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

SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 94/MUM/2024
(Assessment Year: 2017-2018)

Assistant Commissioner of Income Tax ..... **Appellant**
Circle 14(1)(2)
Room No.455, 4th Floor, Aayakar Bhavan,
M.K.Road, Mumbai – 400020 Maharashtra.

Vs

Bombay Footwear Private Limited
Deonar Village, Behind Telcom Factory,
Deonar, Mumbai – 400 088. Maharashtra
[PAN: AAACB2162P] ..... **Respondent**

C.O No. 139/MUM/2024
(Assessment Year: 2017-2018)

Bombay Footwear Private Limited
Deonar Village, Behind Telcom Factory,
Deonar, Mumbai – 400 088. Maharashtra
[PAN: AAACB2162P] ..... **Appellant**

Assistant Commissioner of Income Tax Vs
Circle 14(1)(2)
Room No.455, 4th Floor, Aayakar Bhavan,
M.K.Road, Mumbai – 400020 Maharashtra. ..... **Respondent**

Appearance

For the Appellant/ Department	:	Dr. Mahesh Akhade
For the Respondent/ Assessee	:	Ms. Aarti Vissanji and Shri Ajay Bhandari

Date

Conclusion of hearing	:	19.09.2024
Pronouncement of order	:	12.12.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue and Cross-Objection preferred by the Assessee are directed against the

order, dated 20/11/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 24/12/2019, passed under Section 143(3) of the Act for the Assessment Year 2017-18.

ITA No.94/Mum/2024

2. The Revenue has raised following grounds of appeal:-

"1. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in placing reliance upon the decision of the Hon'ble ITAT in assessee own case for A.Y.2015-16 passed in ITA No.1645/Mum/2021 wherein the order passed by PCIT u/s.263 of the Act was quashed ignoring the fact that the assessee has entered into a joint development agreement by opting to revenue sharing formula to gain commercial advantage of trade & Profession in place of capital gain?

2. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in placing reliance upon the decision of the Hon'ble ITAT in assessee own case for A.Y.2015-16 passed in ITA No.1645/Mum/2021, wherein the order passed by PCIT u/s.263 of the Act was quashed ignoring the fact that the decision of ITAT is not accepted by Revenue and further appeal is filed before Hon'ble High Court Bombay which is pending?

3. The penalty proceedings initiated u/s.270A of the Act deleted by CIT(A) may please be restored if ground (i) is upheld in favour of revenue.

4. The Appellant prays that the order of the CIT(A) on above grounds be set aside and that of the Assessing Officer be restored."

3. We have heard both the sides and perused the material on record.

4. The facts as emerging from record and from the submission advanced by both the sides are that the Assessee-Company entered into a Development Agreement, dated 21/09/2010, with Godrej Properties Ltd [hereinafter referred to as '**the Developer**']. As per the said Development Agreement, the Assessee had agreed to transfer development rights in a piece of land at Village Deonar, Taluka Kurla, Mumbai held by the Assessee as capital asset. The Developer acquired exclusive rights and authority to develop the aforesaid piece of land by constructing thereon residential buildings; and to allot/sell the aforesaid residential units (along with other premises) on ownership basis or as otherwise permitted under law. In consideration the Assessee was entitled to receive 50% of the Gross Sales Revenue generated from the sale of the total constructed area in the entire development to be carried out by the Developer.

5. During the previous year relevant Assessment Year 2013-14 the Assessee executed a General Power Of Attorney in favour of the Developer on 21/06/2012. Treating the aforesaid event as transfer of the development rights in the piece of land, the Assessee offered to tax INR.16,76,92,000/- as Capital Gains Income computed in accordance with Section 45 read with Section 50D of the Act in the return of income for the Assessment Year 2013-14. The case of the Assessee for the Assessment Year 2013-14 was selected for regular scrutiny. During the assessment proceedings specific query was raised by the Assessing Officer in relation to capital gains income offered to tax by the Assessee. After considering the

details/submission furnished by the Assessee, the Assessing Officer accepted income of INR.16,76,92,000/- offered to tax by the Assessee as Capital Gains Income without any variation or additions. Thus, vide assessment order, dated 12/02/2016, the assessment of the Assessee was completed by accepting returned income as the assessed income for the Assessment Year 2013-14.

6. Thereafter, assessment for the Assessment Year 2014-15 and 2015-16 were completed vide assessment order, dated 08/11/2016, and 27/12/2017, respectively, passed under Section 143(3) of the Act whereby the returned income was accepted as the assessed income without any variation/addition.

7. The Assessment Order, dated 27/12/2017, for the Assessment Year 2015-16 was revised by the Learned Principal Commissioner of Income Tax (PCIT) in exercise of powers vested under Section 263 of the Act. The Assessee challenged the aforesaid revision order in appeal before the Tribunal [ITA No.1645/Mum/2021]. In the aforesaid appellate proceedings before the Tribunal the issue of characterization of payments received by the Assessee in terms of the Development Agreement from the Developer first came up for consideration before the Tribunal. After examining the terms of the Development Agreement, the Tribunal, vide order dated 15/05/2023, concluded that the relationship between the Assessee and the Developer was strictly on principled to principle basis. The Development Agreement did not constitute a joint Development Agreement. While the Assessee was being compensated by way of share of the Gross Revenue received from sell of constructed area, the cost of development of the

housing project and the associated risks was born by the Developer.

8. The appeal before us pertains to Assessment Year 2017-18. In the return of income for the aforesaid assessment year, the Assessee had offered to tax payments received from the Developer in terms of Development Agreement as Long Term Capital Gains Income taxable at the beneficial rate of 20%. However, the Assessing Officer was of the view that the same were in the nature of business income liable to tax under the head 'Profits and Gains of Business or Profession'. In appeal preferred by the Assessee, the CIT(A) overturned the aforesaid order of the Assessing Officer and accepted the Assessee's claim that the income received from the Developer was taxable as Long Term Capital Gains by following the Order, dated 15/05/2021, passed by the Tribunal in ITA No. 1645/Mum/2021, whereby the order of revision passed under Section 263 of the Act for the Assessment Year 2015-16 was quashed by the Tribunal. Being aggrieved, the Revenue is now in appeal before the Tribunal on the grounds reproduced paragraph 2 above.

9. When the present appeal was taken up for hearing, the Learned Authorised Representative for the Appellant appearing before us, at the outset, submitted that the issue raised in appeal preferred by the Revenue was squarely covered by the above decision of the Tribunal. Countering the aforesaid preliminary submission, the Learned Departmental Representative submitted that the above decision rendered by the Tribunal was rendered in the context of exercise of powers of revision by the PCIT under Section 263 of the Act. The Tribunal had quashed the order of revision passed under Section 263 of the Act and

therefore, the findings returned by the Tribunal cannot be relied upon by the Assessee. The Learned Departmental Representative vehemently contented that the Development Agreement and the terms recorded therein clearly showed that the Assessee was engaged in the business and therefore, the payment received from the Developer was in the nature of business income. Referring to Clauses of the Development Agreement (i.e. Clause 12(viii), Clause 15.2, Clause 16.4 and Clause 25) as reproduced in paragraph 5 of the Assessment Order, the Learned Departmental Representative pointed out that the Assessee was sharing a percentage of profits. While the land was owned by the Assessee, the Developer had undertaken responsibility to carry out the construction and to develop the housing project. On completion of the housing project the Assessee and the Developer were under obligation to execute deed of conveyance in favour of the purchaser. The consideration received by the Developer from the purchaser on sale of constructed area included the development charges representing cost of construction of superstructure and the charges for transfer of land. Thus, the consideration received by the Assessee from the Developer, also included consideration for the land which was transferred on execution of the aforesaid conveyance deed. It was further submitted by the Learned Departmental Representative that the activities carried on by the Assessee would qualify as adventure in the nature of trade since the Assessee was carrying out a systematic activity of earning income by way of sale of constructed area. The transactions taken by the Assessee were not simple transactions of transfer of a capital asset but a complex commercial business arrangement entered into by the Assessee with the intention of earning business income.

10. Per contra, Learned Authorised Representative for the Assessee submitted that the Assessee had already offered to tax income of INR.16,76,92,000/- in relation to the transfer of development rights as capital gains income in the return of income for the Assessment Year 2013-14 on account of execution of General Power of Attorney in favour of the Developer. Once the Revenue has accepted the aforesaid income offered to tax by the Assessee as capital gains, the subsequent payments received under the same Development Agreement could not be brought to tax as business income. Learned Departmental Representative further submitted that identical issue relating to characterization of payments received under the Development Agreement was also been examined by the Assessing Officer during the assessment proceedings for the assessment year 2013-14 and after examining the issue, the Assessing Officer accepted Assessee's claim to conclude that the income of INR.16,76,92,000/- had been correctly offered to tax as Capital Gains Income. It was submitted by the Learned Authorised Representative for the Assessee that while the principal res-judicata is not applicable to the income tax proceedings, following the principle of consistency, the order passed by CIT(A) ought to be sustained since the CIT(A) had followed the Order, dated 15/05/2021, passed by the Tribunal in ITA No. 1645/Mum/2021 whereby the Tribunal had rejected identical arguments/submissions made by the Revenue and had returned a finding that the Development Agreement is not in the nature of the Joint Development Agreement and the relationship between the Assessee and the Developer is on principal to principal basis. It was also held by the Tribunal that the payments received from the Developer gave rise to Capital

Gains Income in the hands of the Assessee and the same could not be assessed to tax as business income.

11. In rejoinder, the Learned Departmental Representative reiterated the submissions made and once again vehemently contented that the mere fact that the Assessee has offered to tax payments received from the Developer during preceding assessment years as Capital Gains Income and the same has been accepted as such, would not render the addition made by the Assessing Officer during the relevant previous year invalid.

12. We have given thoughtful consideration to the rival submissions. We find merit in the contention advanced on behalf of the Assessee that identical submissions made by the Revenue stands rejected by the Tribunal vide order, dated 15/05/2021, passed in ITA No.1645/Mum/2021 whereby the Tribunal had quashed the revision order passed under Section 263 of the Act for the Assessment Year 2015-16. We note that the Tribunal had, after examining the terms of the Development Agreement, returned factual finding that the Assessee did not enter into a joint venture with the Developer for construction and sale of the constructed area and that the relationship between the Assessee and the Developer was on principal to principal basis. The relevant extract of the aforesaid decision of the Tribunal reads as under:

> *"5. Per contra, Dr. Mahesh Akhade representing the Department strongly supported the impugned order. The Id. Departmental Representative (DR) submitted that a perusal of the assessment order dated 27.12.2017 would show that it is a cryptic order and the AO has not applied his mind on an issue for which the case was selected under limited scrutiny. In respect of assessment order for AY 2013-14 and 2014-15, the ld. DR submitted that the assessment orders for preceding assessment years are*

also wrong as the AO in the preceding assessment years has not decided the issue in right perspective. He submitted that in any case each assessment year is independent assessment year and assessment for each assessment year has to be examined independently. The principle of res judicata does not apply in income tax proceedings. The AO has to investigate each assessment year and has to pass assessment order on the facts on each assessment year. In support of his submissions, the ld. DR placed reliance on the following decisions:

1. *CIT vs. Ballarpur Industries Limited, 85 taxmann.com 10 (Bombay);*

2. *Jeevan Investment & Finance (P.) Ltd. vs. CIT, 88 taxmann.com 552 (Bombay); and*

3. *Sify Software Limited vs. ACIT, 80 taxmann.com 273 (Chennai-Trib.)*

The ld. DR submitted that the AO while completing the assessment has applied incorrect provisions of law following the earlier assessment orders. The AO without conducting independent enquiry in the impugned assessment year was carried away with the findings in the preceding assessment year, wrong presentation of facts and wrong claim made by the assessee. The development agreement dated 21.09.2010 is in fact a joint development agreement between the assessee and Godrej Properties Limited. This fact is evident from the profit sharing model. As soon as land is pooled in a project developed jointly, the capital asset becomes business asset. The land owned by the assessee on which a housing project is developed by Godrej Properties Limited is not an outright sale of land. The sale is that of development rights as per the agreement. This itself shows that the assessee is a co-developer and is sharing risk. The mode of compensation is profit sharing of revenue from complete household units constructed on the land. The revenue from sale includes value of land and development charges. Thus, the consideration received on sale of flats includes both the components. Thus, the ld. DR prayed for upholding the impugned order and dismissing appeal of the assessee.

6. *Rebutting the submissions made on behalf of the*

Department, the ld. Counsel submitted that the case laws on which the ld. DR has placed reliance are distinguishable on facts and hence, have no relevance in deciding the controversy involved in present appeal. There is only one agreement dated 21.09.2010 on the basis on of which the assessee has received compensation on year on basis as and when the flats are sold. In the preceding assessment years, the Revenue has accepted compensation received by assessee on sale of land as capital gains. The ld. AR further asserted that a perusal of the development agreement at page 43 of the paper book would show that developer is solely responsible for development at its own cost and risk. She reiterated that the assessee has never converted the land held as capital asset into stock in trade. Insofar as mode of consideration is concerned, It has been mutually agreed between assessee and Godrej Properties Limited to share revenue generated from sale of flats. Hence, the assessee received its share of consideration as and when flats are sold. Insofar as the relation between the assessee and the developer, the ld. Counsel referred to Clause 28 of the agreement and submitted that the relation between the parties is strictly on principal to principal basis and it has been specifically mentioned that nothing contained in the agreement shall be construed as constituting a partnership between the parties or a joint venture between the parties. The owner of the land will not be liable for the tax, deals, matters and things entered into, executed or agreed to be done by the developer with third party. The ld. Counsel further placed reliance on the following decisions to support her submissions:

1. *Malabar Industries Co. Ltd. vs. CIT, 243 ITR 83;*
2. *JRD Tata Trust vs. DCIT, 112 taxmann.com 275 (Mumbai Trib.)*

7. *<u>We have heard the submissions made by rival sides and have examined the orders of authorities below</u>……*

8. *xx xx*

9. *<u>It is also an undisputed fact that the assessee has offered income from sale of land pursuant to development</u>*

agreement dated 18.09.2010 for the first time in AY 2013-14. A perusal of the assessment order dated 12.02.2016 for AY 2013-14 would show that the AO has examined the issue and thereafter, accepted the income offered by the assessee from land under the head capital gains. In the subsequent assessment year that is 2014-15, the assessee again offered income from land under the head capital gains and the same was again accepted by the AO. In the impugned assessment year once again, the AO has accepted income offered by the assessee from land as capital gains. As per the agreement between assessee and Godrej Properties Limited, for the sale of land the consideration is received by the assessee on revenue sharing model as and when the flats are sold. The sale proceeds of constructed part of building is shared in ratio of 50% each by the assessee (owner of the land) and the developer.

10. *One of the contention raised by the Revenue is that the revenue sharing model indicates that the assessee is also bearing risk. Here it would be relevant to refer to some of the Clauses in the development agreement (supra). The extract of the relevant Clauses from the agreement are reproduced herein below:*

"3. SECURITY DEPOSIT

3.1 The Developer shall pay to the Owner an interest Free Refundable Security Deposit for an amount of Rs. 10,00,00,000/-(Rupees Ten Crores only) (hereinafter referred to as "the Deposit) for the due observance and performance of the obligations undertaken by the Developer in respect of the transaction/ arrangement of development of the said property in the following manner:

(i) A sum of Rs.2,00,00,000/- (Rupees Two Crores only) has been paid by the Developer to the Owner on or before the execution hereof (the payment and receipt whereof the Owner doth hereby admit and acknowledge and acquit release and discharge the Developer from the same) and

(ii) The balance sum of Rs.8,00,00,000/- (Rupees Eight Crores only) ("Balance

Deposit") shall be paid by the Developer to the Owner on obtaining the Commencement Certificate set out in clause 6.2 below.

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11. Developer's Undertaking

The Developer hereby covenants, agrees and undertakes with the Owner that:

(i) The Developer shall upon execution hereof, initiate the process of applying for and obtaining all necessary permissions/approvals from the concerned authorities for commencing the construction of the proposed buildings on the said property;

(ii) The Developer shall during the subsistence of this Agreement be entitled to enter into separate contracts in its own name with suppliers of materials, building contractors, architects, engineers and other for carrying out the development of the said property, at its own risk and cost.

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14. DEVELOPMENT AND SALE

14.1 The Developer shall carry out in its sole and unfettered discretion, and at its own costs, charges and expenses in all respects, all or any items of works for development of the said property, which includes construction of internal roads, laying out of compulsory open spaces or recreation grounds, laying of drainage, sewage and water pipes, and electricity and telephone cables, electric sub-station, common walls, gas pipelines, and other service and utility connections and other items, in conformity with terms and conditions as may be imposed by the MCGM and other statutory authorities while sanctioning the plans and also

such other items and works may be required to be carried out for the purpose of making the said property fit for constructor of residential building(s) thereon as per this Agreement. All finances for completion of the said items of works shall be provided, borne and paid by the Developer alone, and the Owner shall not be liable to incur any financial obligations in that behalf. The Owner (if so required) shall, however, render all assistance and co-operation that may be required by the Developer from time to time to carry out the development work in respect of the said property and construction and completion of the said Project thereon, including signing and executing all necessary documents and writings.

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23. DELAY AND DAMAGES:

23.1 In the event of the Project Completion is not achieved by the Developer within the period as set out in clause 23.1 hereinabove, the Developer shall be liable to pay to the Owner, liquidated damages, calculated at the rate of Rs.4,00,000/- (Rupees Four Lakhs only) per month of delay beyond the stipulated period (including the grace period) in clause 23.1 herein above.

23.2 The Developer shall alone be responsible for the following losses or claims that may arise to the Project.

25. OWNERSHIP OF THE PROPERTY

The possession of the said property is and shall always continue to be with the Owner until the time possession of the completed residential units in the proposed building/s shall be handed over by the Developer to the respective purchasers of such residential units. The authority and permission to be granted by the Owner to the Developer to commence construction of the proposed residential building/s shall not be construed to be handing over or giving possession of the property to the

Developer.

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28. RELATIONSHIP BETWEEN THE PARTIES

Nothing contained herein shall be construed as or be deemed to Developer as constitute the an agent of the Owner, and the relationship between the parties hereto is strictly on a principal to principal basis, and nothing contained herein shall be construed as constituting any partnership between the parties hereto or a joint venture or an association of persons between the parties hereto, and the Owner will not be liable for the acts, deeds, matters and things entered into, executed or agreed to be done by the Developer with any other parties and authorities."

From perusal of above covenants of the Development Agreement, it is unambiguously clear that the risk and the cost of development of the housing project is that of the developer and of not the assessee. Although, the assessee is compensated by way of profit sharing model but the financial interest of the assessee is fairly secured by way of advance deposit of Rs.10 crores, which of course would be adjusted gradually on the sale of complete residential units (Re. Clause 16 Distribution Mechanism). The assessee is not liable for any damages on account of delay or losses in the project. The entire risk and liability to bear the damages is that of the developer. Possession and the ownership of the land shall continue to be with the assessee/owner till the time possession of the completed residential units is handed over to the respective buyers of the flats. The relationship between the developer and the assessee is strictly on principal to principal basis. Thus, from the above covenants in the development agreement it can be safely deduced that it is not a case of joint development agreement as argued by ld. DR.

11. The contention of the Revenue is that the AO has failed to conduct enquiries before completing the assessment. A

perusal of documents on record reveal that the assessment order was selected for limited scrutiny to examine the genuineness of the capital gains, the AO has conducted primary enquires. The agreement on the basis of which the assessee has offered income from land is the same which was subject matter of scrutiny in AYs 2013-14 and 2014-15. For AY 2013-14 after enquiries, the AO accepted the income from land as capital gains. In subsequent assessment year, the AO again accepted the income that germinated from same development agreement as capital gains. No material is brought on record to show that the assessment for AY 2013-14 and 2014-15 were distributed. Therefore, it can be presumed that they have attained finality. The impugned assessment year is a third assessment year. Since, the agreement consequent to which the income was offered to tax as capital gains was the same, there could have been no deviation in the nature of income. We are live to the fact that the principle of res judicata do not apply in income tax proceedings, nevertheless, where there is no change in the facts and circumstances from the preceding assessment year, the Rule of Consistency cannot be ignored (Re. Distributors Baroda (P) Ltd. vs. Union of India, 155 ITR 120 (SC) and Radhasoami Satsang vs. CIT, 193 ITR 321 (SC))" (Emphasis Supplied)

12. xx xx

13. The jurisdiction under Section 263 of the Act can be invoked by the CIT/PCIT where any order passed under the Act by the Assessing Officer is erroneous and is prejudicial to the interest of revenue. The sine qua non for exercising revision jurisdiction under Section 263 of the Act is, the order of Assessing Officer should be erroneous and prejudicial to the interest of revenue. Both the conditions have to be satisfied simultaneously. In the instant case, the Revenue has failed to show that the assessment order is erroneous. Both the conditions for exercising revisional jurisdiction u/s 263 of the Act are not satisfied in the instant case. Thus, we find merit in the appeal of the assessee.

14. In the result, impugned order is quashed and appeal of the assessee is allowed." (Emphasis Supplied)

13. There is no change in the facts and circumstances of the case during the assessment year before us as compared to the Assessment Year 2015-16 since the payments under consideration have been received by the Assessee in terms of the same Development Agreement. On perusal of the Development Agreement as a whole, we concur with the factual findings returned by the Tribunal in the aforesaid decision. We find that entire cost and risk for development of the housing project was born by the Developer. The Developer also undertook the obligation to take necessary approvals and comply with the requirements of the Maharashtra Ownership Flats [Regulation of the Promotion of the Construction, Sale, Management and Transfer] Act, 1963, and rule made thereunder. Clause 28 of the Development Agreement specifically provided that the relationship between the Assessee and the Developer was on principal to principal basis. The Developer had sole and unfettered discretion to develop the housing project and had to bear the responsibility to incur financial obligation for the same. While Developer was required to sell the constructed area in a prudent manner at the maximum available sale price to be mutually decided by the Assessee and the Developer, the Developer had the right to exclusively finalize the sales made to be third parties. We have also taken into consideration the various clauses of the Development Agreement on which reliance was placed by the Learned Departmental Representative. On perusal of Clause 12(viii), Clause 15 and Clause 16 of the Development Agreement we are of the view that the aforesaid clauses were designed to ensure that the Assessee gets fair consideration under the Development Agreement. In our view, the mode of

computation of consideration and the manner of payment cannot be taken as the sole criteria for determining the character of the payments received by the Assessee from the Developer in terms of the Development Agreement. The fact that in the present case the Assessee was getting 50% of sale proceeds arising from sale of the constructed unit cannot lead to the conclusion that the aforesaid payments were in the nature of business income. The intention of the Assessee, as gathered from the reading of the Development Agreement as a whole, was to receive consideration for transfer of asset and not to earn business income. We note that the Assessee had offered income of INR.16,76,92,000/- as Capital Gains Income arising in terms of the Development Agreement for the first time in the return of income for the Assessment Year 2013-14, being the assessment year relevant to the previous year in which General Power of Attorney was executed by the Assessee in the favour of the Developer. Applying the provisions contained in Section 50D of the Act, the Assessee had taken the value on which stamp duty was paid at the time of registration of the Development Agreement as the full value of consideration for the transfer of rights in terms of the Development Agreement and had offered the said amount of INR.16,76,92,000/- to tax as Capital Gains Income for the Assessment Year 2013-14. When the case of the Assessee for the Assessment Year 2013-14 was picked up for regular scrutiny, the Assessing Officer had taken cognizance of the Development Agreement and the aforesaid transaction/facts in the following manner:

"1. The assessee filed its return of income for the A.Y.2013-14 on 20.03.2015 declaring total income at Rs.16,69,63,800/. The return of income was processed u/s. 143(1) of the 1.T.

Act, 1961. Subsequently, the case was selected for scrutiny and notice u/s. 143(2) of the I.T. Act, 1961 was issued on 28.08.2015 and duly served on the assessee. Thereafter, upon change in incumbency to this office, fresh notice u/s 142(1) was issued & duly served on the assessee for necessary compliance.

2. *In response to the said notices, Shri ……., authorised representative of the assessee company, attended from time to time and filed details which are placed on record after verification and the case was discussed & heard.*

3. *The assessee company was in the business of manufacturing of footwear. However, during the F.Y. 2012-13 relevant to the A.Y. 2013-14 there was no business of manufacturing carried out by the assessee. The company had entered into a Joint Development Agreement dated 21.09.2010 with Godrej Properties Ltd., to jointly develop the property owned by the company. In accordance with the terms of the agreement the company executed the General Power of Attorney in favour of the developer on 21.06.2012.*

4. *In accordance with the terms of the agreement, the company is entitled to receive 50% of the Gross Sales Revenue generated from the sale of the total constructed area in the entire development from the Developer as consideration for the transfer.*

5. *As such, the amount of consideration to be received by the company is not ascertainable as it depends on the gross sales revenue from the sale of the total constructed area which will be received in the future.*

6. *Section 50 D of the Income Tax Act, 1961 states that "Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer."*

7. *In view of the above, as the consideration received or*

accruing as a result of the transfer of the property by the company is not ascertainable and cannot be determined the company has taken the Ready Reckoner Value of Rs.16,76,92,000 (Rupees Sixteen Crores Seventy Six Lakhs Ninety Two Thousand only) on which stamp duty has been paid at the time of registration of the agreement as the fair market value of the said asset on the date of transfer as the full value of the consideration received as a result of the transfer.

8. The assessee thus, has declared the heed capital gains of Rs.16,76,92,000/-, for the A.Y. 2013-14.

9. After discussion the total income of the assessee is worked out as under……." (Emphasis Supplied)

14. On perusal of above it become clear that the Assessing Officer had, after due enquiry, accepted the income returned by the assessee under the head 'Capital Gains' as the returned income was accepted as the assessed income of the Assessee for the Assessment Year 2013-14. Similarly, in the for the Assessment Year 2014-15, the payments received by the Assessee from the Developer under the Development Agreement were offered to tax as Capital Gains and the same accepted by the Assessing Officer vide Assessment Order, dated 18/11/2016. For the Assessment Year 2015-16, vide assessment order dated 27/12/2017, capital gains income offered to tax by the Assessee was accepted by the Assessing Officer. Vide order, dated 15/05/2023, passed by the Tribunal in ITA No.1645/Mum/2021, the aforesaid assessment order passed for the Assessment Year 2015-16 was upheld as the Tribunal quashed the revisional order passed by under Section 263 of the Act holding, inter alia, that the assessment order, dated 27/12/2017, was not erroneous. Further, while arriving at the aforesaid conclusion the Tribunal made following observation:

".11. The contention …….We are live to the fact that the principle of res judicata do not apply in income tax proceedings, nevertheless, where there is no change in the facts and circumstances from the preceding assessment year, the Rule of Consistency cannot be ignored"

15. We find no reason to depart from the above said view taken by the Tribunal in the case of the Assessee for the Assessment Year 2015-16. Consistent with the view taken by the Tribunal for the Assessment Year 2015-16, we hold that payments received by the Assessee from the Developer during the Assessment Year 2017-18 were in the nature of Capital Gains Income. Since, the CIT(A) has allowed the appeal preferred by the Assessee following the aforesaid decision of the Tribunal, we do not find any infirmity in the order passed by the CIT(A). Accordingly, all the Grounds raised by the Revenue are dismissed.

Cross Objection No.139/Mum/2024

16. Since, we have sustained the order passed by the CIT(A), the Cross Objection raised by the Assessee are dismissed as having been rendered infructuous.

17. In result, the appeal preferred by the Revenue as well as the Cross Objections preferred by the Assessee are dismissed.

Order pronounced on 12.12.2024.

Sd/-	*Sd/-*
(Narendra Kumar Billaiya)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 12.12.2024
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.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)
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