

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.56/SRT/2021

(निर्धारणवर्ष / Assessment Year: (2015-16)

(Virtual Court Hearing)

Rajendrabhai Ramanlal Desai, At & Post: Mota Varachha, Vasi Falis, Mota Varachha, Surat-395006, Gujarat.	Vs.	The PCIT-1, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFUPD3826L		
(Assessee)		(Respondent)

Assessee by : Shri Ashwin Parekh, AR

Revenue by : Shri Ritesh Mishra, CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 17/09/2021

घोषणाकीतारीख/Date of Pronouncement: 11/11/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

By way of this appeal, the assessee has challenged correctness of the order dated 27.03.2021 passed by the Learned Principal Commissioner of Income Tax-1, Surat [in short “the Id. PCIT-1”], under section 263 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). Grievances raised by the assessee, are as follows:-

“1. The learned Pr. Commissioner of Income-tax, Central, Surat has grievously erred in law and on facts in setting aside the order u/s 143(3) and directing the Assessing Officer to verify the specific issue of Indexed cost of acquisition based on Fair Market Value of property as on 01.04.1981 as the cost of acquisition for deduction u/s 48 of the Act appreciating the non-existence of twin conditions of "Erroneous" and "Prejudicial" order in respect of issue. The order of Principal Commissioner of Income-tax be quashed.

2. The learned Pr. Commissioner of Income-tax, Central Surat has erred on facts and in law in assuming Jurisdiction u/s 263 by substituting his opinion with that of Assessing Officer, formed after detailed examination / inquiries and proper application of mind which is not permissible in law. The order of Principal Commissioner of Income-tax be quashed.

3. The learned Pr. Commissioner of Income-tax, Central Surat has grievously erred in law and on facts in directing the Assessing Officer to verify the issue

of Capital Gain and Indexed cost of acquisition based on Fair Market Value of property as on 01.04.1981 as the cost of acquisition for deduction u/s 48 of the Act without offering any reasons for reinvestigation of issue already raised, verified and accepted by Assessing Officer after inquiry and appreciation of evidences. The order of Principal Commissioner of Income-tax be quashed.

The appellant reserves the right to add, alter, modify, amend or withdraw any of the grounds of appeal before hearing.”

2. Succinct facts are that assessee before us is an individual and filed his return of income for Assessment Year 2015-16 on 21.03.2017, declaring total income of Rs.1,00,00,820/-. The case of the assessee was selected for scrutiny assessment through CASS. The assessment was framed under section 143(3) of the Income Tax Act, 1961 (herein after referred to 'the Act') on 26.12.2017 accepting returned income.

3. Later, Learned Principal Commissioner of Income Tax-1, Surat [in short “the ld. PCIT-1”], has exercised his jurisdiction under section 263 of the Income Tax Act, 1961. The ld. PCIT, on perusal of records, noticed that during the year under consideration, the assessee had sold an immovable property N.A. Land, R.S. 0.36-1-2-37, T.P Scheme No.25, Block No. 30B, F.P. No. 120B Moje, Mota Varachha, Surat for a consideration of Rs.3,58,00,000/- on 23/01/2015. The Cost of acquisition of the said land was taken to the tune of Rs.6,65,840/-, that is, Rs.123/- per square meter as on 01.04.1981 and claimed indexed cost of land at Rs.68,18,202/- for calculation of Long Term Capital Gain. The ld PCIT noticed that during the course of assessment proceeding, the assessee had not submitted any valuation report of any authorized valuer nor the Assessing Officer obtained any sale instances/Fair Market Value (FMV) form the office of the Sub Registrar. The Assessing officer, during the assessment proceedings, had not referred the case to DVO/Sub-Registrar for sale instances/FMV of the property, as on 01/04/1981. Therefore, accepting cost of acquisition at Rs.6,65,840/- as on 01.04.1981 without verification of the same was held as erroneous and prejudicial to the interest of revenue by ld PCIT. In view of the above facts, a show cause notice dated 19.03.2021 was

issued by Id PCIT to the assessee under consideration to explain the genuineness of fair market value as on 01.04.1981.

4. In response to the show-cause notice, the assessee submitted his reply through ITBA system. The assessee replied that during the course of assessment proceeding, a valuation report of a Registered Valuer for land situated at R.S. No. 327, Block No. 529 of Sayan Road, Kosad, Surat in the case of Dalpatbhai Bhagabhai Patel has been submitted. Fair Market value of said land of one Shri Dalpatbhaia Bhagabhai Patel was valued at Rs.227/- per Square Meter by Departmental Valuer as well as by the Registered valuer. The assessee also stated that the land questioned in this case is also situated in same area therefore value of land taken at Rs.6,65,840/- as on 01.04.1981 is justified rate. The assessee argued that all the facts had been submitted before the Assessing Officer (the AO) during the assessment proceeding, and he had verified all the facts properly. Merely because no specific findings are given in the Assessment Order, the same cannot be held as erroneous.

5. However, Id PCIT rejected the contention of the assessee and held that valuation of the land sold by the assessee is not justified on basis of the valuation report of any other land, as both the lands are situated in different areas. The land sold by the assessee is situated at R.S. 0.36-1-2-37, T.P Scheme No.25, Block No. 30B, F.P. No. 120B Moje: Mota Varachha, Surat, whereas the land for which valuation report is relied upon, the land at R.S. No. 327, Block No. 529 of Sayan Road, Kosad, Surat, as evident lands are not in the same village/locality. Further, the assessee has taken value of the land at Rs.127 per square meter whereas the value of the other land on which the assessee relied is valued at Rs.327/- per Sq. meter. When the valuation of the other land was @327 per Square Meter, what was the logic/rationale for adopting valuation land @127 per square meter is not ascertainable/understandable. Thus, by submitting the valuation report of the other land, the assessee just want to mislead the AO and the AO has made error by accepting valuation submitted by the assessee without referring to the

District Valuation Officer for valuation of the land in question. This is not a case of lack of inquiry, but no inquiry in respect to valuation of the impugned land. It is also a case where the AO did not apply his mind. Therefore, the Id. PCIT, based on the above facts, invoked the jurisdiction under section 263 of the Act and noted that the order passed by the Assessing Officer under section 143(3) of the Act on 26.12.2017 is erroneous and prejudicial to the interest of Revenue and directed the assessing officer to examine the issue of Capital Gain.

6. Aggrieved by the order of the Id. PCIT, the assessee is in appeal before us.

7. Shri Ashwin Parekh, Learned Counsel for the assessee, submitted before the Bench that during the course of Assessment Proceedings the Assessing Officer issued the notice dated 28.09.2017 for verification of claim of Long Term Capital Gain made by the assessee. The copy of Notice is enclosed at paper book Page no 15 & 16. In response to the said notice assessee submitted reply dated 06.10.2017, the copy of reply is enclosed at paper book Page no. 17 to 19. In the said reply dated 06.10.2017, the assessee submitted before assessing officer the details of sale deed of land and evidences of Investment in new residential house in the form of bills of material purchases, Labour Expenses on construction and bills of Fittings Material used in new residential house to justify the claim u/s 54F of the Act. Therefore, assessing officer has applied his mind and examined the issue during the assessment stage, hence order passed by the assessing officer under section 143(3) of the Act is not erroneous therefore order passed by the Id PCIT under section 263 of the Act may be quashed.

8. On the other hand, Shri Ritesh Mishra, CIT(DR) for the Revenue, vehemently submitted that Id. PCIT has passed a reasoned order and he has exercised his jurisdiction stating that it is a case of non-enquiry. Learned DR relied on the findings of Id PCIT which is stated in para no.4.1 to 4.4 of his

order under section 263 of the Act. Finally, ld DR prayed the Bench that order of the ld. PCIT should be upheld.

9. We have heard both the parties and perused the material available on record. We note that issue involved in the assessee's case is the indexed cost of acquisition allowed by the Assessing Officer in order u/s 143(3) passed on 26.12.2017. During the year under consideration the assessee had sold land bearing Block No 30B, T.P. No. 25, P.P. No. 120B of Mota Varachha, Surat for a consideration of Rs. 3,58,00,000/-. The land was acquired by inheritance by assessee on the death of his mother by mutation entry No. 2084 of 02.01.1976. Therefore, for cost of acquisition the fair market value of land as on 01.04.1981 is to be substituted as cost of acquisition and thereafter the indexed cost of acquisition is allowed against sale consideration. The land is admeasuring 5418 Sq. Mts. and the fair market value taken by the assessee as on 01.04.1981 is at Rs. 123 per Sq. Mts. Hence, as per assessee, the cost of acquisition is at Rs.6,65,840/- and the indexed cost of acquisition is at Rs. 68,68,202/-.

We note that Ld. Counsel filed before us the notice issued under section 142(1) of the Income Tax Act dated 28.09.2017 by the Assessing Officer during the assessment proceedings (vide PB 15) wherein the Assessing Officer has asked the assessee to furnish the details about the immovable property. The relevant portion of notice (which is useful for our analysis) is reproduced below:

“.....8. Furnish description of immovable properties purchased/sold by you during F.Y.2014-15.

In case of transaction of purchase of immovable properties, if any, please furnish copies of purchase deeds. Reconcile your sources of investment in immovable properties vis-a-vis your returned income for A.Y.2015-16 along with certified documentary evidences in support of your justification/claims/contentions viz. copies of Ledgers, Confirmations, ITRs, Bank Statements etc, of relevant parties.

In case of transaction of sale of immovable properties, if any, please furnish copies of sale- deeds. Reconcile sale consideration received by you vis-a-vis your returned income for A.Y.2015-16 along with computation of Capital

gain. Please furnish certified documentary evidences in support of your justification/claims for deductions or exemptions/contentions.”

10. In response to the notice under section 142(1) of the Act, the assessee submitted reply to the Assessing Officer on dated 06.10.2017 (vide PB.18) wherein the reply submitted by the assessee, in respect of the above said question is reproduced below:

“The assessee had sold land bearing Block No. 30B Abrama Road, Mota Varachha, Surat on 17.01.2015. The copy of sale deed is enclosed. The assessee had not purchased any immovable property during the A.Y. 2015/16. The working of Long Term Capital Gain is as under:

Sale consideration		Rs.3,58,00,000
1. Indexed Cost of Acquisition	Rs.68,18,202	
2. Indexed Cost of Improvement	Rs.33,44,589	
3. Deduction under section 54F	Rs.1,56,36,387	Rs.2,57,99,178
Net Long Term Capital Gain		<u>Rs.1,00,00,822</u>

11. Before the Assessing Officer, the assessee has also submitted reply dated 27.11.2017, which is reproduced below:

“3. Your honour had also asked for basis and evidences of indexed Cost of Acquisition based on Fair Market Value of land as on 01.04.1981 as the land was inherited by assessee. In this regards the following evidences are enclosed.

(1) Valuation Report of Registered Valuer showing fair value of Rs. 227 per Sq. Mts. as on 01.04.1981 for nearby land bearing Revenue Survey No. 327, Block No. 529, Khata No. 385, T.P.S. No. 46, F.P.NO. 248, Old Tenure, Anjani Industries, Nr. Manav Seva Trust, Manbuddhi Ashram, Sayan Road, Kosad, Surat.

(2)The Valuation Report of the Valuation Officer, Valuation Cell, Income-tax Department, Surat showing Fair Market Value of Rs.130 per Sq. Mts. as on 01.04.1981 for nearby land bearing Revenue Survey No. 256 + 257, Block No, 259, T.P.S. No. 24, P.P. 119, Moje Mota Varachha, Surat at Rs. 130 per Sq. Mts.

4. The value taken by the assessee is Rs. 123/- per Sq. Mts. which is the less than the value determined by the Registered Valuer and the Valuation Officer for land in same area. As the fair market value based on the report of Registered Valuer and Valuation Officer is Rs. 227/- per Sq. Mts. and Rs.130/-

per Sq. Mts. respectively, which is more than the value claimed by the assessee, the assessee has not obtained report from a Registered Valuer.”

12. Therefore, we note that regarding the issue raised by the Id. PCIT, under section 263 of the Act, the Assessing Officer has made enquiry, as he has issued notice under section 142(1) of the Act and asked the assessee to submit the details before him. In response, the assessee submitted the details before the Assessing Officer, and the Assessing Officer after getting the submissions of the assessee, has applied his mind and passed an assessment order under section 143(3) of the Act, therefore order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.

13. Learned Counsel also submitted before us, the Valuation Report of the Department *vide* paper book page nos. 23 & 24 wherein the DVO has valued the property @130 per sq. meter. The Ld. Counsel also submitted the Report of the assessee's Registered Valuer which is placed at paper book page no.40, wherein the Registered Valuer of the assessee has valued the property @227 per sq. meter., thus, we note that both the Valuation Reports were before the Assessing Officer, during the assessment stage. Therefore, after taking into account the Valuation Report submitted by DVO and Valuation Report by the assessee, the Assessing Officer has applied his mind and examined the issue and then passed order under section 143(3) of the Act, therefore order passed by the Assessing Officer under section 143(3) of the Act is neither erroneous nor prejudicial to the interest of the Revenue.

14. We note that since, Fair Market Value as on 01.04.1981 determined by Registered Valuer for nearby land and Fair Market Value determined by Valuation Officer for land in same Town Planning Scheme where land sold by assessee is situated are higher than Fair Market Value claimed by assessee, therefore, Id Counsel prays that Fair Market Value of Rs. 123/- per Sq. Meter, is acceptable. The Id Counsel submits before us that assessee had claimed a lower value as Cost of Acquisition from sale consideration in the working of Long Term Capital Gain. The lowest value determined by Valuation Officer in

this area of land is Rs. 130 per Sq. Mts. The assessee claimed 5% lower value than this lowest value to avoid any issue of litigation on Cost of Acquisition. The Id Counsel further states that Assessing Officer had a number of cases involving the issue of Long Term Capital Gain in respect of land situated at T.P. 24 and T.P. 25 of Mota Varachha and the claim of assessee at Rs. 123/- per Sq. Mts. as Fair Market Value as on 01.04.1981 is the lowest claim among all cases and therefore, the Assessing Officer did not refer the issue to DVO for determining Fair Market Value of land as on 01.04.1981 and accepted the evidences submitted by assessee to allow the claim of Indexed Cost of Acquisition.

15. We note that in assessee`s case under consideration, it is vivid from the above narrated facts that assessing officer conducted sufficient inquiry. To gather more information and then prove the claim of the assessee wrong is not the object of section 263 of the Act. The object of section 263 is to examine whether order passed by the AO is erroneous as well as prejudicial to the interest of revenue. Therefore, based on this factual position, the order passed by the AO under section 143(3) should not be erroneous. We note that Coordinate Bench of I.T.A.T., Kolkata in the case of Plastic Concern vs. ACIT [61 TTJ 87 (Cal) has held that mere possibility of gathering more material to prove the claim of the assessee wrong would not make the concluded assessment erroneous so long as the Id. A.O. had acted judiciously and conducted enquiries in the course of assessment proceedings. We note that Ld. A.O. having examined both the valuation reports and having satisfied himself about the correctness of the same and explanation of the assessee in regard to the indexed cost of acquisition as on 01.04.1981, completed the assessment and, therefore, there cannot be a reason to say that the A.O. has failed to conduct necessary enquiry before accepting the claim of the assessee.

16. We note that Ld. Pr. C.I.T. on analysis of assessment records derived satisfaction for issuing the impugned show-cause notice u/s 263 of the Act. The expression '*record*' as used in section 263 of the Act is comprehensive

enough to include the whole record of evidence on which the original assessment order is based. At the same time, if any information asked for by the assessing authority from the assessee or from others to whom he referred the matter during the course of assessment proceeding was not received but received subsequent to the completion of the assessment, in that situation the assessment order passed without receiving such report may appear to be erroneous within the meaning of section 263 of the Act. In the case of the assessee, there is no denying the fact, as detailed above and acknowledged in the assessment order u/s. 143(3) dated 26.12.2017, that in response to notices u/s. 143(2)/142(1) and further requisitions made during the course of assessment proceeding, the A/R of the assessee appeared from time to time and produced/ submitted necessary details/documents as per requisitions in relation to the issues raised by the Ld. Pr. C.I.T., which were examined by Assessing Officer. Therefore, it is the appraisal of the same records which are already with the Ld. A.O. and the Ld. Pr. C.I.T. took a different view than adopted by the A.O. on the same set of facts, which is not permissible u/s 263 of the Act. In the above circumstances, the view taken by the A.O. was one of the possible views and the assessment order passed by him could not be held to be erroneous and prejudicial to the interests of revenue.

17. It is settled law that there is difference between 'Lack of enquiry' and 'inadequate enquiry'. It is for the AO to decide the extent of enquiry to be made as it is his satisfaction as what is required under law. Reliance is placed on the decision of CIT v. Sunbeam Auto Ltd. [(2010) 332 ITR 167], wherein Hon'ble Delhi High Court has held that if there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass order u/s 263 of the Act, merely because the Commissioner has a different opinion in the matter and that only in cases where there is no enquiry, the power u/s 263 of the Act can be exercised. The Id. PCIT cannot pass the order u/s 263 of the Act on the ground that further/thorough enquiry should have been made by AO. Further, it was settled by Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd. vs. CIT [(2000) 243 ITR 83 (SC)]**

wherein it was held that if the A.O. adopts one of the possible courses available in the scheme of the I.T. Act which results in any loss of revenue or when two views are possible and the A.O. adopts one of them with which the C.I.T. does not agree, then it would not be an order prejudicial to the interest of revenue for invoking the jurisdiction u/s. 263 of the Act. In other words, the Ld. Pr. C.I.T. on the same set of facts and evidences on record was of the opinion that the A.O. should have examined the fair market value as on 01.04.1981, as explained above, and he should have taken the stand which the Ld. Pr. C.I.T. hinted in the impugned order u/s 263 of the Act. This is not permissible under law. For better appreciation, the relevant portion of the judgment in the case of **Malabar Industrial Co. Ltd. vs. CIT** (supra) is quoted below:

“The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an 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 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”.

18. Therefore, we note that certainly it is not a case wherein adequate enquiries at the assessment stage were not carried out or assessment was made in haste. However, what is an opinion formed as a result of these enquiries and verification of the materials is something which is in exclusive domain of the Assessing Officer, and even if Ld. Pr. Commissioner does not agree with the results of such enquiries, the resultant order cannot be subjected to revision proceedings. For the reasons set out in the foregoing para of our order we are therefore, unable to agree with the Ld. Pr. CIT’s finding in the impugned order that no enquiry was conducted by assessing officer and no evidence was furnished before assessing officer satisfying the claim raised by the assessee in respect of indexed cost of acquisition as on 01.04.1981, is not tenable and, therefore, we find that the jurisdiction invoked for exercising his revision

jurisdiction is not tenable in the eyes of law and, therefore, we have no hesitation in quashing the impugned order passed by the Ld. Pr. CIT. Therefore, the ground of appeal of assessee is allowed.

19. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 11/11/2021 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat
दिनांक/ Date: 11/11/2021
SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat