfer is

important to decide the year of chargeability of capital gains under general law, normally, the ownership of title of the immovable property would pass on to the purchaser on the registration of the sale deed from date of execution of sale deed as held by the Hon'ble Supreme Court in the case of Alapati Venkataramiah vs. CIT, 57 ITR 185 (SC). But, this is not an absolute proposition, as the properties do not pass on since sale deed is registered but passing on the property is based on the intention of the parties, the registration is prima-facie proof of intention of the parties to transfer, but it is no proof of operative transfer, if there is a condition precedent as to the payment of consideration or delivering of sale deed etc. Reliance in this regard can be placed on the decision of the Hon'ble Patna High Court in the case of Smt. Raj Rani Devi Ramna, 201 ITR 1032 (Patna), wherein, Hon'ble High Court after referring to the decision held as follows :-

> *"After hearing learned counsel for the parties, I have no hesitation in holding that the properties do not necessarily pass as soon as the instrument is registered, for the true test is the intention of the parties. Registration is prima facie proof of an intention to transfer, but it is no proof of an operative transfer if there is a condition precedent as to the payment of consideration or delivery of the deed. Thus the seller may retain the deed pending payment of price and, in that case, there is no transfer until the price is paid and the deed is delivered.*

To substantiate my above view, I may first refer to a Bench decision of the Calcutta High Court in the case of Nitai Chandra Naskar v. Smt. Champaklata Debi reported in [1919] 29 CLJ 250, wherein while referring to section 54 of the Transfer of Property Act, it has been held that, "sale is a transfer of ownership in exchange for a price paid or promised or part paid and part-promised. The true test is, what is the intention of the parties to the transaction. If the intention is that title should pass immediately, even though the consideration has not been paid, title passes, that is, failure to pay the consideration for a conveyance does not defeat the conveyance except where there is an agreement that it should take effect only if the consideration is first paid." In the case of Panchoo Sahu v. Janki Mandar, reported in AIR 1952 Patna 263, it has been held that title does not pass on the mere execution and registration of the sale deed and the answer to the question regarding passing of the title lies in the intention of the parties, which is to be gathered from the sale deed itself. A similar view has been taken in the case of Shiva Narayan Sah v. Baidya Nath Prasad Tiwary, reported in AIR 1973 Patna 386. There is a catena of decisions of this court as well as of other High Courts taking a similar view."

28. To the same effect of the decision of the Hon'ble Supreme Court in the case of Kaliaperumal vs. Rajgopal & Another, 2009 (4) SCC 193, wherein, the Hon'ble Supreme Court held that passing on title of execution of sale deed depends upon on the intention of the parties and such intention has to be gathered from recitals of the sale deed, and the surrounding circumstances. Nevertheless, it is equally settled position of law that mere non-payment of consideration may not prevent passing on the title, as the consideration could be payable in future also. Non-payment of consideration could stop

the transfer of title, if such payment is treated as a condition precedent by the parties of the sale deed.

29. Applying the above mentioned principles to the facts of present case, on perusal of clause 2.3 of the sale deed, it would reveal that the parties intended that the ownership of property would be transferred to the seller only upon receipt of the entire consideration by the assessee firm is condition precedent. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Kaliaperumal (supra) is squarely applicable to the facts of the present case. Therefore, we have no hesitation to hold that the transfer of property had not taken place during the previous year relevant to the assessment year under consideration. Consequently, the profits or gains arising on sale of such property cannot be brought to tax for the year under consideration. Therefore, we do not find any illegality or perversity in the findings of the ld. CIT(A) for requiring our interference.

30. The contention of ld. CIT-DR that the assessee firm had received full consideration stipulated in the sale deed inclusive of alleged on-money consideration cannot be accepted for the reason

that the effect of the sale deed should be considered with reference to the sale consideration stipulated in the sale deed. Therefore, there is no merit in the grounds of appeal nos.1 and 2 filed by the Revenue. Thus, the ground of appeal nos.1 and 2 filed by the Revenue stands dismissed.

31. Ground of appeal nos.3 and 4 challenges the decision of the ld. CIT(A) in holding that there was no evidence on record to hold that the assessee firm had paid on-money consideration of Rs.1,05,80,000/- at the time of purchase of property in R.S.No.948/3, 948/7 and 948/10 at Kasaba Bavada, Kolhapur from Ulpe Family. The Assessing Officer made addition of Rs.1,05,80,000/- by alleging that the assessee firm had paid on-money consideration in cash over and above the sale consideration stated in sale deed based on the information received from the ACIT, CC, Kolhapur. When this information was confronted to the assessee firm, the partner of the said firm, namely, Shri Vihang Shah had denied having paid any on-money consideration over and above the sale consideration stated in the sale deed. However, disbelieving the said contention of Shri Vihang Shah, partner of the

assessee firm, the Assessing Officer had proceeded to make the addition of Rs.1,05,80,000/- u/s 69C of the Act.

On appeal before the ld. CIT(A), the ld. CIT(A) deleted the addition by holding that the Assessing Officer had not brought any material on record except the information received from ACIT, CC, Kolhapur, he further observed that the ACIT, CC, Kolhapur had not brought on any evidence on record except the purchase deed dated 21.06.2011, wherein, the consideration of Rs.1,70,20,000/- alone stated. The ld. CIT(A) further observed that the property was purchased by the assessee firm on 21.06.2011 and the addition, if any, is required to be made only for the purpose of assessment year 2012-13.

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

33. The ld. CIT-DR placing reliance on the order of the Assessing Officer submits that the ld. CIT(A) ought not to have deleted the addition on account of alleged payment of purchase consideration in cash.

34. On the other hand, ld. AR submits that the order of the ld. CIT(A) is based on proper appreciation of facts as well as evidence requires no interference.

35. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the addition on account of alleged payment of on-money consideration at the time of purchase of property from Ulpe Family. The material on record clearly indicates that the property was purchased by the assessee firm on 21.06.2011 from Ulpe Family for a consideration of Rs.1,70,20,000/-. The Assessing Officer had received information from ACIT, CC, Kolhapur that the assessee firm had paid on-money consideration in cash of Rs.1,05,80,000/- over and above the sale consideration mentioned in the sale deed of Rs.1,70,20,000/-. When this information was confronted to the assessee firm, the partner of the assessee firm had denied having paid any such on-money consideration. From the contents of letter received from ACIT, CC, Kolhapur, it is clear that there was no reference to any document or loose sheets suggesting the payment of on-money consideration. The Assessing Officer had neither proved nor had brought on record

any corroborative, independent evidence in support of such allegation of on-money consideration, as well as, no independent enquiries were conducted by the Assessing Officer. It is very well settled position of law that no addition can be made merely based on the information received from another Assessing Officer without any independent corroborative evidence on record. Therefore, we do not find any illegality and perversity in the findings of the ld. CIT(A) deleting the addition made by the Assessing Officer. Thus, the ground of appeal nos.3 and 4 filed by the Revenue stands dismissed.

36. In the result, the appeal filed by the Revenue in ITA No.67/PUN/2021 stands dismissed.

ITA No.458/PUN/2020 – By Assessee :

37. Now, we shall take up the appeal of the assessee in ITA No.458/PUN/2020 for adjudication.

38. The assessee firm raised the following grounds of appeal :-

> *"1. On the facts and circumstances of the case and in law the assessment order is bad in law inasmuch as the same is passed beyond the prescribed time limit and is thus barred by limitation and hence needs to be annulled.*

2. On the facts and circumstances of the case and in law the assessment order is bad in law inasmuch as the ITO has, in violation of Instruction of CBDT has travelled beyond his jurisdiction and made additions on other grounds which were not in the reasons for selection of the case for Limited Scrutiny without prior approval of the Pr.CIT.

3. On the facts and circumstances of the case and in law the Ld CIT (A) erred in rejecting the contention of the appellant that the basic record (in the form of hand written diary written by a partner of the firm forming the very basis of the addition) not being bearing the names of the persons, in particular assessee or his partners, it is incorrect to make addition in the hands of the appellant of huge amount of Rs.8.47 Crores merely on surmises and conjunctures.

4. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the addition of Rs.8,47,00,000/- being alleged 'On-Money' paid by the buyers of the land in the years of alleged receipts of such on- money.

5. On the facts and circumstances of the case and in law the Ld CIT (A) erred in rejecting the contention of the appellant that such on-money cannot be taxed in the year of their receipts 'On Receipt Basis' in view of the method of accounting followed by the appellant inasmuch as they same is not accrued in the years of their alleged receipts.

The appellant craves leave to add to, amend, alter, modify or delete all or any of the grounds of appeal or add altogether a new ground of appeal before or at the time of hearing."

39. The assessee firm also raised the following additional grounds of appeal :-

"6. Appellant contends that, since Appellant's 'Return of Income' was selected for "Limited Scrutiny"; addition of Rs. 6,97,00,000 (addition made by leaned AO of Rs. 8,47,00,000), relating to alleged on-money cash received from M/s Prarthana Infra; could not have been made into Appellant's total income, since -

a) No any 153C proceedings were initiated, or

b) No any 147 proceedings were initiated, or

c) No any approval of learned PCIT was availed for extending scope of "Limited Scrutiny"'"

40. The assessee firm raised these grounds of appeal challenging the correctness of decision of the ld. CIT(A) in holding that the assessee firm had received on-money consideration of Rs.8,47,00,000/- at the time of sale of property at Kolhapur.

41. At the outset, there is a delay in filing the present appeal by 59 days. The assessee firm filed a petition praying for condonation of delay relying on the decision of the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation, In re (2022) 441 ITR 722 (SC) dated 10.01.2022, wherein, the limitation prescribed by various statutes was *suo motu* extended on account of difficulties faced by the citizens of the country on account of Pandemic Covid-19. Therefore, we find that it is a fit case for condonation of delay. Therefore, we condone the delay and admit the appeal for adjudication and proceed to adjudicate the issues in the present appeal of the assessee firm.

42. First, we shall take up the additional ground of appeal filed by the assessee firm, as they go to the root of the matter. The assessee

firm raised the preliminary issue that since the assessment order is invalid in law for the reason that the Assessing Officer cannot make addition in relation to those items which had not formed the basis for scrutiny the case under limited scrutiny assessment. He further submits that without converting the case into complete scrutiny, no other addition can be made except the addition should be restricted to the relevant items which formed the basis for selected the case for scrutiny assessment without approval of the Pr.CIT for converting the case to complete scrutiny. The submissions of the assessee firm have carefully perused. Admittedly, in this case, the case was selected under CASS for limited scrutiny for the following reasons :-

> *"- Large increase in sundry creditors w.r.t. turnover as compared to last year.*
> *- Sale consideration of the property in ITR is less than sale consideration of the property reported in ITR."*

43. The transaction of alleged receipt of on-money consideration on sale of immovable property falls within the ambit and scope of *"sale consideration of the property in ITR is less than sale consideration of the property reported in ITR"*. Further, no material

was placed before us in support of contention that no approval of Pr. CIT was obtained. It is further contended that the assessment order is silent as to the approval accorded by the Pr. CIT to convert the limited scrutiny into complete scrutiny. The approval of the Pr. CIT need not form part of the assessment order, if it form part of the record is sufficient, the assessee firm could not discharge the onus proving that no such approval was obtained. Thus, all the contentions raised by the assessee firm are devoid of merits and, accordingly, dismissed.

44. As regards to the contention of the assessee firm that invalidity of the assessment order on the ground that since the assessment is based on the information received consequent to the search and seizure operations of third party, the assessment should be done u/s 153(C) of the Act not under regular assessment are devoid of any merit for the reason that the assessee firm had failed to prove the existence of condition for exercise the jurisdiction u/s 153C of the Act. Moreover, during the course of regular assessment proceedings, any information received from third party can be used against the assessee after affording an opportunity of rebuttal.

Accordingly, the additional ground of appeal as well as original ground of appeal nos.1 and 2 filed by the assessee firm stands dismissed.

45. Ground of appeal nos.3 to 5 challenges the correctness of findings of the ld. CIT(A) that there was evidence on record to show that the receipt of on-money consideration on sale of property. The factual background leading to this addition was already narrated by us in the appeal of the Revenue in ITA No.67/PUN/2021.

46. On perusal of the assessment order, it would reveal that the Assessing Officer made addition of Rs.8,47,00,000/- based on the information received from the ACIT, CC, Kolhapur, which is in fact based on the report of DDIT, Investing Wing, Kolkata. The substance of such information is that during the course of search and seizure proceedings in the case of M/s. Prarthana Infra, a Pen Drive was seized, wherein, the ledger extract of copy of land purchase advance was found. The said data had shown the cash payments on various dates to Mr. Vihang Shah and Mr. Anand Shah totaling to Rs.8,47,00,000/- for purchase of land etc. Based on this information, the Assessing Officer had summoned the partner of

M/s. Prarthana Infra, namely, Mr. Sachin Abhaykumar Oswal and the partner as well as employee of assessee firm, namely, Mr. Vihang Shah and Mr. Anand Shah respectively. In the statements, recorded from the partner of M/s. Prarthana Infra, it is stated in reply to question no.6 that the notings are made in his handwriting, but the notings were recorded as per information given by his partners. He further stated that the amount might have been handed over to M/s. Anand Developers by his partner. However, he failed to recollect about the name of the partner, who had informed him to make the notings and also the partner, who was stated to have made the said payments. On cross-examination, Mr. Vihang Shah, who is partner of the assessee firm, had denied having received any on-money consideration. However, the Assessing Officer had disbelieved this statement and considering the information received from ACIT, CC, Kolhapur had made addition of Rs.8,47,00,000/- on account of alleged receipt of on-money consideration u/s 69A of the Act.

On appeal before the ld. CIT(A), the ld. CIT(A) held that there was sufficient evidence of receipt of on-money consideration of

Rs.8,47,00,000/- but, however, directed the Assessing Officer to restrict the amount received during the year under consideration i.e. Rs.6,97,00,000/- and balance of Rs.1,56,00,000/- directed to be assessed in assessment year 2016-16.

47. Being aggrieved by the direction of the ld. CIT(A), the assessee is in appeal before us.

48. The ld. AR contends that mere entries in the diaries found as result of search and seizure action in third party cannot be form the basis for addition without any corroborative evidence placing reliance on the decision of the Hon'ble Bombay High Court in the case of Addl. CIT vs. Miss Lata Mangeshkar, 97 ITR 696 (Bom.). He further submits that there are gaps in the evidence brought by the Department to suggest that there is an undisclosed income, therefore, the documents can be considered as dumb document and based on the dumb document, no addition can be made. He further submits that the partners of the assessee firm had nowhere stated that they had paid on-money consideration to assessee firm and once the assessee had denied the receipt of such on-money consideration, as well as in the absence of any corroborative

independent evidence to the contrary on record, no addition can be made placing reliance on the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Salek Chand Agarwal, 300 ITR 426 (All.). Without prejudice to the above, he submits that the addition, if any, is required to be made on account of alleged receipt of on-money consideration, the same should be made in the year in which the profits on the sale of such property were taxed.

49. On the other hand, ld. CIT-DR submits that the findings of the ld. CIT(A) are very reasoned and the ld. CIT(A) had reached the conclusion on proper appreciation of facts and evidence on record, requires no interference.

50. We heard the rival submissions and perused the material on record. We have carefully gone through the orders of the lower authorities. The issue in the present grounds of appeal relates to whether or not there was the evidence of receipt of on-money consideration on sale of property. Based on the information passed on by the ACIT, CC, Kolhapur, who in turn passed on the information of DDIT, Investing Wing, Kolkata that during the course of search and seizure operations in the case of M/s. Prarthana

Infra, the Pen Drive was found wherein it was shown that the said party had paid on-money consideration for the period from 01.04.2013 to 08.12.2014 of Rs.8,47,00,000/- to the assessee firm. On receipt of the information, the Assessing Officer had summoned the partner of the said firm, M/s. Prarthana Infra as well as Mr. Vihang Shah and Mr. Anand Shah, partner of the assessee firm and employee of the assessee firm respectively. During the course of examination u/s 131, one of the partners of M/s. Prarthana Infra, namely, Mr. Sachin Abhaykumar Oswal had admitted that this notings were made in the books of account by him. He further stated in reply to question no.6 that he had not paid said money to the partners or M/s Anand Developers. Thus, on consideration of the entire statement given by said, Mr. Sachin Abhaykumar Oswal, which is extracted by the Assessing Officer at page no.22 and 23 of the assessment order, it would be clear that he had nowhere stated that he had paid on-money consideration to the assessee firm herein or its partners. When this statement was confronted with Mr. Vihang Shah and Mr. Anand Shah, they had denied having received any on-money consideration. Thus, it is clear that there is no

evidentiary value of the statement given by said Mr. Sachin Abhaykumar Oswal, who is partner of M/s. Prarthana Infra, once the statement of Mr. Sachin Abhaykumar Oswal is eliminated then there remains no corroborative evidence on record to conclude that the assessee firm had received on-money consideration. The Assessing Officer had merely presumed that the assessee firm received on-money consideration based on the notings/entries made in the books of M/s. Prarthana Infra. It is trite law that a finding in the assessment of one person is not conclusive in the assessment of another person in view of the settled position of law that material gathered in the assessment proceedings of one person is not legal evidence in the assessment of another person. Reference can be made to the decision of N. S. Choodamani vs. CIT, 35 ITR 676 (Kerala). The assessment of each person is separate and distinct and an addition is to be made only on the basis of independent corroborative evidence, brought on record by the Assessing Officer. It is trite law that the assessment is final and conclusive between parties and only in relation to assessment for the financial year for which it is made. Reference can be made decision of Hon'ble

Supreme Court in the case of M.M. Ipoh & Ors. vs. CIT, 67 ITR 106 (SC).

51. Thus, we are of the considered opinion that in the absence of any conclusive material brought on record by the Assessing Officer establishing the receipt of on-money consideration, it cannot lead to the conclusion that the assessee had received on-money consideration. Therefore, the findings of the lower authorities are hereby reversed and we direct the Assessing Officer to delete the addition of Rs.8,47,00,000/-.

52. In the result, the appeal filed by the assessee in ITA No.458/PUN/2020 stands allowed.

C.O. No.15/PUN/2023 – By Assessee :

53. Since in the appeal of the assessee in ITA No.458/PUN/2020 the issues raised in Cross Objection were decided against the assessee firm, the Cross Objection filed by the assessee becomes infructuous, hence dismissed.

54. To sum up, the appeal filed by the Revenue as well as Cross Objection filed by the assessee stands dismissed and appeal filed by the assessee stands partly allowed, as indicated above.

Order pronounced on this 20th day of June, 2023.

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 20th June, 2023.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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