

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George Mathan, JM & Shri B.R. Baskaran, AM

ITA No. 47/Coch/2021
(Assessment Year: 2016-17)

Shri Joy Pulluruthikary Joseph
11, Mullackal House
Cherthala 688524
Alappuzha

Assistant Commissioner of
Income Tax
Vs. Arattukulangara Complex
A.N. Puram, Alappuzha 688911

PAN – AHDPJ9224H

Appellant

Respondent

Appellant by: Shri R. Krishnan, CA
Respondent by: Shri V. Roy Jose, CIT-DR

Date of Hearing: 08.02.2022
Date of Pronouncement: 08.02.2022

ORDER

Per: George Mathan, JM

This is an appeal filed by the assessee against the order passed under Section 263 of Income Tax Act, 1961 by the learned CIT, Kochi-1 in DIN & Document No. ITBA/REV/S/91/2020-21/103125914691) dated 05.03.2021 for AY 2016-17.

2. Shri R. Krishnan, CA appeared on behalf of the assessee and Shri V. Roy Jose, CIT-DR appeared on behalf of Revenue.

3. It was submitted by the learned A.R. that assessment under Section 143(3) of the Act for the relevant assessment year 2016-17 was completed on 22.12.2018. It was the submission that the said assessment under Section 143(3) of the Act was one of limited scrutiny wherein under CASS the following reasons has been mentioned: -

"The case was selected for limited scrutiny under CASS for the following reasons – (i) Value of property transferred as reported in AIR is higher than the value of property transferred as reported in Return of Income (AIR and Schedule CG), (ii) Sale consideration of

property in ITR is less than sale consideration reported in Form 26QB (Form 26QB and Schedule CG of ITR) AND (iii) Large deduction claimed u/s 54C, 54D, 54G, 54GA (Schedule CG of ITR)."

It was the submission that the details have been produced and after making an addition of Rs. 4,35,639/- the assessment had been completed.

4. It was the submission that the learned Principal CIT, Kochi-1 issued notice under Section 263 of the Act on two grounds. First was that the assessee had claimed cost of improvement of Rs.10,44,336/- for the period from 14.04.2010 to 20.07.2010 being prior to the purchase period. The second was that there was an incorrect claim of exemption under Section 54 of the Act in so far as in the agreement dated 23.06.2015 for purchase of the flat an amount of Rs.1,25,00,000/- had been paid vide cheque No. 029651 dated 10.07.2015 of Axis Bank, Thiruvalla, but in the bank statement this amount was not debited.

5. The learned A.R. drew our attention to page 16 of the paper book, which was copy of the Saving Account No. 914010029769592 for the period from 01.08.2015 to 31.08,2015 wherein the said cheque No. 029651 is shown to have been debited for an amount of Rs.1,25,00,000/- to Five Petal Realtors Pvt. Ltd. It was further submitted that Section 143(3) assessment itself was a limited scrutiny assessment and the issue on the case of improvement was not there in the limited scrutiny assessment. It was further submitted that even before the AO and the CIT when the details were produced the details of expenditure incurred between 14.04.2010 and 27.04.2010 were also produced. It was the submission that consequently the order under Section 263 of the Act was unsustainable.

6. In reply the learned D.R. submitted that as per Explanation 2 to Section 263 if the CIT felt that proper enquiry has not been done by the AO then by invoking his powers under Section 263 of the Act he can direct the AO to conduct a proper enquiry. He vehemently supported the order of the CIT passed under Section 263 of the Act.

7. We have considered the rival submissions. At the outset a perusal of the paper book at page 16 clearly shows that the amount of Rs.1,25,00,000/- has clearly been debited in the bank account of the assessee. Thus the finding of the learned CIT that the bank statement does not show this amount to be debited is factually erroneous. Coming to the next issue, clearly the assessment under Section 143(3) of the Act is a limited scrutiny assessment. Consequently the powers of the CIT under Section 263 of the Act to treat the order of the AO as erroneous and prejudicial to the Revenue got restricted to the area of limited scrutiny as provided under CASS in assessee's case. The issue of cost of improvement is not a part of limited scrutiny. Under these circumstances as no error, much less than an error prejudicial to the interest of Revenue has not been shown in the order passed under Section 263 of the Act in assessee's case of AY 2016-17 the order passed under Section 263 of the Act by the learned CIT is unsustainable on the facts and stands quashed.

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

Dictated and pronounced in the open Court on 8th February, 2022.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Cochin, Dated: 8th February, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The Pr. CIT, Kochi -1*
4. *The DR, ITAT, Cochin*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.