

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./ ITA No. 219/Chny/2022
(निर्धारण वर्ष / Assessment Years: 2016-17)

Smt. Kalyani Seetharaman E-56B, 19 th Cross Street, Besant Nagar, Chennai – 600 090.	बनाम/ Vs.	ACIT, Non Corporate Circle 15(1), Chennai – 600 034.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. ABHPS-7501-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Guru Bashyam, CIT(DR)

सुनवाई की तारीख/ Date of Hearing	:	26.07.2022
घोषणा की तारीख / Date of Pronouncement	:	29.07.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by assessee is arising out of the revision order of Principal Commissioner of Income Tax, Chennai-3 passed u/s. 263 of the Income-tax Act, 1961 (herein after referred to as 'the Act') vide revision no. PCIT,Chennai-3/Revision-263/100000195594/2021 order dated 27.03.2021. Assessment was framed by ACIT, Non Corporate Circle

15(1), Chennai for the AY 2016-17 u/s. 143(3) of the Act vide order dated 19.11.2018.

2. The only issue in this appeal of assessee is whether the assessment order framed by the Assessing Officer u/s. 143(3) dated 19.11.2018 is erroneous and prejudicial to the revenue on the ground that the valuation requires verification based on correct address given by the buyer. The second issue is whether the PCIT is right in revising the assessment framed u/s. 143(3) of the Act by invoking the provisions of section 263 of the Act, where the assessee has objected to the value adopted by stamp valuation authority which is higher than the consideration declared in sale deed. For this assessee has raised following grounds:

"2. The Commissioner of Income tax erred in setting aside the assessment order on the ground that the valuation requires verification based on the correct address given by the buyer.

3. The Commissioner of Income tax erred in ignoring the valuation report of an approved valuer along with the photograph and survey plan and ought to have held that the sale consideration as per the sale deed is reasonable and proper.

4. Without prejudice to the above, as the Appellant had objected to the value adopted by the stamp authorities, the Commissioner of income tax ought to have directed the AO to refer the matter to the DVO for arriving at the correct and proper value of the property, if the Assessing Officer does not accept the valuation by the approved valuer."

3. Briefly stated facts are that for the AY 2016-17, the assessee filed return of income on 05.08.2016. Subsequently, the assessee's case was selected for limited scrutiny by CASS and accordingly assessment was

framed u/s. 143(3) of the Act vide order dated 19.11.2018 after considering all the documents, details filed by the assessee called for. Subsequently, the PCIT on perusal of records, noted that during the previous year 2015-16 relevant to AY 2016-17, the assessee admitted sale consideration of Rs. 6,01,47,000/- towards sale of his property as against value adopted by sub-registrar for the purpose of charging stamp duty at Rs. 9,51,20,528/-. The PCIT also noted that apart from the failure for invoking provisions of section 50C of the Act, the AO has allowed the market value and indexation in respect of sold property as claimed by assessee without proper verification. According to PCIT the assessment order passed u/s. 143(3) dated 19.11.2018 is erroneous in so far as it is prejudicial to the interest of revenue. The Assessing Officer was asked to show cause as to why the assessment order not be set aside.

4. The assessee replied to this show cause notice stating that the assessee has objected to the department considering the value adopted by the stamp valuation as per the sale consideration in terms of section 50C(1) of the Act. Even the assessee produced valuation report by an approved valuer in respect of his property along with the photograph and survey plan. The value in his valuation report determine the value of the said property at the rate of Rs. 4,79,22,000/-, it was contended that the

sale consideration of Rs. 6,01,47,000/- is reasonable and represent the fair market value of the property. On the issue of cost and indexation, he stated that assessee has filed all the papers in determining capital gains which the Assessing Officer after going through and satisfying himself, passed assessment order u/s. 143(3) of the Act. But PCIT has not accepted the claim of assessee but passed a cryptic order and set aside the assessment order by observing in Para 5 as under:

"5. I have considered the submission of the assessee and gone through assessment order. The assessee's main contention is that in the sale deed prepared the buyer has inadvertently put wrong address because of which the Stamp duty has been paid higher than actual guideline value. Since this issue requires verification, the assessment order is set aside for this limited purpose. The AO is directed to verify the facts and pass a fresh assessment order after giving adequate opportunity to the assessee."

Aggrieved, assessee came in appeal before tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that this very issue of revision proceedings u/s. 263 of the Act in the case of applicability of provisions of section 50C of the Act, where there is difference between the sale consideration as per sale deed and guideline value fixed by stamp valuation authority and because the guideline value is higher than the sale consideration as shown in the sale deed, it cannot be a reason for holding that the assessment is erroneous and prejudicial to the interest of revenue. Admittedly in the present case the assessee has registered

the sale consideration in the sale deed of the property sold at Rs. 6,01,47,000/- as against the value adopted by sub-registrar office for charging stamp duty in view of the guideline value fixed at Rs. 9,51,20,528/-. The assessee sold the property of an extent of 9980 sq.ft, bearing Door #31F, Old Door #59, New Door #109, Anna Salai Lane (Mount Road), Guindy Ranganathan Street, Guindy, Chennai – 600 032 to M/s. Rajam Foods P Ltd for a sale consideration of 601,47,000/- on 10.07.2015 vide a deed of sale registered as document #1908/15 in the office of SRO, Adyar, Chennai. We noted that the exactly identical issue was considered by Hon'ble Madras High Court in the case of CIT vs Smt. Padmavathi, [2020] 120 taxmann.com 187 (Madras), wherein Hon'ble Madras High Court in Para 16 held as under:

"16. The only reason for setting aside the scrutiny assessment was on the ground that the guide line value of the property, at the relevant time, was higher than the sale consideration reflected in the registered document. The question would be as to what is the effect of the guideline value fixed by the State Government. There are long line of decisions of the Hon'ble Supreme Court holding that guideline value is only an indicator and the same is fixed by the State Government for the purposes of calculating stamp duty on a deal of conveyance. Therefore, merely because the guideline was higher than the sale consideration shown in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue."

5.1 Respectfully following the decision of Hon'ble Madras High Court in the case of Smt. Padmavathi (supra), we are of the view that the revision proceedings and order passed for revising of assessment by the PCIT is bad in law and hence quashed.

6. Subsequently, we noted that the PCIT has not at all given a finding that the order of the AO i.e., the assessment order is erroneous or prejudicial to the interest of revenue and how. We have already noted the finding of PCIT in above para 4 and noted that simple assumption made by PCIT is that to verify the facts and pass assessment order but the PCIT has nowhere recorded the fact that how the assessment order is erroneous so as to prejudicial to the interest of the revenue. The case law cited by Ld. Counsel for the assessee of Punjab & Haryana High Court in the case of CIT vs Jagadhri Electric Supply & Industrial Co. [1983] 140 ITR 0490, as regards to assumption of jurisdiction, Hon'ble High Court held that the tribunal cannot substitute the grounds which the CIT(A) did not find proper to form the basis of his order and even disclosing the facts of that case Hon'ble High Court stated that recording of certificate by the ITO to the effect that firm was entitled to continuation of registration and ITO is required to apply his mind and satisfy himself. Such a recording would constitute an order for which can be revised u/s. 263 of the Act and CIT(A) can revise such an order on finding that the same is erroneous or prejudicial to revenue. Hon'ble Punjab & Haryana High Court observed in Para 24 read as under:

"24. The jurisdiction vested in the Commissioner under [Section 263\(1\)](#) of the Act is of a special nature or, in other words, the Commissioner has the exclusive jurisdiction under the Act to revise the order of the ITO if he considers that any order passed by him was erroneous in so far as it was prejudicial to the interests of the Revenue. Before doing so, he is also

required to give an opportunity of being heard to the assessee. If after hearing the assessee in pursuance of the notice issued by him under [Section 263\(1\)](#) of the Act, he is not satisfied, he may pass the necessary orders. Of course, the order thus passed will contain the grounds for holding the order of the ITO to be erroneous, as contemplated under [Section 263\(1\)](#) of the Act. Feeling aggrieved therefrom, the assessee may file an appeal against the same, as provided under [Section 253\(1\)\(c\)](#) of the Act. In the memorandum of appeal, the assessee is supposed to attack the order of the Commissioner and to challenge the grounds for decision given by him in his order. At the time of the hearing, if the assessee can satisfy the Tribunal that the grounds for decision given in the order by the Commissioner are wrong on facts or are not tenable in law, the Tribunal has no option, but to accept the appeal and to set aside the order of the Commissioner. The Tribunal cannot uphold the order of the Commissioner on any other ground which, in its opinion, was available to the Commissioner as well. If the Tribunal is allowed to find out the ground available to the Commissioner to pass an order under [Section 263\(1\)](#) of the Act, then it will amount to a sharing of the exclusive jurisdiction vested in the Commissioner, which is not warranted under the Act, It is all the more so, because the Revenue has not been given any right of appeal under the Act against an order of the Commissioner under [Section 263\(1\)](#) of the Act. In case he proceeds thereunder after hearing the assessee in pursuance of the notice given by him, then the appeal filed by the assessee under [Section 253\(1\)\(c\)](#) of the Act cannot be treated on the same footing as an appeal against the order of the AAC passed in assessment proceedings, where both the parties have been given the right of appeal. In this view of the matter, the argument raised on behalf of the Revenue, that, in appeal, the Tribunal may uphold the order appealed against on the grounds other than those taken by the Commissioner in his order, is not tenable. Under [Section 263](#) of the Act it is only the Commissioner who has been authorised to proceed in the matter and, therefore, it is his satisfaction according to which he may pass necessary orders thereunder in accordance with law. If the grounds which were available to him at the time of the passing of the order do not find a mention in his order, appealed against, then it will be deemed that he rejected those grounds for the purpose of any action under [Section 263\(1\)](#) of the Act. In this situation, the Tribunal, while hearing an appeal filed by the assessee, cannot substitute the grounds which the Commissioner himself did not think proper to form the basis of his order.”

7. In the present case before us the PCIT has ignored the valuation report of an approved valuer filed with the AO along with the photographs and survey plan and then framed assessment and formed

an opinion that the sale consideration disclosed by assessee is a right consideration. Hence, according to us PCIT cannot interfere in the assessment order while acting u/s. 263 of the Act.

8. Accordingly, we quash the revision order passed by PCIT u/s. 263 of the Act and allow this appeal of the assessee.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on 29th July, 2022.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई / Chennai; दिनांक / Dated : 29-07-2022

JPV

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

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