Platinum Properties — Income Tax Appeal No. 151/2024

2026:BHC-OS:9208-DB 16-ITXA-151-24.DOC JYOTI RAJESH IN THE HIGH COURT OF JUDICATURE AT BOMBAY MANE Digitally signed by JYOTI RAJESH MANE ORDINARY ORIGINAL CIVIL JURISDICTION Date: 2026.04.10 18:03:43 +0530 INCOME TAX APPEAL NO. 151 OF 2024 Pr Commissioner Of Income Tax Central Pune ...Appellant Versus Platinum Properties Ay 2014-15 Ita 3555/Mum/2019 ...Respondents _______ Mr. Ashokkumar N. Kotangale a/w. Prabhakar Ranshur, for Appellant. Mr. Madhur Agrawal i/b. Mr. Sameer Dalal, for Respondent. _______ CORAM: G. S. KULKARNI & AARTI SATHE, JJ. DATE: 27 MARCH 2026 Oral Judgment (Per : Aarti Sathe, J):- > B. " Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is justified in quashing order of the Income Tax Act, 1961 passed by the Pr. Commissioner of Income Tax by accepting the assessee's stand that on-money received cannot be assessed during the year under consideration as Occupancy Certificate was received in subsequent assessment year ignoring the fact that the AO did neither ask any explanation about taxability of on money of Rs.7.96Cr. nor even asked for Occupancy certificate?

3. The brief facts are as follows:- > i) The Respondent-Assessee is engaged in the business of builders and developers. During the year under consideration, the Respondent-Assessee undertook the construction of two projects, namely "Spring" and "Taloja." The Respondent-Assessee follows the "project completion" method for recognizing profits from construction activities. > ii) During the present AY i.e. 2014-2015, the project "Spring" was completed, whereas the project "Taloja" remained under construction. Accordingly, the Respondent-Assessee recognized sales in respect of the completed project and disclosed the closing work-in-progress for the ongoing project. > iii) The Respondent-Assessee reported a net profit of Rs. 45,25,572/- and closing work-in-progress of Rs. 1,59,11,745/-. After considering remuneration paid to partners and other allowable and disallowable items as per the provisions of the Act, the Respondent-Assessee declared a taxable income of Rs.1,14,800/-.The Page 2 of 17 Mane ::: Uploaded on - 10/04/2026 ::: Downloaded on - 10/04/2026 21:20:17 ::: 16-ITXA-151-24.DOC Return of income (ROI) for AY 2014-15 was filed electronically on 30 th September 2014. The PCIT-II, Thane passed order dated 27th March 2019 holding that the order of the Assessing Officer dated 26 th December 2016 is erroneous and prejudicial to the interest of the Revenue, and therefore invoked the provisions of of the Act and set aside the assessment order dated 26th December 2016 of the Assessing Officer passed under of the Act, with a direction to re-do the assessment de novo after affording an adequate opportunity to the Respondent-Assessee. viii) Being aggrieved by the order passed by the PCIT-II Thane, the Respondent-Assessee preferred an Appeal before the ITAT and contended that the PCIT-II Thane had erred in passing the order dated 27 th March 2019 under of the Act. Page 4 of 17 Mane ::: Uploaded on - 10/04/2026 ::: Downloaded on - 10/04/2026 21:20:17 ::: 16-ITXA-151-24.DOC ix) The ITAT, by the impugned order dated 21 st March 2023 allowed the Appeal filed by the Respondent-Assessee on the ground that the order passed by PCIT-II, Thane, was incorrect in as much as the same was not erroneous or prejudicial to the interests of the Revenue, and the finding rendered therein of taxing on-money of Rs.7,96,39,066/- in the present AY 2014-15 without referring to any material available on record. The ITAT accepted the contention urged by Respondent-Assessee that they were following the project completion method for offering its income and this fact was never disputed by the Appellant-Revenue. The ITAT also accepted that the occupancy certificate for the Spring - I Project was received in the year relevant in AY 2013-14 and hence the proportionate amount of on-money relating to the aforesaid project was offered in that year. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income- tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law." The principle which has been Malabar Industrial Co. Ltd. 2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in [2007] 295 ITR 82." The principles the courts are that the Learned CIT cannot invoke his powers of revision under if the Assessing Officer has conducted enquiries and applied his mind and has taken a possible view of the matter. If there was any enquiry and a possible view is taken, it would not give occasion to the Commissioner to pass orders under of the Act, merely because he has a different opinion in the matter. The consideration of the Commissioner as to whether an order is erroneous in so far it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. It not a case where the AO has not applied his mind. From the record we notice that the AO was very much aware that the Project Spring II has not been completed in this year. Accordingly, we agree with the submission of Ld A.R that the Ld PCIT has no material to come to the Page 8 of 17 Mane ::: Uploaded on - 10/04/2026 ::: Downloaded on - 10/04/2026 21:20:17 ::: 16-ITXA-151-24.DOC conclusion that the difference amount is taxable in AY 2014-15. Accordingly, we are of the view that, in the facts and circumstances of the case, the impugned revision order cannot be sustained. Accordingly we quash the same.

11. In the result, the appeal filed by the assessee is allowed. Pronounced in the open court on 21.3.2023."

4. We have heard Mr. Kotangale, learned counsel on behalf of the Appellant- Revenue and Mr. Madhur Agrawal, learned counsel on behalf of the Respondent- Assessee.

5. Learned counsel appearing on behalf of the Appellant-Revenue, Mr.Ashokkumar Kotangale, contended that the order passed by the ITAT failed to properly appreciate the material available on record. It was submitted that during the course of the assessment proceedings for present AY 2014-15, the Assessing Officer did not raise or verify the issue of on-money received by the Respondent- Assessee amounting to Rs. 60,82,34,643/- crores in respect of its two projects, namely "Spring-I" and "Spring-II." It was further contended that the Assessing Officer failed to consider that out of the total on-money of Rs. 60,82,34,643/-, a sum of Rs.7,96,39,066/- pertained to present AY 2014-15 and had not been offered to tax by the Respondent-Assessee in the said year. Accordingly, the assessment order dated 26th December 2016 was erroneous and prejudicial to the interests of the Appellant-Revenue. > 2. At this stage we may clarify that under para 10 of the judgment in the case of (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the

Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income- tax Officer is unsustainable in law. According to the learned Additional Solicitor General on interpretation of the provision of as it then stood the view taken by the Assessing Officer was unsustainable in law and therefore the Commissioner was right in invoking of the Income-tax Act. Revision of orders prejudicial to revenue -- (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous insofar as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. > (2) No order shall be made under sub-section (1)-- > (a) to revise an order of reassessment made under , or > (b) after the expiry of two years from the date of the order sought to be revised." From a reading of sub- of , it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the ITO is 'erroneous insofar as it is prejudicial to the interests of the revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements sub-section (1). The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. We have also held as to what is prejudicial to the interests of the revenue. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the Court, it would be open to the Courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. Our aforesaid conclusion gets full support from a decision of Sabyasachi Mukharji, J. (as his Lordship then was) in Russell Properties (P.) . CIT [1977] 109 ITR 229 (Cal.).

12. It is therefore our view that the impugned order passed by the ITAT is a well-reasoned order which does not give rise to any substantial question of law which requires interference or consideration in the present Appeal. In view thereof Appellant-Revenue's appeal is accordingly dismissed, as no substantial question of law arises in this Appeal. No costs. (AARTI SATHE, J.) (G. S. KULKARNI, J.)