

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE S/SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1072 & 1073/Ahd/2018
Assessment Year :2008-09 & 2009-10
AND

ITA No.1091/Ahd/2018
Assessment Year : 2010-11

Shri Hiralal D. Thakkar Satkar Guest House Swaminarayan Kutir S.G. Highway, Opp: YMCA Club Nr.Nirma Firm Ahmedabad	Vs	Pr.CIT (Central) Ahmedabad.
---	----	--------------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
-------------------------------	--	--------------------------------

Assessee by :	Shri Divyang Shah, AR
Revenue by :	Shri Vijay Kumar Jaiswal, CIT-DR

सुनवाई की तारीख/**Date of Hearing** : **24/05/2022**
घोषणा की तारीख /**Date of Pronouncement**: **07/07/2022**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

These three appeals are filed by the assessee against separate orders of even dated 28.3.2018 passed by the Ld. Commissioner of Income-tax (Central), Ahmedabad invoking section 263 of the Income Tax Act, 1961 ("the Act" for short) relating to the Asst. Years 2008-09 to 2010-11.

2. Effective issue raised in all these appeals is that the ld.CIT (Central), Ahmedabad has erred in law in passing Revisional

Assessment order under section 263 of the Act and the same is liable to be quashed.

3. The ld. counsel Mr. Divyang Shah for the assessee submitted that his arguments are on three folds; viz.

(a) there was no incriminating material seized during the course of search, hence the assessment made under section 153A itself is bad in law and the same cannot be revised under section 263 of the Act;

(b) the proposed revision of assessment is based on the Tax Evasion Petition (TEP) received by the department and based on the same Revenue Audit Team recommended for the Revision of assessment and Pr.CIT has not formed his own opinion to revise the assessment, therefore, it is not legally valid.

[c] invocation of revision under section 263 by the ld.Pr.CIT is not correct, more so, *Explanation 2(a)* to section 263(1) of the Act has been inserted w.e.f. 1-6-2015 only, whereas the assessment years involved herein is 2008-09 to 2010-11.

4. First we take up ITA No.1073/Ahd/2018 (Asst.Year 2009-10):

Brief facts of the case is that the assessee is an individual and assessment under section 143(3) r.w.s. 153A of the Act was completed on 30.3.2016 by making an addition of Rs.19,74,000/- on account of certain cash deposits in the bank. However, it was noticed by the Pr.CIT (Central) that no inquiry was made about the bogus expenditure of Rs.3,72,45,001/- which were made during the period 1.4.2008 to 31.3.2009 by Swaminarayan (Jivraj Park) Co-op Shops and Offices Housing Society Ltd. ("Swaminarayan Society" for

short) in which the assessee was the secretary. According to the ld.Pr.CIT this action of the AO is erroneous inasmuch as it is prejudicial to the interest of the Revenue. Therefore, the ld.Pr.CIT has invoked provisions of section 263 of the Act and issued notice to the assessee which reads as follows:

“3. On perusal of records it has been established that you were the secretary of the Swaminarayan (Jivraj Park) Co. Op. Shops & Officers Housing Society Ltd, which was engaged in the construction work. The construction work of this society was completed in the month of March, 2008 whereas as per the information available on record, it is noticed that the society had incurred construction expenditure of Rs. 3,72,45,00 1/~ during the period 01/04/2008 to 31/03/2009 but no material was purchased during that period. Only bogus bills of purchase were shown. All the bills were benami, Further, the Auditor of society had clearly called for the bills during the audit of society which were not produced for audit purpose.

4. On perusal of bank statement it was found that there were credit entries in your bank account. The sources of deposit of such entries remain unexplained.

5. The AO had made addition of Rs.19,74,000/- on account of cash deposits in various bank accounts. Further, it has been noticed that you were not tested against the bogus expenditure of Rs.3,72,45,001/- which were made during the period 01/04/2008 to 31/03/2009 by Swarninarayan (Jivraj Park) Co. Op. Shops and Officers Housing Society Ltd., in which you were a secretary.

6. In view of the above, the assessment order 143(3) r.w.s. 153A of the Act dated-30/03/2016 passed by the Assessing Officer is, prima facie, erroneous as also prejudicial to the interest of the revenue and therefore, I intend to revise the said order u/s.263 of the I.T. Act, 1961.”

5. However, ld.Pr.CIT did not examine the reply made by the assessee and passed impugned revision order directing the AO to redo the assessment order and pass a fresh assessment order in accordance with law. Aggrieved against the impugned Revision Order assessee is now before the Tribunal.

6.1. The ld. counsel for the assessee submitted that for the Asst. Year 2009-10 assessment order passed under section 143(3)/153A dated 30.3.2016 was subject matter of appeal before the ld.CIT(A)-

12, Ahmedabad. The ld.CIT(A) vide order dated 10.2.2021 deleted the additions made by the AO by holding as follows:

“5.6 The fact which may require appreciation at this stage is that even in the assessment order framed u/s. 153A, wherein addition made, there is no reference of any incriminating material. It is therefore submitted that on account of this special and very important factual matrix of this case, the provisions of section 153A are not applicable. To strengthen the aforesaid contention, it is submitted that it is very settled position of law as evident from various decisions of Tribunal as well as High court that Assessing Officer has no jurisdiction to make additions in the order passed u/s 153A of the Act which are not pertaining to any undisclosed income or seized material when proceedings are closed and attained finality. In support of its contention the appellant strongly relies on the decision of Hon'ble Gujarat High Court in case of CIT Vs. Saumya Construction Pvt Ltd (Tax appeal No. 24 of 2016) dated 14th March 2016.”

The ld.counsel for the assessee also relied upon the following judgments:

- i) CIT Vs. Kabul Chawla, 61 taxmann.com 412 (Del);
- ii) Pr.CIT Vs. Anil Bholabhai Patel (Guj) dated 30.8.2017;
- iii) Pr.CIT Vs. Sanghvi Fincap Ltd., (Guj) dated 20.2.2018;
- iv) Sunrise FinleaseP.Ltd., 89 taxmann.com 1 (Guj);
- v) Desai construction, 81 taxmann.com 271 (Guj);

5.7 It is an undisputed fact that on the date of initiation of the search no assessment proceedings were pending in this assessment year. Therefore, the proceedings were not abated in the case as mentioned in the second proviso to section 153A (1) of the Act. It seems that the AO lost sight of the fact that he was not making an assessment under section 153A (1) of the Act read with its second proviso. As discussed hereinabove, there is no indication in the contents of the assessment order that the addition was made on the basis of any incriminating material found and seized in search.

5.8 In view of the aforesaid findings and respectfully following the judgments/decisions of Jurisdictional High Court, Jurisdictional Tribunal and other Courts, wherein it has been held that in absence of incriminating material/evidence, addition/disallowance cannot be sustained within the pale of section 153A of the Act. In my considered opinion, the action of the for making addition of cash deposit from regular bank account which is already disclosed in the return of income filed u/s.139(1) of the IT Act is not justified. Accordingly, the addition made in assessment completed u/s.153A is deleted.”

6.2. The ld.AR also took us to the submissions made by the ld.DCIT vide his letter dated 9.3.2018 relating to the tax evasion petition which reads as follows:

“3. The objection raised by the audit party is merely based on the report of the DDIT(Inv) on TEP which is not justified and acceptable. The DDIT (Inv) had not given any categorical finding about the quantum of revenue evaded to tax. It was merely an indication for the AO to examine the same during the course of assessment proceedings. It is evident from the finding given in Para-1 that “the suspicion no.1 raised in the TEP was found to be correct. Here the suspicion has been held as correct and that too due to the reason of non-production of certain bills/vouchers. It does not in any way conclusively prove that expenditure of Rs.3,72,45,001/- was bogus expenditure and the same was disallowable as observed by the Id.Audit officer. Further, this suspicion was examined by the AO during the course of assessment proceedings and that is an addition of Rs.19,74,000/- was made by the AO on account of cash deposited in various bank accounts. Therefore, it is wrong interpretation that the AO did not examine the entire seized materials and records attributable to the assessment of the assessee.”

4. It is very relevant to mention here that the DDIT (Inv) in the finding given for Para-2 has again held that “the suspicion no 2 raised in the TEP was found to partly correct”. Similarly, for the third point, the DDIT (Inv) held the suspicion as correct. Here the suspicions have been held as partly correct or correct and it has been only an indication to the AO. Therefore, the Id.Audit Officer has not interpreted the indication of the DDIT(Inv) in its real spirits. Actually the AO had conducted all necessary verification of facts as mentioned in the report of DDIT(Inv) and thereafter finalised the assessment after making full investigation of all materials facts available and had made relevant addition. Even the AO had concluded that seized materials were carefully perused with respect to the remarks in appraisal report.”

5. The Id.Audit Officer has not even appreciated the concluding remark in the report of the DDIT(Inv) wherein he has mentioned that ‘the Assessing Officer may kindly derive his own satisfaction and draw his conclusion independently’. This observation of the DDIT(Inv) is suffice to indicate that the report given by him is not final and is subject to further investigation. But the Ld.Audit Officer appears to have jumped to the conclusion by substituting himself for the Assessing Officer and has tried to suggest addition to the total income based on the conjectures and surmises.”

6. In view of above facts, the audit objection is not found to be justified and acceptable and may therefore kindly be dropped.”

6.3. The Id.AR further submitted that the Id CIT has not formed his own belief in revising the assessment but based upon audit

objection raised by Revenue Audit Party the above Revisional proceedings is initiated, which is bad in law and relied on case laws. The Id.AR has further taken us to the inquiry order pursuant to the Special Report in audit conducted in the case of “Swaminarayan Society” for the period 1.4.2008 to 31.3.2010 under section 93 of the Gujarat Co-operative Societies Act, 1961. After detailed inquiry, Inquiry Officer passed final order observing that “no financial irregularities found in the inquiry against the Swaminarayan (Jivrajpark) Co-op Shops and Offices H.S.Ltd., at Jivraj Park, Ahmedabad and responsibility of no one is fixed”. In view of this order, the Id.counsel for the assessee pleaded that there is no question of making any addition on account of bogus expenditure of Rs.3,72,45,001/- in the hands of the assessee by invoking Revision Order u/s.263 of the Act.

6.4. Further the Id. Counsel for the assessee pleaded that invocation of revision under section 263 by the Id.Pr.CIT is not correct, more so, *Explanation 2(a)* to section 263(1) of the Act has been inserted w.e.f. 1-6-2015 only, whereas the assessment years involved herein is 2008-09 to 2010-11. The said *Explanation* reads as follows:

“[Explanation 2. – For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, -

(a) The order is passed without making inquiries or verification which should have been made”

7. Per contra, the Id.DR appearing for the Revenue has supported the order of the Pr.CIT and argued that revision order is well within the provisions of law and the same is maintainable.

8.1. We have given our thoughtful consideration to the facts of the case; perused material available on record and the Paper Book filed by the assessee. It is not disputed that in the Asst. Year 2009-10, assessment was completed under section 143(3) read with section 153A of the Act which was subject matter of appeal before the ld.CIT(A). After verifying the details, the ld.CIT(A) deleted additions made by the AO on the ground that no seized material was found during the course of search relating to the assessee. This issue is no more *res integra* as the Hon'ble jurisdictional High Court in the case of Pr.CIT Vs. Saumya Construction P. Ltd., 81 taxmann.com 292 (Guj) has held as follows:

“18. In this case, it is not the case of the appellant that any incriminating material in respect of the assessment year under consideration was found during the course of search. At the relevant time when the notice came to be issued under section 153A of the Act, the assessee filed its return of income. Much later, at the fag end of the period within which the order under section 153A of the Act was to be made, in other words, when the limit for framing the assessment as provided under section 153 was about to expire, the notice has been issued in the present case seeking to make the proposed addition of Rs.11,05,51,000/- on the basis of the material which was not found during the course of search, but on the basis of a statement of another person. In the opinion of this court, in a case like the present one, where an assessment has been framed earlier and no assessment or reassessment was pending on the date of initiation of search under section 132 or making of requisition under section 132A, while computing the total income of the assessee under section 153A of the Act, additions or disallowances can be made only on the basis of the incriminating material found during the search or requisition. In the present case, it is an admitted position that no incriminating material was found during the course of search, however, it is on the basis of some material collected by the Assessing Officer much subsequent to the search, that the impugned additions came to be made.

19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of all the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as, the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of powers under section 153A of the Act and

the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India), Jodhpur (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court in the case of Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year.

8.2. Respectfully following the above judgment of the jurisdictional High Court, we find that assessment order dated 30.3.2016 passed u/s.153A is confined only to the Returned Income, in other words, original assessment order is reiterated. As against this assessment order, the ld.Pr.CIT could not initiate revision proceedings under section 263 of the Act on the ground that order passed by the AO is erroneous and prejudicial to the interest of the Revenue since the basic assessment itself is invalid in law. This view is supported by Hon'ble Bombay High Court in the case of CIT Vs. Murli Agro Products Ltd., 49 taxmann.com 172 (Bom). The relevant paras of the judgment read as follows:

“12. Once it is held that the assessment finalized on 29.12.2000 has attained finality, then the deduction allowed under section 80 HHC of the Income-tax Act as well as the loss computed under the assessment dated 29-12-2000 would attain finality. In such a case, the A.O. while passing the independent assessment order under Section 153A read with Section 143(3) of the IT. Act could not have disturbed the assessment/ reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalised assessment/reassessment were contrary to the facts unearthed during the course of 153A proceedings.

13. In the present case, there is nothing on record to suggest that any material was unearthed during the search or during the 153A proceedings which would show that the relief under Section 80HHC was erroneous. In such a case, the A.O. while passing the assessment order under Section 153A read with Section 143(3) could not have disturbed the assessment order finalised on 29.12.2000 relating to Section 80HHC deduction and consequently the C.I.T. could not have invoked jurisdiction under Section 263 of the Act.”

8.3. Respectfully following the Bombay High Court judgment, we hold that the Revision Order passed as against the invalid assessment order is nullity in law.

8.4. Furthermore, we observe that the Id.DCIT vide his letter dated 9.3.2018 informed Pr.CIT to drop the proceedings based on the Tax Evasion Petition and categorically stated that Id.Audit Officer not even appreciated remarks in the report of DDIT(Inv) wherein he has mentioned that the AO may kindly derive his own satisfaction and draw his conclusion independently. This observation of DDIT(Inv) is sufficient to indicate that report given by him is not final and is subject to further investigation. But the Id.Audit Officer appears to have jumped into conclusion by substituting himself for the AO and has tried to suggest addition to the total income based on some conjectures and surmises. Further, as it can be seen from the order passed by the Inquiry Officer dated 21.6.2013 that there were no financial irregularities in "Swaminarayan Society", and therefore the revision order passed by the Pr.CIT has no legs to stand.

8.5. Thus, we find that the Id.CIT has initiated Revision proceeding based on the Internal Audit Party report only, which is not maintainable in law following jurisdictional High Court in the case of N.K. Roadways P.Ltd. v. Income-tax Officer (OSD) reported in [2015] 63 taxmann.com 342 (Gujarat) wherein it was held that 'where Assessing Officer had considered issue relating to taxability of interest in detail at the time of assessment, action of reopening solely at behest of audit party without any independent belief while recording reasons would surely make reassessment vulnerable'. Further it is settled Principle of law by the Three Judges Bench judgement of the Hon'ble Supreme Court in the case of Sirpur Paper Mill Ltd. -Vs- Commissioner of Wealth-tax reported in [1970] 77 ITR 6 (SC) that revision made by the Commissioner simply following

direction of the Board, which may control exercise of power of officers of department in administrative matters, but not in quasi-judicial matters. In case of judicial matters, the Commissioner should apply his mind and initiate proceedings in accordance with law and not merely carry out directions of the Board. Thus, any order passed pursuant to the directions of the Board is liable to be set aside as Commissioner has not applied his independent judgments in invoking revision proceedings.

8.5. Respectfully following the above judgments of jurisdictional High Court and judgment of Hon'ble Supreme Court cited (supra) we hold that revision order dated 28.03.2018 passed by the Pr.CIT [Central] for the asst. year 2009-10 is not in accordance with law and the same is hereby quashed.

8.6. We further found the *Explanation* (2)(a) to section 263(1) of the Act has been inserted w.e.f. 01-06-2015 only. The ld.Pr. CIT is legally not correct in invoking this provision and therefore the initiation of Revision Proceedings itself is invalid in law. For all the above reasons, we find that Revision Order passed by the Pr.CIT is not in accordance with law, and therefore, the same is hereby quashed.

9. Next let us take ITA No1091/Ahd/2018 (Asst.Year 2010-11):

In this assessment year, in response to the notice under section 153A of the Act, the assessee filed its return of income on 18.2.2011 declaring total income of Rs.4,25,340/-. After making certain additions, the total income of the assessee was assessed at Rs.3,36,72,300/- by the AO on 30.3.2016. However, the ld.Pr.CIT noticed that during the 153A assessment the ld.AO has not made any inquiry with regard to bogus expenditure of Rs.7,58,935/- which was made during the period 1.4.2009 to 31.3.2010 by the

“Swaminarayan Society” in which the assessee is the secretary. The ld.Pr.CIT accordingly proposed to initiate action under section 263 of the Act and therefore issued show cause notice. After considering the explanation of the assessee, the ld.Pr.CIT held that the order passed by the AO is erroneous in as much as it is prejudicial to the interest of Revenue. Accordingly he set aside the assessment order passed under section 143(3)/153A of the Act and directed the AO to pass a fresh assessment order in accordance with law after examining all the particulars. Against this Revision Order, the assessee is now before the Tribunal.

10. After hearing both the sides, we find that similar issue has been considered for the Asst. Year 2009-10 (hereinabove) in ITA No.1073/Ahd/2018. Following the same reasons, the Revision order passed under section 263 of the Act for the Asst. Year 2010-11 is also quashed.

11. Now let us take **ITA No.1072/ahd/2018 for the Asst. Year 2008-09:** The assessee filed his Return of Income for the assessment year 2008-09 on 1.6.2009 declaring total income at Rs.6,17,790/-. The return was selected for scrutiny assessment and the total income was determined at Rs.6,57,360/- by the AO on 27.12.2010. Thereafter a search under section 132 of the Act was carried out in the group cases of Dharmadev Group on 15.10.2013 and during the course of search certain incriminating documents were seized pertaining to the assessee regarding various cash deposits in the bank account. Accordingly notice under section 153A of the Act was issued and asked the assessee to file return of income. In response to the notice and based on the reply and details filed by the assessee, the ld.AO accepted the returned income of

Rs.6,17,790/- and passed assessment order under section 143(3) rws 153A of the Act on 30.3.2016.

11.1. On perusal of the record by the ld.Pr.CIT, it was noticed the assessee's wife late Shushilaben H. Thakkar has received Rs.24,46,500/- on sale of land bearing survey no.539 situated at Vejalpur, Ahmedabad. The assessee is the legal heir of the late Shushilaben H. Thakkar, but receipt of this income has not been assessed in the hands of the assessee, and to this effect no inquiry has been made by the AO, before finalization of assessment under section 143(3) r.w.s. 153A of the Act. This action of the AO is erroneous in as much as it is prejudicial to the interest of the Revenue. Therefore, the ld.Pr.CIT has invoked provisions of section 263 of the Act by issuance of notice. The show cause notice reads as follows:

“3. On perusal of records, it is noticed that as per BanakhatKarar dated-07/10/2005, late sushilaben H. Thakkar was one of the confirming party. The sale deed was registered on 07/07/2007 with sub-district, Ahmedabad, 4 (Paldi), Ahmedabad vide no. 7155/2007 accordingly to which payment of Rs.24,46,500/- was made to late Sushilaben H, Thakkar. Since, on the date of sale ie. 07/07/2007 Sushilaben H. Thakkar was not alive and being the legal heir the benefit accrued to you. Moreover, during the course of investigation before ADIT(lnv.), Unit-2(3), A'bad you confessed that your deceased wife was the confirming party and after her death you are her legal heir.

Despite repeated opportunity given to you during investigation proceedings as well as assessment proceedings you failed to file any documentary evidence in respect of taxability of Rs, 24,46,500/- either in your hand or in the hand of your deceased wife.

6. In view of the above, the assessment order 143(3) r.w.s. 153A of the Act dated-30/03/2016 passed by the Assessing Officer is, prima facie, erroneous as also prejudicial to the interest of the revenue and therefore, I intend to revise the said order u/s.263oftheI.T.Act, 1961”

11.2. In response to that the assessee submitted following reply:

“1. In the case of the assessee, assessment order u/s.143(3) r.w.s. 153A was passed by the AO on 30.3.2016 in pursuance of the supervision, guidance and approval of the designated higher Income Tax

Authority, As per U/s 263(b) explanation, the higher officer should have done at the stage of approval before passing the assessment order by AO, what he proposed to do U/s.263 of the Income Tax Act

2. The assessment order passed by the assessing officer is not erroneous and not prejudicial to the interest of the revenue. The inquirer conducted by the AO before the assessment order was passed was proper and adequate inquiry so as not to render /consider the assessment order erroneous and prejudicial to the interest of the revenue.

3. Explanation (2) to section 263(1) was inserted by the Finance Act 2015 w.e.f 01-06-15. The order cannot be branded as erroneous as explanation (2) falls outside the given purview of scope of clauses (a) to (c) is required to be seen.

4. We are relying on the judgment of the Judicial Authority in support of our submission.

- i. *Srinivasan vs ACIT (2013)29 taxmann.com 279 (Madras).*
- ii. *CIT vs SmtAnnapoornamam Chandrashekhar (2012) 17 taxmann.com 120 (Karnataka).*
- iii. *Narayan Tatu Rane vs ITO (2016) 70 taxmann.com 227.*
- iv. *Amira Pure Foods Pvt. Ltd. Vs Pr. CIT (ITAT Delhi dated 04-12-2017.*
- v) *CIT vs Anit Kumar Sharma (2011) 335ITR 83 (Delhi).*

5. In the case of the Assessee, the co-operative Housing Society is a separate distinct entity. He being a secretary of the Society cannot be responsible and liable for any of the activity under his individual capacity. He is representative of the society which is separate entity. Therefore, the activity / income of the society cannot be considered as the income of the Assessee. Moreover, in the case of the Housing Society they are having separate books of accounts and the activity is supported by the documents and evidences which includes various records under the Co-operative Society Act

6. Under the circumstances, and on the light of the above submission, your honor is humbly requested and prayed to drop the proceedings of revision initiated against the Assessee. My client shall be grateful if your honor will give us a chance of personal hearing in this regard.

In the notice, it is mentioned that banakhata dated 07-10-05 was executed by Late Sushilaben H. Thakkar and sale deed was registered on 07-07-07 and payment of Rs. 24,46,500/- as on 07-07-07. Sushilaben H. Thakkar was not alive, therefore, his wife being a confirmation party in the sale deed and after her death, Assessee is legal heirs still have a tax liability on amount of Rs. 24,46,500/-,

In this regard, we would like to state that the amount of Rs.24,46,500/- was received by Late Sushilaben H. Thakkar during the year 2005-06 when she was alive and same was shown in her books of accounts during such particular year. Due to death of Sushilaben H. Thakkar, we do not have any old record of such particular year and the returns filed by her. As per the provisions of Income tax Rules, the Assessee is not required to maintain and preserve the records and books of accounts of the party of more than 6 years.

Since the Assessee has not received any money in his account as instructed to the undersigned, there is no question of making and showing any tax liability by the assessee.”

11.3. Overlooking the above reply, the ld.Pr.CIT invoked *Explanation-2* to section 263(1) of the Act and set aside the assessment passed under section 143(3) read with section 153A of the Act with direction to the AO to pass a fresh assessment order in accordance with law and the facts of the case after examining particulars and after giving assessee a reasonable opportunity of being heard. Aggrieved against this Revision Order, the assessee is in appeal before the Tribunal with the following grounds:

“1. Whether, on facts and in circumstances of the case and in law, Ld. PCIT has erred in exercising power u/s.263 of the act?

2. Without prejudice to above ground of appeal, whether, ld.PCIT erred in not considering application of sec. 68 of the Act?”

12. The ld. Counsel for the assessee submitted that for the Asst. Year 2008-09, original assessment under section 143(3) was completed on 27.12.2010 and search assessment made under section 143(3) r.w.s. 153A of the Act, the ld.AO has accepted the declared income of Rs.6,17,790/- without making any addition, since there was no seized material found during the course of search. The ld. Counsel for the assessee further brought to our attention to Page Nos.24 and 25 of the Paper Book wherein the

ld.DCIT vide letter dated 13-03-2018 submitted his report to the Pr.CIT(Central) on the Revenue Audit Objection as follows:

“... In this regard, it is very relevant here to submit that any income received or accrued or arisen to Late Sushilaben Hiralal Thakkar or received by Hiralal D Thakkar on behalf of Late Sushilaben H Thakkar can be taxed in the hands of Shri Hiralal Thakkar in his capacity as Legal heir only. It can't be taxed in his individual capacity. Both status as per provisions of section 2(31) of the Act, are distinct and separate. Therefore, objection raised by the audit is not acceptable.”

In view of the above, the objection raised by the audit for taxing income of Legal Heir in the hands of individual is not justified and hence, it may kindly be dropped.”

12.1 Pursuant to the above report, the ld JCIT vide letter dated 14-03-2018 recommended his report to the Pr.CIT (Central) on the Revenue Audit Objection as follows:

2. Kindly find enclosed herewith DCIT, CC-2(4), Ahmedabad's letter No.DCIT/CC-42(4)/ITRA/LAR-3244/HDT/2017-18 dated 13.3.2018 in the case of Shri Hiralal D Thakkar for A.Y. 2008-09 regarding the audit objection. The Revenue audit objection regarding the receipt of Rs.2446500/- by the assessee Shri.Hiralal D. Thakkar as legal heir of Late Shushilaben H Thakkar in cash on sale of land as a confirmity party in Banakhat dated 7.10.2005 is not acceptable. In this regard it is submitted that any income Received or accrued or arisen to Late Sushilaben Hiralal Thakkar or received by Hiralal D Thakkar on behalf of Late Sushilaben H. Thakkar can only be taxed in the hands of Shri Hiralal Thakkar in his capacity as legal heir only and not be taxed in his individual capacity. Both status, as per provisions of section 2(31) of the Act are

distinct and separate. Therefore, the objection raised by the Audit is not acceptable.”

13. We have given our thoughtful consideration and perused material available on record and Paper Book filed by the assessee. It is seen from the records and Paper Book, based on the Tax Evasion Petition the above assessments were being suggested for reopening by Revenue Audit party. As against the same, DCIT (Central), Ward-2(4) vide his letter dated 13.3.2018 submitted that amount of Rs.24,46,500/- has been received by the assessee in cash in capacity as legal heir of late Shushilaben H. Thakkar (wife of the assessee) who was the confirming party in the sale deed dated 7.7.2007 registered with sub-Registrar, Ahmedabad-4, Paldi vide document no. 7155 of 2007. However, on the date of execution of the sale deed, Smt.Shushilaben H Thakkar was not alive. Therefore, the said amount of Rs.24,46,500/- received by the assessee, on behalf of his wife can only be taxed in the hands of the assessee in his capacity as “legal heir”. It cannot be taxed in the hands of the assessee in his “individual” capacity. Both the status provided in the section 2(31) of the Act are distinct and separate. Therefore, the ld.DCIT submitted that objection raised by the audit party was not acceptable. The income of “legal heir” cannot be assessed in the hands of individual and hence requested to drop Audit Objection. In the same line, ld.JCIT vide his letter dated 14.3.2018 submitted before the ld.Pr.CIT(Central) to drop further proceedings. However, as it can be seen from the show cause notice, for the very same reason, Pr.CIT has invoked revision proceedings without applying his mind, but borrowed reasons from Revenue Audit Party, which is bad in law. Thus the ldPr.CIT erred in invoking proceedings under section 263 with barrowed reasons which is against the provision of law and liable to be quashed.

14. After hearing both the sides, we find that similar issue has been considered for the Asst.Year 2009-10 (hereinabove) in ITA No.1073/Ahd/2018. Following the same reasons, the Revision order passed under section 263 of the Act for the Asst.Year 2010-11 is also quashed.

15. In the result, all the appeals of the assessee are allowed.

Order pronounced in the Court on 7th July, 2022 at Ahmedabad.

Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT

True Copy

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, dated 07/07/2022

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad