

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 927/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2012-13)

Paras Chinubhai Jani 22 – Parikh Colony, Nr. Navnirman Park, Ranip, Ahmedabad - 382480	बनाम/ Vs.	Pr. Commissioner of Income Tax-5 1 st Floor, Narayan Chambers, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACXPJ9045M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Hardik Vora, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri O. P. Sharma, CIT. DR

सुनवाई की तारीख / Date of Hearing	31/01/2019
घोषणा की तारीख /Date of Pronouncement	26/04/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee seeking to impugn the revisional order passed by the Principal Commissioner of Income Tax-5, Ahmedabad ('Pr.CIT' in short) under S. 263 of the Income Tax Act, 1961 (the Act) dated 17.03.2017 in connection with the assessment order passed by the AO under s. 143(3) of the Act dated 20.02.2015 concerning AY. 2012-13.

2. As per the grounds of appeal, the essential grievance of the assessee is that in the facts and the circumstances of the case the Pr.CIT was not justified in exercising revisionary powers under s.263 of the Act and thereby setting aside the assessment order passed under s.143(3) of the Act with a direction to the AO to frame assessment afresh after proper examination, inquiry and verification with reference to deduction under s.54B of the Act claimed by the assessee.

3. To adjudicate the grievance of the assessee, the relevant facts are taken note of as follows:

3.1 The assessee filed its return of income for AY 2012-13 declaring total income at Rs.21,86,120/-. The assessee *inter alia* claimed deduction under s. 54B of the Act to the tune of Rs.75,94,273/- against the sale of certain parcels of land. The return filed by the assessee was subjected to scrutiny assessment and assessment order was framed under s.143(3) of the Act dated 20.02.2015 wherein the AO *inter alia* revised the quantum of chargeable capital gains. The AO also disallowed an amount of Rs.23,06,723/- as excess claim of deduction under s.54B of the Act.

3.2 The assessment so framed by the AO under s.143(3) of the Act was sought to be modified by the Pr.CIT in the proceedings under s.263 of the Act. A show cause notice dated 22.02.2017 was issued to the assessee in this regard alleging the aforesaid assessment order to be erroneous and prejudicial to the interest of the Revenue. The relevant portion of the show cause notice is reproduced hereunder:

“...On verification of the assessment records, it is noticed that you have claimed deduction of Rs.41,09,160/- [Rs.29,75,580/- + Rs.11,33,580/-] u/s. 54B of the Act, against the properties purchased on 02/12/2011 and 01/12/2011. It is further seen from the records that the capital assets were sold on 21/02/2012 from which the gain arose. The provisions of Section 54B of the Act provides that the

exemption is available under this section if the asset is purchased after the date of sale of asset from which the capital gain arose. As stated above, you have purchased the assets prior to the sale of land and hence the exemption claimed by you is not allowable. Failure to disallow your claim of Rs.41,09,160/- is incorrect.

From the above discussions, it appears that the said assessment order dated 20/02/2015 is erroneous and prejudicial to the interest of revenue to the extent mentioned above. You are, therefore, requested to show cause as to why the total income assessed u/s. 143(3) of the Act should not be enhanced or modified u/s. 263 of the Act... ”

3.3 The assessee filed a reply thereto contesting the show cause notice and also challenged the foundation of jurisdiction under s.263 of the Act sought to be assumed by the Pr.CIT. From the case record, it appears that the AO made an addition to the long term capital gains of Rs.49,55,300/-. The AO also verified the claim of deduction under s.54B of the Act against the aforesaid capital gain. The AO scaled down the deduction under s.54B of the Act from Rs.75,94,273/- to Rs.52,87,673/- and consequently, disallowed the deduction under s.54B of the Act to the extent of Rs.23,06,723/- in respect of investment in one of the parcels of the land made after the due date of filing of return.

3.4 The Pr.CIT noted that the assessee has purchased following property and had claimed exemption under s.54B of the Act thereon:

Sl. No.	Survey No.	Purchase Value (in Rs.)	Stamp Duty (in Rs.)	Regn. Charges (in Rs.)	Total (in Rs.)	Share of the assessee	Date of purchase	Exemption claimed (in Rs.)
1.	1369/1, Prantij	55,00,000	3,96,000	55,160	59,51,160	50%	2/12/2011	29,75,580
2.	1369/2, Prantij	23,06,600	26,900	23,280	23,56,780	50%	27/9/2012	11,78,390
3.	1369/3, Prantij	21,00,000	1,46,000	21,160	22,67,160	50%	1/12/2011	11,33,580
4.	921, Prantij	65,00,000	3,55,000	65,170	69,20,170	33.33%	13/5/2013	23,06,723
							TOTAL	75,94,273

3.5 From the above tabulated statement, the Pr.CIT observed that while the AO has rightly disallowed investment in land amounting to

Rs.23,06,723/- for contravention of Section 54B(2) of the Act, the AO has failed to disallow deduction under s.54B of the Act in respect of purchase of land (as per Item Nos. 1 & 3 tabulated above) where the purchase of land has occurred prior to transfer of capital asset for the purposes of Section 54B(1) of the Act. The Pr.CIT observed that Section 54B(1) of the Act enjoins upon the assessee to purchase of land for agricultural purposes after the date of transfer of the original capital asset in order to avail the exemption contemplated under s.54B of the Act. But in the instant case, the assessee has purchased the asset prior to the date of transfer of the original capital asset to the tune of Rs.41,09,160/-. The Pr.CIT alleged that the AO has not looked into this crucial aspect and finalized the assessment proceedings under s.143(3) of the Act without due diligence. The Pr.CIT, in essence, alleged that the assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue owing to breach of conditions specified under s.54(1) of the Act relating in excess deduction to the extent of Rs.41,09,160/-. The Pr.CIT took note of various submissions made by the assessee in its defense but was not impressed. The Pr.CIT accordingly set aside the assessment order and directed the AO to look into the aforesaid decision afresh in accordance with law.

4. Aggrieved by the aforesaid action of the Pr.CIT, the assessee preferred appeal before the Tribunal.

4.1 The learned AR for the assessee reiterated various submissions made before the Pr.CIT as noted in its order and pointed out that the jurisdiction assumed by the Pr.CIT is not proper. The learned AR sought to contend that the assessment order passed by the AO is after due application of mind. The AO in fact has disallowed a portion of the claim of deduction made by the assessee under s.54B of the Act

and therefore lack of due diligence cannot be alleged. It was contended that the AO has taken one of the two possible views and therefore, assessment order is neither erroneous nor prejudicial to the Revenue.

4.2 The learned AR thus urged for cancellation of the order passed under 263 of the Act.

4.3 The learned DR for the Revenue, on the other hand, relied upon the order of the Pr.CIT.

5. We have carefully considered the rival submissions and perused the revisional order passed by the Pr.CIT under s.263 of the Act as well as other materials referred to and relied upon by the respective parties and case laws cited.

5.1 Supervisory jurisdiction vested under Section 263 of the Act enables the concerned Pr.CIT/CIT to review the records of any proceedings and order passed therein by the AO. It empowers the Revisional Commissioner concerned to call for and examine the records of another proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interest of the Revenue, then 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 the order enhancing or modifying the assessment or cancelling the assessment and directing afresh assessment. Thus, the revisional powers conferred on the Pr.CIT/CIT under s.263 of the Act are of very wide amplitude with a view to address the revenue risks which are objectively justifiable.

5.2 In the facts and circumstances of the case, the substantive issue that emerges for adjudication is whether the Pr.CIT under the umbrella of revisionary powers is entitled to upset the finality of assessment proceedings before the AO where the AO has allegedly committed error in passing assessment order without proper verification of deductions claimed.

5.3 It is the case of the Pr.CIT that as per Section 54B(1) of the Act the deduction is permissible only where capital gain is utilized for purchase of land *after* the transfer of a capital asset. The Pr.CIT accordingly took a view that the deduction/examination to the extent of Rs.41,90,160/- attributable to the land acquired *prior* to transfer is allowed in excess of the parameters laid down.

5.4 We find that the controversy is plain and simple and is not capable of any debate having regard to express statutory language. The AO has not given any reason as to how purchase of land prior to transfer of capital asset is eligible for claim of deduction under s.54B(1) of the Act. Thus, as a corollary, the AO has accepted the claim of deduction by oversight and without any application of mind in this regard. No evidence has been adduced before us to show that the issue was present to the mind of the AO. A wrong acceptance of claim of deduction would not given inference towards application of mind. Secondly, the eligibility of deduction under s.54B of the Act in respect of land acquired prior to transfer of capital asset is clearly opposed to the plain provision of the Act and thus apparently not sustainable having regard to express the provision of the statute. The legislature in its own wisdom has used the expression before the transfer of long term asset as well as after the transfer of capital asset at appropriate places viz. Section 54 of the Act. The intention of the legislature is thus quite clear. Therefore, claim of deduction accepted

by the AO despite unequivocal language of the Act, in our view, is erroneous as contemplated under s. 263 of the Act. Such error on the part of the AO has caused definite prejudice to the interest of the Revenue. The action of the Pr.CIT is thus within the realm of powers vested under s.263 of the Act. The Pr.CIT has distinguished the case laws cited which is found to be in order. We do not see irregularity in the assumption of jurisdiction by the Pr.CIT under s.263 of the Act. We therefore decline to interfere.

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

This Order pronounced in Open Court on 26/04/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 26/04/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्योषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।