

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “B”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.296/PUN/2021

निर्धारण वर्ष / Assessment Year : 2016-17

Shri Pravinchandra Walchand Shah, 19, Sumati Society, Sharanpur Road, Shastri Nagar, Nashik – 422002. PAN: ACMPS 2997L	Vs .	The Pr.CIT, Nashik-1.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Sanket Joshi – AR
Revenue by	Shri Sardar Singh Meena – AR
Date of hearing	14/07/2022
Date of pronouncement	19/07/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee’s appeal for A.Y. 2016-17 is directed against the Principal Commissioner of Income Tax, Nashik-1’s order dated 12.03.2021 passed in case no.ITBA/REV/F/REV5/2020-21/1031448193(1), in proceedings u/s.263 of the Income Tax Act, 1961 [in short “the Act”].

Heard both the parties. Case file perused.

2. It emerges at the outset that the Pr.CIT revision direction’s herein u/s 263 of the Act terming the corresponding regular assessment

framed in assessee's case dated 16.12.2018 as an erroneous one causing prejudice to the interest of the Revenue as follows:

“02. On perusal of the assessment records for the AY 2016-17, it is seen that the assessment proceedings were completed u/s.143(3) of the I T Act, without making proper enquiries and verifications which were expected on the facts and in the circumstances of the case. In this regard, the following points are notable:

“During the course of review of assessment, it was observed that the Dy.CIT, Circle-1, Nashik, while finalizing the assessment proceedings in the case of one Shri Dinesh KanayalalManwani, who is one of the co-owner of the property alongwith the assessee, has made addition u/s.56(2)(vii)(b) of the Act, as income from other sources [being the difference in the value as per the Government Valuation and as per the consideration paid by the assessee].

03. On consequent to creation of Regional e-Assessment Centers (ReACs) vide CBDT, New Delhi's Notification No.187/3/2020 ITA-I dated 13/08/2020, the Charge of Pr. Commissioner of Income tax-2, Nashik, was merged with this Office, i.e. Pr. Commissioner of Income tax-1, Nashik vide CBDT, New Delhi's Notification SO No.2745(E) dated 13/08/2020 Therefore a show cause notice No.ITBA/REV/F/REV1/2020-21/1030007164(1) dated 22.01.2021 communicating the above reasons and calling for submission on 27.01.2021 was issued to the assessee through e-proceedings. This notice was duly served to assessee.

4. The assessee further stated that from the fact of the case mentioned in earlier paragraphs, it is certain that the issue under consideration for revisions is covered in favour of the assessee and

at the most it can be made on debatable issue. This proposition of law is supported by following decisions:

1. Commissioner of Income Tax, Delhi Vs.M/s DLF Ltd 236/2010 7 384/2020
2. CIT Vs. Max India Ltd 295 ITR 282 (SC)

The assessee also relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs.Gabriel India Ltd 203 ITR 108 (Bom) and stated that in view of the facts of the case and ratio laid down by various decisions, the proposed revision u/s 263 is not justified.

5. In view of the above, submission/clarification on the part of the assessee and on the issues cropped-up during the course of present proceedings are duly discussed in the above paras and were duly confronted to the assessee, I proceed to pass the order on the basis of material available on record.

5.1 From the record it is observed that the assessment was completed on 10.12.2018 and return of income of the assessee was accepted as assessed income for A.Y. 2016-17. However, it is noticed that in one case of the DCIT, Circle-1, Nashik_ile. Shri Dinesh Kanayalal Manwani who is one of the co-owner of the property alongwith the assessee, which is subject matter of verification. The AO in the case of Manwani has made addition u/s 56(2)(vii)(b) of the I.T. Act, 1961 as income from other source. In this case also the assessee has claimed exempt income of Rs.1,01,06,735/- on capital receipt on compulsory Land Acquisition. It is also noticed that there were two agreements prior to the final registered safe deed. As mentioned in the Sathekhat, the land was not free from encumbrances and hence alienation of right over the land was not in exclusive domain of the sellers.^ The

transactions as per Sathekhat was contingent upon the alienation of right of certain family members of the sellers (as mentioned in the Sathekhat). It was also noticed that the amount of consideration was neither fixed at the time of sathekhat, nor at the time of subsequent deed dated 04.10.2014. the consideration was fixed only through registered sale deed dated 09.09.2015. hence, the date of agreements prior to the registered sale deed does not hold any significance vis a vis fixing the amount of consideration. The amount' of consideration remained flexible and it was finally ascertained through registered sale deed dated 06.02.2016. Therefore, the date of registered sale deed is the date on which the amount of consideration was fixed and the earlier deeds were mere negotiations or processes which culminated in the fixing of the amount of consideration in the form of registered sale deed. The earlier deeds were contingent on certain events to take place, hence neither the transfer not the fixing of amount of consideration can be considered to be completed in the earlier deeds. In this context, the DCIT, Circle-1, Nashik has obtained the stamp valuation as on the date of registered sale deed i.e. 06.02.2016 from Stamp Valuation Authority which is Rs.19,85,97,000/- for the entire land. The assessee had 3.5% share in the, property i.e. 69,50,895/-, being the difference in the value as per Government Valuation and as per consideration pay by the assessee. Hence, the value of the consideration received has to be determined as per the stamp duty value on the date of registration of the Agreement during the relevant A.Y. and the difference between the Agreement value as per Sathekhat Agreement and the stamp duty value will be the income from other sources of the assessee to be taxed under section 56(2)(vii)(b) of the I.T. Act, 1961. The AO was required to verify these facts before finalizing the assessment. However it is observed that the AO failed to do so. Therefore, there is under assessment

and AO was supposed to bring the amount to tax as per the provisions of section 56(2)(vii)(b) of the Act.

6. In view of the above, it is admitted fact that the assessment proceedings in this case have been completed without verifying the main issues for which the case selected under CASS. Therefore, the provisions of Explanation 2(a) to Section 263 of the Act are squarely applicable in this case. The same are reproduced as under for the sake of convenience:

“263. (1) The Principal Commissioner or Commissioner.....

Explanation 2 - For the purpose 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 interests 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. In the light of the detailed discussion made hereinabove, I am of the considered opinion that the assessment order passed u/s. 143(3) of the Act for Assessment Year 2016- 17 on 10.12.2018 by the then AO, is erroneous insofar as it is prejudicial to the interests of Revenue, because the assessment has been made not only without proper verification but also not applying the relevant provisions of the Act properly. Therefore, the provisions of section 263 of the I.T. Act, 1961 are hereby invoked and assessment order passed by the AO on the above issues is hereby set aside to the file of the assessing officer.

The AO is directed that the assessment order should be framed afresh as per the provisions of law, after considering proper facts and submissions of the assessee, after affording proper opportunity to the assessee within the time allowed under the Income-tax Act, 1961.

8. *It is stated that, in view of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 No.2 of 2020 dated 31/03/2020, the limitation date 31.03.2020 for finalization of proceedings u/s.263 of the Act first stood extended up to 30/06/2020, then again vide Notification No.S.O.2033(E) dated 24/06/2020 stood extended up to 31/12/2020 and then again vide The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 No.38 of 2020 dated 29/09/2020 stands extended up to 31/03/2021.”*

3. Mr.Joshi, vehemently argued during the course of hearing that the Pr.CIT has erred in law and on facts in exercising his section 263 revision jurisdiction once there is no dispute regarding the fact that section 56(2)(vii)(b) is not even applicable in the year of transfer of the land in assessee’s favour i.e. 25.01.2001. He invited our attention to the assessee’s detailed paper book running into 120 pages placing all the relevant documents on record.

4. Learned CIT(DR) strongly supported the DCIT’s revision directions in issue extracted in the preceding paragraphs.

5. We have given our thoughtful consideration to vehement rival submissions and find no merit in assessee’s stand. It emerges from a

perusal of the case records that the land in issue formed part of the Survey No.883/1, Village Nashik falling in the Municipal Corporation limits of the Nashik City. The assessee appears to have executed the first agreement way back on 12.08.1997 [unregistered]. There is no dispute between the parties that even as per the registered deed is issued dated 06.08.2016 that atleast a part of consideration i.e. Rs.1 lakh (three occasions, all dated 08.07.1997) stood paid to the vendor out of total consideration of Rs.72 lakhs. Mr.Joshi claims that the same transfer of possession on 25.01.2001 over the corresponding land [unregistered]. And that the parties thereafter executed a final payment receipt dated 09.09.2015 and registered instrument dated 06.02.2016 involving payment of stamp duty and other required charges. It is in this factual backdrop that Mr.Joshi has vehemently argued that the Assessing Officer had duly examined all the relevant aspects in the course of scrutiny and therefore, the revision exercise in issue taken recourse to at the Pr.CIT's end is not sustainable in law.

6. We hardly see any substance in the assessee's instant arguments. Needless to say, the legislature has amended section 263 of the Act by inserting the Explanation-2(a) that an Assessing Officers assessment indeed attracts exigibility of revision jurisdiction in case he fails to make all due enquiries during scrutiny. We make

it clear that the assessee's land in issue formed subject matter of compulsory acquisition which followed his claim of section 54B deduction and the Assessing Officer had nowhere examined the foregoing unregistered documents or transfer; as the case may be, for the purpose of correct computation thereof. We therefore conclude that the Pr.CIT revision jurisdiction has been rightly exercised in the facts of the instant case. The same stands upheld.

7. Learned counsel at this stage invited our attention to section 56(2)(vii)(b) of the Act, and referred to 1st and 2nd proviso thereunder his case is that the corresponding addition could not exceed stamp duty value of the asset in any case under clause (ii) thereof. And that the authorities concerned may also adopt stamp duty value on the date of agreement provided that the considerations payment in whole or in part; as the case may be, was made through banking channel. He invited our attention to first three payments instances dated 01.01.1997 (supra) to claim benefit of the foregoing twin proviso(es).

8. Faced with the situation, we are of the considered opinion that it shall be upon for the assessee to claim the benefit of foregoing twin beneficial provisions in consequential proceedings before the Assessing Officer which shall be considered as per law. Ordered accordingly.

9. Delay of 23 days in filing of the instant appeal is condoned since falling in Covid-19 pandemic outbreak period.

10. This assessee appeal is dismissed in above terms.

Order pronounced in the open Court on 19th July, 2022.

Sd/-
(DR. DIPAK P. RIPOTE
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.