

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1280/Mum/2021

(Assessment Year 2011-12)

Gian Chand Arora
101, 48 NRI Complex,
Seawoods Estates Road,
Sector 58, Seawoods,
Navi Mumbai,
Mumbai-400 706

Vs.

PCIT
Room No.1001, 10th Floor,
Pratishtha Bhavan,
Old CGO Annexe,
Maharishi Karve Road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. ABGPA 9809 G

Assessee by : Shri Ashok Mehta, AR
Revenue by : Shri Shekhar L. Gajbhiye, CIT
DR

Date of hearing: 09.03.2022
Date of pronouncement : 08.06.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the order passed by Pr. Commissioner of Income Tax, Central Mumbai-1, under Section 263 of the Income Tax Act, 1961 (the Act) dated 24th March, 2021, for A.Y. 2011-12 holding that assessment order passed under Section 143(3) read with section 147 of the Act dated 16th November, 2018, is erroneous and prejudicial to the interest of Revenue and hence, set aside. The assessee has raised following grounds of appeal:-

"1) *The Learned Principal Commissioner of Income Tax- Central Circle, Mumbai-1, erred in passing an order u/s 263 without jurisdiction.*

2) *The Learned Principal Commissioner of Income Tax- Central Circle Mumbai-1, erred in holding that the order passed by the Learned Assessing Officer u/s 143(3) read with Section 147 dated 16/11/2018 is erroneous so far as prejudicial to the interest of revenue without appreciating the fact that the Learned Assessing Officer had applied his mind and had taken a plausible view and the Learned Principal Commissioner of Income Tax- Central Circle Mumbai-1 could not replace the view of the Learned Assessing Officer u/s 263*

3) *The assessee craves to leave to add, alter and amend any of the grounds of appeal."*

02. Brief facts of the case shows that assessee is an individual who filed his return of income under Section 139 of the Act on 29th February, 2012, declaring total income of ₹45,69,943/-. The return was processed under Section 143(1) of the Act accepting the return of income. Subsequently, the case of the assessee was reopened by issuing notice under Section 147 of the Act. The return was assessed under Section 143(3) read with section 147 of the Act on 16th November, 2018, accepting the return of income. Subsequently, on verification of records, the learned PCIT found that the case originally was reopened for examination of capital

gain tax which was not offered by the assessee in the original return of income. The learned CIT (A) found that order under Section 143(3) Read With Section 147 of the Act is erroneous and so far as it is prejudicial to the interest of the Revenue and accordingly, notice under Section 263 of the Act was issued on 18th March, 2021.

03. The learned PCIT noted that assessee has sold an immovable property for ₹1,38,00,000/- and share of the assessee in the above property was 50%. The assessee has earned Long Term Capital Gain of ₹58,25,950/- and assessee claimed deduction under Section 54 of the Act at ₹58,25,950/-. The learned Assessing Officer has not examined the issue properly and in a casual manner as the return of income was filed which did not show any income under the head income from capital gains and did not show any claim of deduction under Section 54 of the Act. Despite this, the learned Assessing Officer allowed the same.
04. The assessee replied in the original return of income under Section 139(1) of the Act that assessee inadvertently missed out in showing the capital gains. However, in the computation of total income, it shows Long Term Capital Gain and claimed exemption under Section 54 of the Act.
05. Further, during the course of hearing before Assessing Officer the assessee submitted the

relevant details along with the copy of agreement for the claim of deduction under Section 54 of the Act. Assessee further stated that 50% sale consideration received was offered as capital gain and further deduction under Section 54 of the Act was claimed by purchasing a residence being flat no. G-304 for ₹1,75,11,173/- which is 50% owned by the assessee and claimed ₹58,25,950/- as deduction therefore, the learned Assessing Officer correctly allowed the deduction. The assessee further stated that in the body of order itself the learned Assessing Officer mentioned that the detail of capital gain was furnished, the learned Assessing Officer enquired about the same. Further in the subsequent Para, the learned Assessing Officer himself mentioned that he examined the same and assessed the total income at return income. Therefore, the learned Assessing Officer correctly assessed the income. Assessee further stated that action under Section 147 of the Act was taken for the examination of capital gain which was offered by the assessee and assessed correctly by the learned Assessing Officer. Therefore, there is no error in the assessment order.

06. The learned CIT (A) held that in the return of income filed by the assessee under Section 139 of the Act or under Section 148 of the Act, capital gain on sale of property has not been offered. The learned CIT (A) further stated that assessee did not purchase any property for deduction under Section 54 of the Act.

He further noted that any claim is required to be made only in the return of income as held by the Hon'ble Supreme Court in case of Goetze (India) Ltd. Vs. CIT 284 ITR 323 and therefore, the facts clearly shows that order passed by the learned Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue. He further held that assessee in the instant case was even failed to show how the capital gain derived on sale of immovable property can be considered for taxation in two different hands. Further, nothing is available on record to establish the fact that both are owner in equal proportion and both had made equal investment in the property. Therefore, the learned CIT(A) invoking explanation 2 to section 263 of the Act held that assessment order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Therefore, it was set aside with a direction to complete the assessment afresh. By this order, assessee is aggrieved.

07. The learned Authorized Representative submitted that assessee has submitted purchase deed, sale deed, bank statement as well as the computation of capital gain and deduction under Section 54 of the Act during the re-assessment proceedings. It shows that assessee and his wife are 50% owner of the property. The decision of the Goetze (India) Ltd. (supra) of Hon'ble Supreme Court does not debar claim of deduction to the extent of escaped

income. He referred computation of total income placed at page no. 21 of the Paper Book. He stated that from the taxable Long Term Capital Gain of ₹58,25,950/- assessee has claimed exemption under Section 54 of the Act of the same amount. He also referred to the details of payment made of ₹1,78,06,699/- for purchase of new house property supported by the bank statement. He therefore submitted that the learned Assessing Officer has verified the same and allowed it. He further stated that explanation 2 can be invoked only if due enquiries are not made. In the present case, complete enquiries were made by the learned Assessing Officer and thereafter, the learned Assessing Officer was satisfied that the capital gain earned by the assessee is deductible under Section 54 of the Act.

08. He further stated that the learned CIT (A) did not say that the learned Assessing Officer was required to be make any further enquiries. He therefore, stated that the order passed by the learned Assessing Officer under Section 147 read with section 143(3) of the Act is neither erroneous nor prejudicial to the interest of the Revenue.
09. The learned CIT Departmental Representative supported the order of the learned PCIT.
010. We have carefully considered the rival contentions and perused the orders of the lower authorities. In

this case, original return filed under Section 139(1) of the Act did not show the capital gain earned by the assessee, therefore, the case of the assessee was reopened under Section 147 of the Act. In the reopened assessment proceedings along with the return filed, assessee disclosed the capital gain at ₹ nil. The working of the capital gain was contained in the computation sheet. Assessee sold a property for consideration of ₹1,38,000/- being house no. 828, sector 2, Panchkula. This property was jointly owned by the assessee along with his wife. The property was sold to Smt. Suman Kapur vide sale deed dated 9th April, 2010. The assessee disclosed 50% of the sale consideration i.e. ₹69 lacs as full value of the consideration. Assessee also reduced the index cost of acquisition of ₹10,74,049/- for the property purchase by him in F.Y. 1994-95 at ₹7 lacs. Therefore, 50% of the cost of acquisition of ₹3,91,250/- was indexed to ₹10,74,049/- and resultant Long Term Capital Gain of ₹58,25,950/- was arrived at. The assessee has also purchased a house property from Ozone Projects Pvt. Ltd. on 1st July, 2014 in the joint name along with his wife for a total consideration of ₹1,78,06,699/-. The assessee claimed 50% thereof to the extent of Long Term Capital Gain earned i.e. of ₹58,25,950/- and resultant taxable Long Term Capital Gain was shown at ₹ nil. In support of the claim assessee disclosed the bank account of HDFC from where payments were made. These details were verified by the

learned Assessing Officer and the claim of the assessee was accepted and returned income was assessed. The learned PCIT held that grant of deduction under Section 54 of the Act was not made in the original return filed under Section 139(1) of the Act. The learned Assessing Officer erred in allowing the above claim though not claimed in original return filed under Section 139 of the Act. He found that the case of the assessee was reopened as assessee did not show capital gain in the original return of income. In the return in response to notice under Section 148 of the Act assessee disclosed Long Term Capital Gain as well as claimed deduction under Section 54 of the Act. The decision of the Hon'ble Supreme Court in Geotz India (supra) do not apply to the facts of the case as in the return in response to notice under Section 148 of the Act assessee claimed deduction in the return of income. Further, assessee can also claim eligible deductions from the escaped income in reassessment proceedings. The learned Assessing Officer also examined the details and allowed the claim. The learned PCIT did not suggest any further enquiries which are required to have been made by the learned Assessing Officer in reassessment proceedings. Therefore, in our opinion explanation 2 to Section 263 of the Act cannot be applied. Further, the learned PCIT also could not show how the order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Hence, the order passed under Section



263 of the Act by the learned PCIT is not sustainable.
Hence, we quash the same.

011. In the Result, appeal of the assessee is allowed.

Order pronounced in the open court on 08.06.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08. 06.2022

Sudip Sarkar, Sr.Ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai