

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No. 433/MUM/2020
Assessment Year: 2012-13**

Jayantilal T Dedhia, Plot No. 75, Shanti Niwas, Kansai Section, Ambarnath (East)-421501 PAN: AJQPD8550K (Appellant)	Vs.	Pr. Commissioner of Income Tax, Circle-2, Second Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan (West)- 400604 (Respondent)
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Assessee by : Bhadresh Joshi (AR)

Revenue by : Achal Shurma (DR)

Date of Hearing : 10/11/2021
Date of Pronouncement: 24/11/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against order dated 26.11.2019 of learned Principal Commissioner of Income Tax (PCIT) -3, Thane, passed under section 263 of the Income Tax Act, 1961 for the assessment year 2012-13.

2. Briefly the facts are, the assessee is a resident individual for the impugned assessment year. Assessee did not file any return of income voluntarily as per section 139(1) of the Act. Subsequently, the AO having jurisdiction over the assessee received information that the assessee along with his two brothers, being owners of a plot of land admeasuring 22,200 sq. mtrs. situated at Ambarnath have entered into a sale cum development agreement with M/s Ami Infra vide a registered deed dated 23.01.2012. He further

noticed that the total valuation of the deed as per Stamp Valuation Authority was Rs. 17,97,11,600/-. As per the terms of the said deed, assessee's share in sale consideration is 9.6% of the total development area i.e. 22,000 sq.mtrs. Based on such information, the AO reopened the assessment under section 147 of the Act. In response to the notice issued under section 148 of the Act, assessee filed his return of income declaring total income of Rs. 2,619/-. In course of assessment proceedings, the AO called upon the assessee to explain why capital gain should not be computed on the consideration received pursuant to sale-cum-development agreement. In response to the query raised by the AO, assessee filed his submission stating that neither any monetary consideration was received in the year nor did he get possession of constructed area. The AO however, was not convinced with the submissions of the assessee and concluded that rights in the property has been transferred in the impugned assessment year. Accordingly, he proceeded to compute long term capital gain arising out of transfer of land in pursuance to sale-cum-development agreement. While doing so, he allowed deduction of Rs. 7,77,000/- towards cost of acquisition as on 01.04.1981 based on a valuation report of Govt. approved valuer furnished by the assessee. Thus, ultimately, he computed net long term capital gain of Rs. 3,95,72,366/-.

3. After completion of the assessment as aforesaid, learned PCIT in exercise of power conferred under section 263 of the Act called for and examined the assessment records of the assessee for the impugned assessment year. After examining the assessment records, learned PCIT observed that while completing the assessment the AO has not made proper enquiry regarding

comparable sale instances of similarly held property. He observed, simply relying upon the valuation report furnished by the assessee, the AO has accepted the cost of acquisition of land at Rs. 350 per sq.mtr. Whereas, the market value of the land is more than that. Thus, ultimately he held that in absence of any cogent evidence to indicate that the cost of acquisition of land as on 01.04.1981 is Rs. 350 per sq.mtr, allowance of cost of acquisition simply based on the valuation report has resulted in under assessment of assessee's income and as a result, the assessment order passed is erroneous and prejudicial to the interest of the revenue. Accordingly, he issue a show cause notice to the assessee. After finding assessee's submissions unacceptable, he set aside the assessment order with a direction to adopt the cost of acquisition after proper inquiry and correctly compute the long term capital gain.

4. Learned Counsel for the assessee submitted, the assessment was reopened under section 147 of the Act only for the purpose of assessing the capital gain arising out of sale of property. He submitted, since, the assessee had not filed any return of income in terms of section 139(1) of the Act, in course of assessment proceedings, for the purpose of computing long term capital gain AO called for and examined all relevant materials/evidences in connection with the property sold giving rise to capital gain. He submitted, in course of assessment proceedings, to ascertain the cost of acquisition of the property at the hands of the assessee, the AO has specifically called upon the assessee to furnish valuation report. He submitted, in response thereof the assessee had furnished valuation report of Government approved valuer

determining the fair market value of the property at Rs. 7,77,000/- as on 01.04.1981. He submitted, after due enquiry and application of mind, the AO computed the long term capital gain by adopting the cost of acquisition as per the valuation report. Thus, he submitted, the assessment order cannot be considered to be erroneous and prejudicial to the interest of the revenue, merely because the valuation report is not acceptable to learned PCIT. He submitted, since the assessment is based on valid piece of evidence, the assessment order cannot be considered to be erroneous and prejudicial to the interest of the revenue. Thus, he submitted, the order passed under section 263 of the Act should be declared invalid. In support of such contention, learned counsel relied upon the following decisions:-

1. *“Pawan Kumar – 62 taxmann.com 260 (Chandigarh-Trib)*
 2. *Mathurbhai Nathalal Patel-ITA No. 3034/Ahd/2011*
 3. *Vipul T. Joshi- ITA No. 1710/Ahd/2014”*
5. Strongly supporting the reasoning of the revisionary authority, learned Departmental Representative submitted, without making any enquiry whatsoever the AO has adopted the cost of acquisition based on a valuation report furnished by the assessee. He submitted, the AO has not obtained information regarding comparable sale instances to ascertain whether the value determined by the Govt. approved valuer is actual market value. Thus, he submitted, the PCIT has rightly invoked his jurisdiction under section 263 of the Act.
6. We have considered rival submissions in the light of the decision relied upon and perused the materials on record. Undisputedly, the limited issue on

which the learned PCIT has exercised jurisdiction under section 263 of the Act to revise the assessment order is because of adoption of cost of acquisition based on valuation report of Govt. approved valuer. Facts on record clearly reveal that for the impugned assessment year the assessee did not file his return of income voluntarily. Therefore, based on information received that capital gain arising at the hands of the assessee has not been offered to tax, the AO reopened the assessment under section 147 of the Act. Thus, it is very much clear, the subject matter of dispute in the re-assessment proceeding was the capital gain arising from sale of immovable property. In course of assessment proceedings, the AO has thoroughly enquired into the sale of immovable property for computing capital gain. For indexation benefit, he has called upon the assessee to furnish the cost of acquisition. It is evident, to demonstrate the cost of acquisition of property as on 01.04.1981, the assessee has furnished valuation report of Govt. approved valuer determining the market value of the property as on 01.04.1981 at Rs. 7,77,000/-. Undisputedly, the Govt. approved valuer is an expert in so far as it relates to valuation of property and valuation report prepared by the Govt. approved valuer carries evidentiary available. Therefore, based on valuation report of the Govt. approved valuer, the AO has adopted the cost of acquisition and granted indexation benefit to the assessee. The only reason for which learned PCIT is not satisfied with valuation report of the Govt. approved valuer is simply for the reason that no comparable sale instances have been referred to in the valuation report. In our view, the valuation report obtained from a person having technical expertise and approved by the Govt. for carrying out valuation

cannot be ignored or brushed aside lightly. In any case of the matter, the work of valuation has to be carried out by applying some amount of estimation/guess work. Therefore, there can be variation in the valuation of a particular property between two valuers. However, for this reason alone the assessment order passed accepting the valuation made by the Govt. approved valuer cannot be termed as erroneous and prejudicial to the interest of Revenue. This is because, the view taken by the AO based on valuation report can be considered a plausible view. Merely because the Assessing Officer's view is not acceptable to the revisionary authority or the revisionary authority entertains a different view, proceeding under section 263 of the Act cannot be initiated. More so, when the AO has completed the assessment after due enquiry and proper application of mind. The judicial precedents cited before us by learned counsel for the assessee supports such view. In view of the aforesaid, we hold that in the giving facts and circumstances of the present case, the twin conditions of "erroneous" and "prejudicial to the interest of revenue" are not satisfied to clothe the learned PCIT to exercise jurisdiction under section 263 of the Act for revising the assessment order. Accordingly, the impugned order passed under section 263 of the act is set aside and the assessment order is restored. Grounds are allowed.

7. In the result, appeal is allowed.

Order pronounced in the open court on 24th November, 2021.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/11/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / 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)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai