

आयकर अपीलीय अधिकरण न्यायपीठ रायपुरमें।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

(Through Virtual Court)

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 148/RPR/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Smt. Shahnaj Sheikh
MIG-II, 47, Nehru Nagar,
Korba (C.G.)
PAN : BRPPS3003Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1,
Korba (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Debashis Lahiri, DR

सुनवाई की तारीख / Date of Hearing : 14.03.2022

घोषणा की तारीख / Date of Pronouncement : 05.04.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax, Bilaspur (C.G.) (for short 'Pr. CIT'), dated 23.03.2017 u/s. 263 of the Income-tax Act, 1961 (in short 'the Act'), which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s.147 of the Act, dated 20.06.2014 for assessment year 2010-11. Before us the assessee has assailed the impugned order on the following grounds of appeal :

"1. That on the facts and circumstances of the case, the order of the Ld. CIT is bad in law.

2. The Appellant craves leave to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing."

2. Succinctly stated, on the basis of information received by the A.O that the assessee a/w her husband i.e, co-owners of a piece of land situated at Ward No.9, Municipal Corporation, Korba (Khasra No. 175/11) had entered into an "agreement of sale", dated 12.11.2008 for a consideration of Rs.65 lacs (as against the segment rate of Rs. 73.15

lac), and thereafter had executed a registered "sale deed", dated 22.02.2010 in favor of the purchasers but had not filed her return of income, the case of the assessee was reopened u/s.147 of the Act. In compliance, the assessee filed her return of income on 29.03.2014, inter alia, declaring a net long term capital loss (LTCL) of Rs. 2,58,217/- from transfer of the aforesaid property. However, the A.O took recourse to Section 50C of the Act and adopting the Fair Market Value (FMV) of the property at Rs. 73.15 lac (supra), therein, vide his order passed under Sec. 143(3) r.w.s 147, dated 20.06.2014 determined the net LTCG at Rs. 2,04,279/-.

3. After culmination of the assessment proceedings the Pr. CIT called for the assessment records of the assessee. Observing that as the Assessing Officer while framing assessment had allowed the assessee's claim for deduction of Rs. 28 lac u/s.54 of the Act without making proper enquiries and verifications, therefore, the assessment order passed by him under Sec. 143(3)/147 of the Act, dated 20.06.2014 was rendered as erroneous in so far as it was prejudicial to the interest of the revenue u/s.263 of the Act, the Pr. CIT called upon

the assessee to substantiate her claim for deduction of Rs. 28 lac under Sec. 54 on the basis of documentary evidences. In reply, the assessee objected to the assumption of jurisdiction by the Pr. CIT u/s.263 of the Act. As the assessee failed to substantiate on the basis of supporting documentary evidence her claim for deduction u/s.54 of the Act, therefore, the ITO Ward-1, Korba pursuant to the directions of the Pr. CIT deputed his Inspector to carry out necessary field enquiry and verify the assessee's claim of having constructed a residential house on the basis of which claim for deduction u/s.54 of the Act was raised by her. On the basis of report dated 14.03.2017, the Inspector of Income-Tax reported that the construction of the house in question was still incomplete as on the date of his visit i.e, on 14.03.2017. Considering the report of the Income-tax inspector, it was observed by the Pr. CIT that the residential house in question was not only incomplete but was also unfit for human habitation and was not physically occupied by anyone. It was observed by the Pr. CIT that as per field enquiry that was made through the ITO-1, Korba, the construction of the house was incomplete and there was only a

boundary wall, raw structure, pillars and no full structure had yet come into existence. It was also observed by the Pr. CIT that the construction activities as regards the property in question had stopped long back and there was a wild growth on the structure and surrounding area of the constructed area. Backed by his aforesaid observations, the Pr. CIT was of the view that the assessee had raised a false and fabricated claim of deduction u/s.54 of the Act which was summarily accepted on the very face of it by the Assessing Officer i.e, without carrying out any examination and verification about the authenticity and genuineness of the said claim. In the backdrop of his aforesaid observations, the Pr. CIT holding a conviction that the order passed by the Assessing Officer u/s. 143(3) r.w.s 147 of the Act, dated 20.06.2014 was erroneous in so far it was prejudicial to the interest of the revenue u/s. 263 of the Act, thus, set-aside the same with a direction to the Assessing Officer to pass a fresh assessment order after affording a reasonable opportunity of being heard to the assessee.

4. Aggrieved, the assessee has assailed the order passed by the Pr. CIT u/s.263 of the Act, dated 23.03.2017 in appeal before us.

5. As the assessee appellant despite having been intimated about the hearing of appeal had failed to put up an appearance before us therefore, we are constrained to proceed with and dispose off the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963 i.e, after hearing the respondent revenue and perusing the orders of the lower authorities.

6. The Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the Assessing Officer had grossly erred in law and on facts of the case in summarily accepting the assessee's claim of deduction u/s.54 of the Act i.e, without carrying out any examination and verification of the genuineness of the said claim for deduction, therefore, the Pr. CIT had rightly exercised his jurisdiction u/s. 263 of the Act and set-aside the assessment order.

7. We have heard the Ld. DR and perused the orders of the lower authorities. As is discernible from the records, the case of the assessee was reopened u/s. 147 of the Act, for the reason, that despite the fact that the assessee had during the year under consideration transferred her share of property vide a registered "sale deed", dated 22.02.2010, but had failed to file her return of income for the said year. On a perusal of the assessment order, we find that the assessee in her return of income filed in compliance to the notice u/s.148 of the Act, had, inter alia, reflected her 1/2 share of LTCG on sale of the aforesaid property in question at Rs. 30,04,279/-. After claiming deduction u/s.54 towards investment of Rs. 28 lac that was claimed by the assessee to have been made towards construction of a new residential house at Nehru Nagar, Korba the amount of LTCG that was offered for tax was reduced to an amount of Rs.2,04,279/-. As observed by us hereinabove, the Pr. CIT was of the view that as the Assessing Officer while framing the assessment had summarily accepted the assessee's claim of deduction u/s.54 of the Act i.e, without making the necessary verifications and examination, therefore, his order was rendered as

erroneous in so far as it was prejudicial to the interest of the revenue.
u/s. 263 of the Act.

8. On a perusal of the records, we find substance in the view taken by the Pr. CIT that the Assessing Officer had summarily accepted the assessee's claim for deduction u/s.54 of the Act i.e, investment made by her towards construction of a new house at Nehru Nagar, Korba. As the summarily acceptance of the assessee's claim for deduction of Rs.28 lacs u/s.54 of the Act by the Assessing Officer i.e., without making any enquiry or necessary verification which should have been made by him, clearly falls within the sweep of Clause (a) of "Explanation 2" to Section 263 of the Act, therefore, we concur with the view taken by the Pr.CIT that the assessment order passed by the Assessing Officer u/s.143(3) r.w.s 147 of the Act, dated 20.06.2014 is erroneous in so far as it is prejudicial to the interest of the revenue under Section 263 of the Act. But then, as a word of caution, we may herein observe, that as the assessee had admittedly sold the property for a consideration of Rs.65 lacs, therefore, her disentitlement for claim of deduction u/s.54 of the Act has to be restricted considering the said

actual sale consideration and the capital gain arising therefrom. In sum and substance, though the provision of Section 50C of the Act would override the normal provisions for the purpose of quantification of the amount of long-term capital gain, but then, we cannot remain oblivious of the fact that the entitlement of the assessee for claiming deduction u/s.54 of the Act would continue to remain dependant on the amount of actual consideration received by the assessee on sale of the property in question. We, thus, subject to our aforesaid observations uphold the order passed by the Pr. CIT u/s. 263 of the Act.

9. In the result, the appeal of the assessee is dismissed in terms of our aforesaid observations.

Order pronounced in open Court on 05th day of April, 2022.

Sd/-
JAMLAPPA D BATTULL
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 05th April, 2022
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Bilaspur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	16.03.2022	Sr.PS/PS
2	Draft placed before author	21.03.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		