

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1146 to 1150/Bang/2019  
(Assessment Years : 2011-12 to 2015-16)

Shri Y.C. Satish Kumar,  
No.1228, Nagarathpet,  
Devanahalli, Bangalore-562 110  
PAN ACGPS 0967E

....Appellant

Vs.

Prin. Commissioner of Income Tax (Central),  
Bangalore.

.....Respondent.

Assessee By:	Shri Mohammed Mujassim, C.A.
Revenue By:	Shri A. Srinivasa Rao, CIT (D.R)

Date of Hearing :	24.06.2020
Date of Pronouncement :	.07.2020

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

These are the appeals filed by the assessee against separate orders of Prin. Commissioner of Income Tax (Central), Bangalore passed under Section 263 of the Income Tax Act, 1961 ('the Act'). Since all the appeals have common issues and identical to the facts of the case, accordingly are clubbed and heard together

and consolidated order is passed. For the sake of convenience, we shall take up the ITA No.1146/Bang/2019 and the grounds of appeal raised by the assessee are as under :

1. On the facts and in the circumstances of the case, the conditions precedent being absent the proceedings initiated U/s.263 of the Act was opposed to law and the order passed U/s.263 is liable to be cancelled.
2. On the facts there being no error much less an error prejudicial to the interest of revenue, the learned Commissioner of Income-tax ought to have refrained from invoking the provisions of Sec.263 of the Act.
3. The learned Commissioner ought to have appreciated the fact that the intention of the Appellant was not to do business but to hold the land as an Capital Investment and the said transaction could not be held as adventure nature of trade.
4. The learned Commissioner failed to appreciate the fact that the appellant in his books has shown the same as investments in fixed Assets and not as stock trade in his statement of affairs and the said asset held by him has to be considered as an Capital Asset towards his share of 50 % of said lands at Guttahalli Village, Kasaba Hobli, Devanhalli Taluk.
5. The learned Commissioner ought to have considered the submissions as well as case laws filed by the appellant and ought not to have invoked the proceedings u/s.263 of the Act.
6. The learned Commissioner failed to appreciate the fact that AO has considered the issue in depth during the Original Assessment proceedings and specific queries had been raised on the transactions (which were under revision under section 263 of the Act) and in response to the same the Appellant had provided all the details as called for.

7. The Ld. CIT failed to consider that inadequate enquiry would not give an occasion to exercise jurisdiction under Section 263 of the Act. He also failed to consider the reliance placed on the following judgments:
    - a. CIT Vs. Sunbeam Auto Ltd. – 322 ITR 167 (Delhi)
    - b. CIT Vs. Gabriel India Ltd. – 203 ITR 108(Bom)
    - c. CIT Vs. Leisure Wear Exports – 341 ITR 166 (Delhi)
  8. The Ld. commissioner ought to have appreciated that in order to arrive at a conclusion, as to whether a transaction is to be taxed as capital gain or the transaction is to be treated to be an "adventure in the nature of trade", things cannot be put in any straight jacket formula, and it is dependent upon the facts and circumstances of each case, to be decided on the basis of relevant considerations as held in CIT Vs. Sohan Khan reported in 304 ITR 194(Raj).
  9. The learned commissioner erred in relying upon the judgments of the Gauhati High Court in CIT Vs Jawahar Bhattacharjee (2012) 341 ITR 434 and CIT vs. Bhagwan Das (2005) 272 ITR 367 (All) (HC), which are contrary to the facts of the case.
  10. The learned Commissioner ought to have appreciated the fact that the appellant had furnished all the details as required by the Assessing Officer in the course of assessment proceedings u/s.143(3) of the Act and thereby the AO was satisfied with the claim of the appellant and therefore the revision initiated under section 263 of the act was uncalled for.
  11. The Ld. Commissioner erred in directing that Rs. 27,50,000/- paid towards purchase of land at Bychapura Village was not allowable expenditure u/s 40A(3) of the Act since the Appellant was engaged in the business of buying , developing and selling of land.
2. The Brief facts of the case are that there was a search under Section 132 of the Act on the assessee on 9.10.2014 and consequent to search, Notice under Section

153A of the Act was issued. In compliance, the assessee has filed a letter dt.24.10.2016 to treat the income as disclosed in the return of income under Section 139(1) of the Act. Further, Notice under Section 143(2) and 142(1) of the Act were issued along with questionnaire and served on the assessee. The learned Authorized Representative of the assessee appeared and furnished the details and the case was discussed. The Assessing Officer has assessed the total income of Rs.1, 31, 83,310/- and passed the order under Section 143(3) r.w.s. 153A of the Act dt.30.11.2016. Subsequently, Revision Notice under Section 263 was issued as the assessee has purchased more than 16 acres of converted non-agricultural land along with Shri Muthappa Rai in Guttahalli Village, Kasaba Hobli, Devanahalli Taluk and applied for issue of layout plan to Bangalore International Airport Planning Authority and formation of residential lay out and also permission for sale and registration of sites. And also the assessee along with his co-owner entered into JDA with M/s Rani Circle Projects Pvt ltd. to develop the residential layout of different dimensions on the said land and Named as Heritage city. The assessee has sold the sites in the Layout of Heritage city and admitted the income as Long Term Capital Gains (LTCG) of Rs.97,35,942/- and Short Term Capital Gains (STCG) of Rs.24,53,425/- whereas it has to be taxed as income from business and also expenditure under Section 40A(3) of the Act for purchase of land for Rs.27,50,000/- in cash and is not allowable as the assessee is engaged in the

business of buying and developing of the land and selling the sites. Further the Assessing Officer has neither examined the above disputed issues nor was any inquiry was conducted during the assessment proceedings. Hence, the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue. In the revision proceedings, the assessee has filed submissions on 12-02-2019 in compliance to the Notice. The learned Authorized Representative of the assessee appeared and explained the details referred at Para 5 of the revision order and emphasized that the Assessing Officer in the assessment proceedings has taken a possible view, which has to be accepted and inquiries were conducted. Whereas, after considering the findings of the Assessing Officer in the assessment order and the assessment record and submissions of the assessee, the Ld Prin.CIT found that the Assessing Officer has never examined the material on record for assessing the income under 'income from business' nor conducted inquiry, instead accepted the assessee income as LTCG and STCG, further the Assessing Officer has not examined the applicability of provisions of Section 40A(3) of the Act in respect of purchase of land and the passed the assessment order without application of mind and incorrect assumption of facts and allowed the claim of assessee. Hence, the order passed by the assessing officer is erroneous and prejudicial to the interest of revenue, with these observations, the Prin. CIT has set aside the order of the Assessing Officer with a direction to make proper verification in respect of the

disputed issues discussed above and redo assessment de novo and passed the revision order under Section 263 of the Act dt.11.3.2019. Aggrieved by the order of Prin. CIT, the assessee has filed an appeal with the Tribunal.

3. At the time of hearing, the learned Authorized Representative submitted that the Prin. CIT has ignored various facts in respect of the claim made by the assessee supported with evidences in the assessment proceedings, which were examined by the Assessing Officer and inquiries were conducted and the assessment order passed under Section 143(3)r.w.s 153A of the Act is neither erroneous nor prejudicial to the interest of revenue and supported his arguments with written submissions and prayed for allowing the appeal. Contra, the learned Departmental Representative supported the orders of the Prin. CIT and further submitted that no enquiry was conducted by the assessing Officer as per the provisions of Section 263 of the Act. Whereas the Ld Prin. CIT has only directed assessing officer for fresh examination and proper verification of facts.

4. We heard the rival submissions and perused the material on record. Prima Facie, the contentions of the learned Authorized Representative are that the revision order passed by the Ld Prin.CIT is bad in law and does not satisfy the twin conditions being erroneous and prejudicial to the interest of revenue and emphasized that the Assessing Officer has taken a possible view and accepted the contentions of the assessee and in the scrutiny proceedings, the Assessing Officer has conducted

inquiries on the claims of the assessee. On perusal of the assessment order, we find that the Assessing Officer has issued Notice under Section 142(1) of the Act along with questionnaire but there are no findings or observations of the Assessing Officer that he has conducted inquiries in respect of the disclosures or claims/details, where the assessee has filed the details in the assessment proceedings referred at page 16 to 29 of the Paper Book. We have considered the judicial decisions relied and the Id. AR could not substantiate with evidence that inquiry was conducted on the material/details filed by the assessee. The contention of the Id.AR is that the order was passed with the approval of Jt.Cit, therefore, there is an application of mind by the AO. Further the assessee is also engaged in other businesses and is not exclusively engaged in the real estate and has accepted the assessment order passed by the A.O and has not contested before higher forum. We find that the submissions of the Id.AR are only justifying the possible view taken by the Assessing Officer but no evidence was filed or substantiated that inquiry was conducted by the Assessing Officer. The Ld Prin.CIT has observed that Assessing Officer has never conducted any inquiry on the disputed issues and also there is no office note or any order sheet noting or internal discussion with any high authority on the issue. We consider it appropriate to refer the observations of the Ld Prin. CIT in the revision order at page 7 Para 8 which is read as under :

*“8. On examination of records, it is noted that these facts are emanated from the analysis of the materials placed on record in the form sale deeds and other documents. In fact, the A.O. has never examined the material from the angle of assessing the income under the head Business. The A.O. has merely called for the break up of the Capital Gains income offered to tax by the assessee in his return in response to which the assessee had filed the Capital Gains working enclosed by copies of sale deeds. Mere filing of information / placing a claim before the A.O. does not amount that such claim is examined and accepted. It is further noted from the P & L Account and Balance Sheet as on 31.03.2011 placed on record that the assessee has offered business income being profit from land dealing and commission of Rs.6,76,415 and further accepted advances from outside parties for land procurement to the tune of Rs.7,40,00,000 and in turn advanced amounts to various persons to the tune of Rs.3,42,08,595. Thus the major activity of the assessee appears to be dealing in lands and in this background it requires examination as to how the solitary transaction of development of lands under the name Heritage City, discussed earlier would alone constitutes investment resulting in LTCG. In my opinion, the A.O. ought to have looked at this issue on a larger perspective by a thorough verification of the assessee's claim. The A.O. has never conducted any enquiry on this issue, leave alone an inadequate enquiry. Therefore, the averment that the A.O. has examined the issue during assessment proceedings is not borne by records that there is no office note or any order sheet noting or internal discussion with any higher authorities on this issue. Therefore, not conducting an enquiry on the desired lines to arrive at a proper conclusion and not analyzing and examining the available documents to bring the proper facts into the assessment order before assessing the income is an error on the part of the Assessing Officer and such error is prejudicial to the interest of the revenue that the tax would have been charged at a higher amount in case the impugned income constitutes business income. Further, when the Assessing Officer has not examined the issue and has not formed an opinion, it is farfetched to say that there exist two opinions on record in regard to the issue under consideration. Secondly, this is not a case of interpretation of statute with reference to a particular provision thereof where two views are existing, rather it is a case where facts are required to be collected, analysed and thereafter the correct law to be applied thereon. Therefore, the case laws relied upon by the assessee are either not applicable to the facts of the case or relevant at this stage.”*

The Id.AR submissions are without proper evidences to substantiate the claim that enquiry was conducted by the Assessing Officer. We found prima facie, the

assessment order is not clear on conducting of inquiry. The Assessing Officer has issued the Notice under Section 143(2) of the Act on 25.10.2016 and also notice U/sec142 (1) of the Act along with questionnaire on 25.10.2016, which is not disputed. Further, the learned authorized representative of the assessee in the assessment proceedings has appeared on two days i.e. 22.11.2016 and 25.11.2016 and furnished the details and the assessing officer has passed the Assessment order on 30.11.2016. We find that the Assessing Officer could not conduct inquiry into income and claims made by the assessee nor the assessee could demonstrate with evidences that the Assessing Officer has conducted the inquiry. We consider the provisions of Section 263 of the Act Expln.2 w.e.f 1.6.2015 which are read as under-

*“Section 263 (1)*

*Explanation 1 .....*

*Explanation 2.—*For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under [section 119](#); or
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

Considering the facts and circumstances, provisions of law, we are of the opinion that the Assessing Officer has passed the order without conducting inquiries or verification of facts. The Ld Prin.Cit has observed that the order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue and he

has set aside the assessment order passed under Section 143(3) r.w.s153A of the Act and directed the A.O to make requisite inquires and verification and redo the assessment de nova with due consideration of facts and law. Accordingly, we are not inclined to interfere with the revision order and of the view that there is no infirmity in the revision order passed by the Ld Pr.Cit and upheld the same and dismissed the grounds of appeal of assessee

5. Similarly, the assessee has filed appeals in ITA Nos.1147 to 1150/Bang/2019 for the A.Ys. 2012-13 to 2015-16 where the issues are similar and identical, and the decision in ITA No.1146/Bang/2019 shall equally apply. Accordingly, we are not inclined to interfere with the order of Prin. CIT and of the view that there is no infirmity in the order passed by the Ld Prin.Cit and upheld the same and dismissed the grounds of appeal of assessee.

6. In the result, appeals of the assessee for the A.Ys 2011-12 to 2015-16 are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 31.07 .2020.

\*Reddy GP

Copy to

1. The Appellant

2. The Respondent

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|------------------|----------------|
| 3. CIT (Appeals) | 4. Prin. CIT   |
| 5. DR, ITAT      | 6. Guard File. |

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore