

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

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

***(Conducted through Virtual Court)***

**ITA No.126/Ind/2021  
Assessment Year: 2010-11**

Shri Shailendra Jhanjhari Legal Heir of Dilip Kumar Jhanjhari Barnagar (Appellant / Assessee)	Vs.	PCIT Indore-1 (Respondent/ Revenue)
<b>PAN: ACKPJ 7620 B</b>		
Assessee by	Shri S.S. Deshpandey, AR	
Revenue by	Ms. Simran Bhullar, CIT-DR	
Date of Hearing	12.05.2022	
Date of Pronouncement	23.05.2022	

**ORDER**

**Per B.M. Biyani, A.M.:**

**THIS APPEAL:**

1. This appeal filed by the assessee is directed against the revision-order dated 28.03.2021 passed by learned Pr. Commissioner of Income-Tax, Indore-1 [**Ld. PCIT**] u/s 263 of the Income-tax Act, 1961 [**the Act**], which in turn arises out of the order of assessment dated 22.11.2017 passed by learned ITO-2(2), Ujjain [**the Ld. AO**] u/s 147 read with section 143(3) for the Assessment-Year 2010-11.

**BACKGROUND:**

2. Precisely stated the facts are such that the assessee submitted Return of Income on 17.03.2011 to the Ld. AO declaring a total income of Rs. 1,87,930/-. Subsequently the Ld. AO received an information from AIR that the assessee has sold an immovable property for Rs. 32,85,000/- as per valuation of stamps authority. In order to verify the taxation of this transaction, the Ld. AO issued a query-later dated 30.01.2017 to the assessee which remained un-responded. The Ld. AO, thereafter, invoked section 147 of the Act and issued statutory notices. In response to the notices, the assessee submitted a reply dated 05.10.2017 explaining the details of the impugned transaction of sale of immovable property supported by the relevant deed. Further, the authorised representative of the assessee also appeared before Ld. AO and submitted the desired explanations. Finally the Ld. AO passed order of assessment u/s 147 read with section 143(3) on 22.11.2017 assessing the same total income of Rs. 1,87,930/- as was declared by the assessee in the original return of income. This way the assessment was closed. Later thereafter, the Ld. PCIT took action u/s 263 by a notice dated 23.02.2021, the relevant extract of which is reproduced below:

***“Please refer to the assessment order dated 22.11.2017 for the A.Y. 2010-11 in your case. On perusal of case record for the A.Y. 2010-11 it is noticed that you have furnished your return of income declaring total income at Rs. 1,87,930/- on 17/03/2011. The assessment in your case u/s 143(3)/147 of the Income Tax Act 1961 was completed by the ITO-2(2), Ujjain (erstwhile), vide order dated 22/11/2017 assessing total income at Rs. 1,87,930/-.***

***2. On perusal and examination of the records it appears that the order u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 dated 22.11.2017 for the A.Y. 2010-11 is erroneous in so far as it is prejudicial to the interest of revenue as the order has been framed without making proper enquiries and investigation with respect to same issue.***

***3. As per the information available on records it is noticed that the assessee has sold an immovable property for Rs. 32,85,000/- during the year under consideration. On perusal of***

**sale deed dated 10/03/2010 it is noticed that the assessee has shown sale value of Rs. 6,00,000/- whereas the registrar stamps had valued the marked price at Rs. 32,85,000/-. According to section 50C of the Income Tax Act 1961, the AO should adopt the sale value at Rs. 32,85,000/-.**

**4. The AO did not examine this fact by conducting any enquiry or investigation. Therefore, the assessment order passed by the AO appears to be erroneous in so far as it is prejudicial to the interest of the revenue. You are, therefore, required to show cause as to why the provision of section 263 should not be invoked in your case for the reason mentioned above.”**

3. Finally, the Ld. PCIT passed the order of revision on 28.03.2021 wherein the assessment-order of Ld. AO was set aside with a direction to re-do the assessment. Aggrieved by this revision-order dated 28.03.2021, the assessee has preferred present appeal and now before us.

#### **GROUND:**

4. The assessee has raised following grounds:

**“1. The order passed by the Ld. PCIT u/s 263 is illegal and bad in law and hence be set aside**

**2. The Ld. PCIT has erred in passing the order u/s 263 on the ground that the order passed by the Ld. A.O. is erroneous and prejudicial to the interest of the revenue.**

**2.1 It was proved before the Ld. PCIT that the order was passed after re-opening of the case of the said issue and after considering the submissions made the Ld. AO has framed the assessment, under this circumstances the order cannot be said to be erroneous and prejudicial to the interest of the revenue. Thus the order passed by the Ld. PCIT is bad in law.**

**3. The notice was issued in the name of the dead person and no notice was issued on the legal heir. Thus the order is bad in law.**

**4. The order passed by the Ld. PCIT be quashed.”**

5. During hearing, the Ld. AR has not pressed Ground No. 3 and not made any submission. Therefore the Ground No. 3 is treated as

withdrawn and does not require any adjudication. We proceed to decide other Grounds i.e. Ground No. 1, 2, 2.1 and 4.

**SUBMISSIONS OF Ld. AR:**

6. The Ld. AR submitted that the crux of various grounds raised by the assessee is that the revision-order passed by Ld. PCIT u/s 263 is bad in law, illegal and deserves to be quashed since the same has been passed even when the order of assessment is neither erroneous nor prejudicial to the interest of revenue.

7. Ld. AR carried our attention to Para No. 3 and 4 of the notice dated 23.02.2021 issued by Ld. PCIT u/s 263 (reproduced earlier). Referring to the same, the Ld. AR submitted that the Ld. PCIT has observed that the impugned transaction of sale of immovable property was for Rs. 32,85,000/- as per section 50C but the assessee has shown sale value of Rs. 6,00,000/- only and the Ld. AO had not examined this issue by conducting any enquiry or investigation. This is the only premise on the basis of which the Ld. PCIT acted u/s 263. The Ld. AR, therefore, straightaway carried our attention to the letter dated 05.10.2017 submitted by the assessee to the Ld. AO during the re-assessment proceeding, placed at Page No. 13 of the Paper-Book. Reading Para No. 2 of this letter, the Ld. AR submitted that the assessee has very-well explained to the Ld. AO that there was a family-settlement under which the assessee purchased a property from the wife of his younger brother, Smt. Samta Jhanjhari. Since the transaction was of family settlement, there was in fact no commercial consideration payable to Smt. Samta Jhanjhari, yet a nominal consideration of Rs. 6,00,000/- was agreed upon having regard to the fact that it was a pre-existing family property. The assessee has further submitted to the Ld. AO that the consideration of Rs. 6,00,000/- was just the minimum price agreed upon to carry-out the family-settlement only and therefore the assessee even made a very humble and specific request to the Ld. AO to accept this value of Rs. 6,00,000/-. The Ld. AR further clarified that in terms of family settlement,

there was a give-take of properties and one property was given by the assessee to Smt. Samta Jhanjhari and one property was taken by the assessee from Smt. Samta Jhanjhari and the documentation was done through two separate-deeds with a nominal consideration of Rs. 6,00,000/- in both transactions. Therefore, the assessee furnished copies of sale-deed as well as purchase-deed to the Ld. AO. The Ld. AR further argued that the details and documents submitted by the assessee were full and complete in respect of the transactions and nothing more was required to be submitted. The Ld. AR submitted that the details and documents were filed through the letter dated 05.10.2017 and it is thereafter on 22.11.2017 that the Ld. AO passed the order of assessment. During hearing the Ld. AR has read out the complete Para No. 3 of the assessment-order, but we reproduce the last sentence of this para for the sake of brevity:

“उक्त सूचना-पत्रों के अनुपालन में निर्धारिती के प्राधिकृत प्रतिनिधि श्री एच.एस. भवालकर, एडवोकेट समय-समय पर उपस्थित हुए और उन्होंने प्रकरण से संबंधित वांछित जानकारी एवं दस्तावेज प्रस्तुत किए तथा प्रकरण पर चर्चा की।”

According to the Ld. AR, this finding noted by Ld. AO in the assessment-order clearly demonstrates that the Ld. AO has not only examined the details and documents submitted by the assessee but also had deliberations with the authorised representative on the “*prakran*” i.e. on the issue of the impugned transaction. The Ld. AR submitted that based on the nature of transaction as explained by the assessee, the Ld. AO was very much satisfied that it was a case of family settlement and neither the transaction was commercial nor the value agreed upon by the parties was a commercial consideration. Hence the Ld. AO accepted the capital gain according to the agreed nominal consideration of Rs. 6,00,000/- declared by the assessee in the Return of Income. According to the Ld. AR, when the Ld. AO has passed assessment-order after due consideration and deliberations, where is the question of not conducting any enquiry or investigation on the issue? The Ld. AR also submitted that it is a well-settled law that if the assessee makes a submission alongwith documents

on an issue before the assessing authority and the assessing authority passes assessment-order after considering such submission, the order passed by assessing authority cannot be said to be erroneous even if the assessing authority does not discuss his findings in the assessment-order. Ld. AR submitted that the obligation of the assessee is only to furnish the information and documents as required by the Ld. AO and once that is done, the assessee's job is over. Thereafter, the assessee does not have any control over the assessing authority in writing order. In such circumstances, according to the Ld. AR, when the assessee has supplied full details to the Ld. AO, the order passed by Ld. AO is neither erroneous nor prejudicial to the interest of revenue. The Ld. AR also referred to another letter of assessee dated 04.03.2021 furnished before the Ld. PCIT, placed at Page No. 6 of the Paper-Book, in which the assessee had submitted to the Ld. PCIT that he had filed necessary details and explanation in respect of the above transaction before learned ITO and the learned ITO after considering the reply and documents produced before him, passed the assessment-order. With these submissions, the Ld. AR argued that the Ld. PCIT has wrongly stepped u/s 263 on the premises that the Ld. AO has not conducted enquiries in the matter. Hence the order passed by Ld. PCIT is wrong and deserves to be quashed.

**SUBMISSIONS OF Ld. DR:**

8. Per contra, the Ld. DR supported the order of Ld. PCIT. Ld. DR submitted that since the Ld. AO had not applied section 50C of the Act while passing assessment-order, the assessment-order is definitely erroneous and also prejudicial to the interest of revenue. Ld. DR argued that if the Ld. AO had applied section 50C, the department would have received its legitimate tax. Therefore, charging tax according to Rs. 6,00,000/- is not only erroneous but also prejudicial to the interest of revenue. Ld. DR also relied upon the decision in Jagdish Kumar Gulati (2004) 139 Taxman 369 (All) referred to by Ld. PCIT in revision-order. With this submission, the Ld. DR submitted that the Ld. PCIT was

justified in taking action u/s 263 and therefore the order of Ld. PCIT must be upheld.

**OUR ANALYSIS:**

9. We have considered the submission of both sides and also perused the material held on record. We observe that during the assessment-proceeding, the assessee has furnished all details and documents to the Ld. AO vide letter dated 05.10.2017 and convinced that the impugned transaction of property was in pursuance of the family settlement and hence there was no real consideration, the consideration of Rs. 6,00,000/- was a nominal consideration acceded to by the family members to carry-out the family settlement only. We also observe that in the said letter dated 05.10.2017, after furnishing these details, the assessee had made a specific request to the Ld. AO to accept the consideration of Rs. 6,00,000/- since it was a case of family settlement only. We also take note of the computation of total income filed at Page No. 19 of the Paper-Book and observe that the assessee has not only declared capital gain on the basis of Rs. 6,00,000/- nominal consideration of sale-transaction but also claimed exemption on the basis of investment of same amount of nominal consideration i.e. Rs. 6,00,000/- for purchase-transaction and offered Nil amount of taxable capital gain. Thus, not only the capital gain but also the new exemption is computed by the same amount of Rs. 6,00,000/- because of the give-take in family settlement and these calculations are accepted by the Ld. AO. Thus, when all these details were available with the Ld. AO and the assessee had also filed aforesaid letter dated 05.10.2017 to the Ld. AO, its quite logical to assume that the Ld. AO has accepted the nature of transaction and the implication of section 50C. In such circumstances, it cannot be said that the order passed by the Ld. AO is erroneous in so far it is prejudicial to the interest of revenue. Therefore, we are satisfied with the submission of Ld. AR that the Ld. PCIT has wrongly conducted revision u/s 263. Hence we are inclined to quash the order passed by Ld. PCIT u/s 263 of the Act. Accordingly, Ground No. 1, 2, 2.1 and 4 are allowed.

**DISPOSITION:**

10. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on  
23.05.2022.

**Sd/-**

**(SUCHITRA KAMBLE)**

Judicial Member

**Indore, 23<sup>rd</sup> May, 2022**

**Patel/ Sr. P.S.**

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

**Sd/-**

**(B.M. BIYANI)**

Accountant Member

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*