

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI**  
**श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT**  
**AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.89/Chny/2021

(निर्धारण वर्ष / Assessment Year: 2016-17)

Mr. Krishnaiyachetty Rameshbabu 2/18, Jakkappan Nagar, 4 <sup>th</sup> Cross Krishnagiri-635 001. PAN: AASPR 2711H (अपीलार्थी/Appellant)	Vs	The Assistant Commissioner of Income Tax, Circle-1, Hosur.  (प्रत्यर्थी/Respondent)
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अपीलार्थी की ओरसे/ Appellant by	:	Mr. T.S.Lakshmi Venkataraman, FCA
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. R.N. Siddappaji, CIT DR

सुनवाई की तारीख/Date of hearing	:	26.04.2022
घोषणा की तारीख /Date of Pronouncement	:	28.04.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order passed by the Principal Commissioner of Income Tax, Coimbatore-1, dated 11.01.2021 and pertains to assessment year 2016-17.

2. The brief facts of the case are that the assessee has filed his return of income for the assessment year 2016-17 on 28.04.2016 declaring total income of Rs.35,47,800/- and agricultural income of Rs.5,96,250/-. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 25.09.2017 and determined total income of Rs.1,69,40,296/- by making additions towards disallowance of deduction u/s.54B

of the Income Tax Act, 1961, amounting to Rs.1,33,92,500/-. The case has been subsequently taken up for revision proceedings and accordingly, show-cause notice u/s.263 of the Act, dated 26.10.2020 was served on the assessee. In response to show-cause notice, the assessee neither appeared nor filed any details. Therefore, the PCIT has passed order u/s.263 of the Income Tax Act, 1961, and has set aside assessment order passed by the Assessing Officer u/s.143(3) dated 28.12.2018 and directed the Assessing Officer to redo assessment afresh in accordance with directions contained in the order passed by the PCIT u/s.263 of the Act. The relevant findings of the PCIT are as under:-

*“3. A notice of show cause dated 26/10/2020 was served on the assessee, by email, for objections if any to the proposed revision. The reason for considering the order of assessment as erroneous and prejudicial to the interest of revenue was also furnished to the assessee. On a perusal of the assessment order and the records concerned, it was noticed that the Assessee had sold sites for Rs. 2,00,63,471 and claimed an amount of Rs. 1,33,92,500/ as deduction u/s 54B of IT Act and deduction of Rs.41,49,611 u/s 54F of IT Act and declared LTCG of Rs.25,21,359/-. The assessment was completed by disallowing the deduction of Rs.1,33,92,500 and assessing the income from LTCG at Rs.1,59,13,860. The Assessee had furnished documents in respect of the transactions made and it is seen from one of the documents No.68/2016 that the property purchased had been undervalued and deficit stamp duty of Rs. 5,37,796 was levied by the Joint Sub Registrar,*

*Krishnagiri. The above property was purchased by the for a consideration of Rs. 9,46,250/- As per the deficit stamp duty collected of Rs.5,37,796/ the difference between the guideline value or the stamp duty value of the said property and the sale consideration amount of the property works out to Rs.76,82,8001- (5,37,796\* 100/7). Hence an amount of Rs. 76,82,800 requires to be brought to tax under income from other sources u/s 56(2)(vii)(b) of the I.T.Act,1961. Thus, there was excess and erroneous claim in the computation of the LTCG in the year under consideration. Since these errors made the assessment order erroneous and prejudicial to the interest of Revenue, the provisions of section 263 of the Act was invoked in the Assessee's case.*

*4. In response to the above show cause notice none appeared nor filed any reply either by post or by e-mail. It is clear that the assessee has no objection on the proposed revision u/s 263 of the Income Tax Act, 1961.*

*From a perusal of the facts above, it is evident that the LTCG of the assessee admitted in the return of income is, prima facie, requires proper verification and examination. The assessment order thus passed by the AC u/s 143(3) of the Act dated 28.12.2018 suffers in as much as it is erroneous and prejudicial to the interest of revenue, requiring an intervention to cure the order made erroneous and prejudicial to the interest of revenue. In order to remedy the said error in the order of assessment in the instant case made on 28.12.2018 for the assessment year 2016- 17, the recourse would be to resort to provisions of sec263 of the Act.*

*Accordingly, the order of the AO dated 28.12.2018 for the assessment year 2016-17 in the case of the captioned assessee is, set aside, in exercise of the powers vested in me u/s.263 of the Act.*

*6. The Assessing Officer, is hereby, directed to re-do the assessment afresh after verification of the facts discussed above and after due satisfaction in accordance with law, may pass fresh assessment order. The Assessing Officer shall give adequate opportunity of being heard to the assessee in this regard before passing the fresh assessment order."*

3. The learned A.R for the assessee submitted that the learned PCIT has passed order without observing principles of natural justice, which is evident from the fact that the learned PCIT has given one opportunity to the assessee to justify its case and thus, submitted that appeal may be set aside to the file of the PCIT to give one more opportunity of hearing to the assessee.

4. The learned DR, on the other hand, supporting order of the learned PCIT submitted that the assessee neither appeared nor filed any details in response to show-cause notice issued under section 263 of the Income Tax Act, 1961. Therefore, there is no error in the reasons given by the learned PCIT to set aside the assessment order passed by the Assessing Officer in exercise of powers vested u/s.263 of the Act and thus, appeal filed by the assessee may be dismissed.

5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The learned PCIT has issued show-cause notice to revise the assessment order passed by the Assessing Officer u/s.143(3) of the Act, dated 28.12.2018 for the reason that

assessment order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of revenue on the issue of assessment of difference in guideline value of property u/s.56(2)(vii)(b) of the Income Tax Act, 1961. The assessee neither appeared nor filed any details in response to show-cause notice. Therefore, the PCIT has passed order u/s.263 of the Act, and set aside assessment order passed by the Assessing Officer. We have gone through order passed by the learned PCIT and find that the PCIT has given one opportunity of hearing to the assessee in contravention of settled legal principles, as per which, it is requirement of law that reasonable opportunity of hearing must be given to the assessee before passing an order. Since, the learned Principal CIT has not given sufficient opportunity of hearing to the assessee, we are of the considered view that appeal needs to be set aside to the file of the PCIT to give another opportunity of hearing to the assessee. Hence, we set aside order passed by the learned PCIT and restore the issue back to the file of PCIT to reconsider the issue afresh in accordance with law, after affording reasonable opportunity of hearing to the assessee.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> April, 2022

Sd/-  
( महावीर सिंह )  
(Mahavir Singh)  
उपाध्यक्ष/ Vice-President

Sd/-  
( जी. मंजुनाथ )  
(G. Manjunatha )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 28<sup>th</sup> April, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF