आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

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

आयकर अपील सं. / ITA No.450 /PUN/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Smt. Rukmini Balkrishna Mathe, S.No. 184, Shinde Vasti, At Post : Ravet Gaon, Ravet, Dehu Road, Pune – 412 101. PAN: BYKPM 9167 P	Vs.	The Pr. Commissioner of Income Tax-5, Pune.
Appellant/ Assessee		Respondent /Revenue

आयकर अपील सं. / ITA No. 451/PUN/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Ravikant Balkrishna Mathe, S.No. 184, Shinde Vasti, At Post : Ravet Gaon, Ravet, Dehu Road, Pune – 412 101. PAN: AWUPM 7701 Q	Vs.	The Pr. Commissioner of Income Tax-5, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Prashant Munot – AR
Revenue by	Shri Sardar Singh Meena – CIT-DR
Date of hearing	19/07/2022
Date of pronouncement	18/10/2022

आदेश/ ORDER

Per S.S.Godara, JM:

These twin assessees as many appeals; both for the AY 2015-16, arise against the PCIT-5, Pune's identical orders dated 10.01.2019 passed in file no.Pn/PrCIT-5/Admn/263/RBM/2018-19/3487 and Pn/PrCIT-5/Admn/263/RBM/2018-19/3482;

respectively, in proceedings under section 263 of the Income Tax Act, 1961[in short "the Act"].

Heard both the learned representatives. Case files perused.

2. It emerges during the course of hearing that both these assessees are aggrieved against the PCIT's section 263 revision directions terming the corresponding regular assessments dated 25th and 30th October, 2017; respectively as erroneous ones causing prejudice to the interest of the Revenue.

3. Learned authorized representative submits that the PCIT's identical revision directions in both these cases read as follows:

> *"02. The Addl. Commissioner of the Income Tax, Range-10, Pune submitted a proposal for passing an order under section 263 of the Income Tax Act, 1961, in-the case of Smt. Rukmini Balkrishna Mathe for the A. Y. 2015-16. Briefly stated, the assessee along with others have entered into an agreement for assignment of Development Right in respect of their leased land at Plot No. 5, admeasuring about 3387.50 sq. mtrs, out of Sector No. 32A at Village Ravet, Taluka Haveli, District Pune and within the limits of Pimpri Chinchwad, New Town Development Authority [P.C.N.T.D.A.], for a consideration of Rs. 7,00,00,000/-.*
>
> *2.1 On a perusal of page no. 6 of the registered deed No.5939/2014 dated 21-07-2014 for assignment of development rights, in respect of transfer of said land to M/s Nirman Vision, it is mentioned that the Pimpri Chinchiwad New Town Development Authority allotted the said land in favour of the Lessees & Consenting Party herein, vide Deed of Lease dated 21/7/2014, which is duly registered in the office of the Sub Registrar Haveli No. 24, at Serial No. 5934/2014.*

Further, agreement of assignment dated 21/7/2014 giving Development Rights to M/s Nirman Vision, is registered at Serial No. 5939/2014. Thus, prima-facie it appears that vide lease deed dated 21/07/2014 which is registered at Serial No. 5934/2014 assessee alongwith other co-owners had acquired lease right in said land on 21/07/2014 from Pimpri Chinchwad New Town Development Authority and on the same date Development Rights, on such leased, land-is assigned to. M/s Nirman. Vision,. Thus, on assignment of Development Rights, assessee has derived Short Term Capital Gain, and on such Short Term Capital Gain deduction u/s 54B of the Act are not allowable and also such Short Term Capital Gain is liable for tax at normal rate. The Ld. Assessing Officer while passing the assessment order has not examined the issue properly and allowed the deduction u/s 54B to the assessee.

03. Accordingly, a notice under Section 263 of the Income Tax Act, 1961 was issued to the assessee on 23-07-2018, in compliance thereto the assessee representative, Shri. Manojkumar B Agarwal, CA and A.R. of the assessee attended the proceedings and stated that the assessee was holding ancestral property i.e. agricultural land bearing Gat No. 200/2/1, 200/2/2 and 200/4/1, Village Ravet, Pune which was acquired before 1980. The said land was notified for acquisition by the Commissioner of Pune Division, Government of Maharashtra u/s 4 of the Land Acquisition Act, 1894 before 1980. Accordingly, the Special Land Acquisition Officer determined the award and took possession of the said land for the purpose of P.C.N.T.D.A. and the mutation entry thereof came to be recorded in the Record of Rights vide Mutation Entry no. 5201 dated 11-12-2000.

The Government of Maharashtra had issue a General Circular dated 03-03-1990 directing the grant of lease rights to the person whose lands were so acquired of land equivalent to 12.50% of the total area acquired. Accordingly, the lease rights for land admeasuring about 3387.50 sq. mts (being 12.50% of the total land acquired around 2 H 71 R) were allotted to the assessee and others by the P.C.N.T.D.A.

The A/R of the assessee further stated that it was only a matter of legal documentation i.e. the formal lease deed was executed in favour of the assessee and others on 21-07-2014. The allotment

of 12.50% of the developed plot of land, to the original displaced farmers/owners of land on acquisition by the Government of Maharashtra related back to the original date of acquisition in terms of Government Resolution/General dated 03-03-1990. The 12.50% land allotted to the displaced original farmers/owners is in the nature of compensation/consideration for compulsory acquisition of their land.

In support of the above, the A/R of the assessee has submitted the copies of 7/12 extract i.e. Mutation entries indicating assessee's family, assessee and P.C.N.T.D.A., Punchnama in respect of possession of land transfer to the Special Land, Acquisition Officer-22, Pune, and Lease Deed No.. 5934/2014 dated 21-07-2014.

04. In order to appreciate the issue at hand, it is imperative to go through the 12.50% Lease Deed No. 5934/2014 dated 21-07-2014 for a consideration of Rs. 17,700/- executed between the P.C.N.T.D.A. and assessee and others for the land situated at Gat No. 200/2/1, 200/2/2 & 200/4/1, Ravet, Pune [Schedule - I], The details of the same are enumerated below:

> *4. The Special Land Acquisition Officer made and published his Award on or about 23/09/86, 0.2.71 Hectare whereby he awarded a sum of* Rs. 80,139.45 (Rs. Eighty thousand One hundred Thirtynine & ps. Fourtyfive onlyj *as compensation* for *the acquisition* of *the land described in the Schedule I written hereunder. Out of the above total acquired land, the Lessee has allotted 12.5 % land area for which the Special Land Acquisition Officer No. 23 has given compensation to him and which amount the Lessor deposited with the Special Land Acquisition Officer got being paid to the Lessees.*
>
> *5. The possession of the said land was taken by the Government and handed over to the Lessor by virtue of the provisions of Section 128 of the said M.R.T.P. Act, 1966, the said land described in the Schedule I became vested in the Lessor, absolutely and free from encumbrances and claims.*
>
> *6.* On *or about 3/3/90 the Government of Maharashtra issued a general* circular or direction directing *the*

Lessor to transfer back to the persons whose lands were so acquired or any other land in the same village or at any place which would be equivalent to 12.50 percent of the total area acquired and who were thus displaced from the locality should continue have some interest in the locality and should be involved in the development of the locality for which the said land was acquired.

7. *The said circular or direction was modified by another circular / direction dated 15-09-1993 where it was provided the persons whose land were acquired after 1/1/84, should be given back five gunthas out of 40 gunthas acquired or 12.50 percent of the area acquired of each owner should be preferably from the same village from which the land was acquired and those owners who had receive3d the compensation from the Land Acquisition Officer should be liable to return proportionate compensation amount in respect of the land to be transferred back to them along with interest on such amount received at the rate of 13.5 percent from the rec3eipt of the compensation till the transfer of land equal to 12.5 percent of the total land acquired of each owner.*

8. *It was also directed by the said circular dated 15/ 9/ 93 that the person to whom the proportionate land out of the acquired land will be retransfer shall be entitled to transfer the same to any other party. It was also directed the said circular dated 15/9/93 that the persons to whom the proportionate land out of the acquired will be retransfer shall be entitled to transfer the same to any other party. The subsequent transferee shall not be entitled to transfer the said land to a third part without the consent of the Lessor and the transfer will be subject to payment of premium prescribed by the Lessor under the Disposal of Land Regulations 1973 made under the said MRTP Act, 1966.*

9. *By third circular or resolution dated 4/8/2000 in modification or super session of the circular dated 3/3/90 and 15/9/93, the Government of Maharashtra has decided that the person to whom any land will be transferred pursuant to the Government said policy to return 12.5 percent of the land of such land of such person acquired by the Government to such person shall not be entitled to transfer the said land to any*

other party unless he pays to the Lessor an amount equal to Rs. 225/ - per square meter of such land if the land is developed or an amount equal to Rs. 150/- per square meter if the said land is undeveloped as a condition precedent to such transfer of the land, the transferor will not entitled to transfer the land to any other person unless he pays the lessor the premium at the rate prescribed by the Land Regulation Rules, 1978 made under MRTP Act, 1966 and for the time being in force as a condition prescribed to such subsequent transfer.

10. *The and of the Lessees acquired as aforesaid and described inthe Schedule 1 written hereunder was 2.71 H and 12.5 percent thereof would amount to 3387.50 Sq. Mtrs which is propose to be transferred back to the Lessees and proportionate compensation awarded in respect thereof including interest thereon amounts of Rs. 10017+7685 = 17702/- (Rs. Seventeen thousand Seven hundred two only).*

11. *As it is not possible within the statutory power of Lessor to transfer back to Lessees any part of the acquired Land described in the first Schedule hereunder whether by sale or otherwise the Lessor has proposed to transfer by way of lease to the transfer of another piece of land belonging to the Lessor and described in schedule 1 hereunder in lieu of the proportionate area 3387.50 Sq Mtrs belonging to the Lessees and acquired as aforesaid pursuant to the Government directions.*

12. *The proportionate amount of compensation received by the Lessees as owner of the land equal to 12.5 percent of the land acquired and which comes to (Rs. 10017 + 7685) = 17702/- (Rs. Seventeen thousand Seven hundred two only) as aforesaid has been repaid by the Lessees to the Lessor on or before execution of these presents and will be treated as the premium payable by the Lessees for the grant of the lease in respect of the land described in the Schedule I hereunder written.*

13. *The Lessor have agreed to pay nominal yearly rent of Rs. One to the Lessor commencing from the date of this document and to be paid on or before 10th day of the month of each following year, during the period of the lease.*

> *14. The Lessees have agreed to the said proposal as requested the Lessor to transfer the said land described in second Schedule [Sector No. 32A, Plot No. 5, admeasuring 3387.50 Sq. Mtrs, Village Ravet, Pune] herein written by way lease in favour of Lessees pursuant to the directions of the Government as contained in these circulars mentioned above.*

05. In view of the foregoing, it is clear that the Special Land Acquisition Officer has acquired the land [Schedule I] of the assessee and others vide Panchnama dated 28-11-2000. The value of compensation of the entire land was determined and awarded to the assessee at Rs. 80,139.45/- only. It was further clarified that out of this land, 12.50% of the land area is allotted to assesse and other co-owners. The land was allotted at a cost which was proportionate compensation amount in respect of land to be transferred back to them alongwith the interest received at the rate of 13.50% from the receipt of compensation amount till the transfer of land equal to 12.50% of the total land acquired by each co-owner.

5.1 No doubt, the land which, was allotted to the assessee and-other co-owners was in lieu of the acquisition of land which took place on 04-08-2000, thus the right to acquire 12.50% of the land so acquired by the P.C.N.T.D.A. was created in the year 2000. The issue is what should be the cost of acquisition, will it be the cost of acquisition to the previous owner (as the land was inherited property of the assessees and co-owner) or the value of compensation returned to the P.C.N.T.D.A. along with interest. Taking stock of the entire transactions, it is abundantly clear that the entire land was compulsory acquired by the P.C.N.T.D.A. and a compensation amount was awarded to the assessee along with all other co-owners. The land was further allotted as a part of compensation subject to certain condition as specified from time to time by different Government's order. The cost of acquisition is what assessee and the other co-owners have paid to P.C.N.T.D.A. and not the cost which is determined by the assessee i.e. cost of land as on 01-04-1981. The AO has not examined this issue at all while passing order u/s 143(3).

Further, it is also clear from the Map of Pune

Metropolitan Regional Plan issued by Town Planning & Valuation Department, that the land in question is not an Agricultural land being situated within the 08 kms of j local Municipal limit. Therefore, the allowability of deduction u/s 54B need to be examined which apparently has not been done by the AO. Further, it appears that that property under assignment was belonging to the co-owner's HUF .which needs to be examined by the AO. Therefore the assessment completed under section 143(3) of the Income Tax Act, 1961, by the Income Tax Officer, Ward - 10(3), Pune, on 30.10.2017, for Assessment Year 2015-16, is erroneous in so far as it is prejudicial to the interest of the revenue. Therefore, the assessment made by the Assessing Officer is set aside with a direction to complete the assessment afresh after verifying the details regarding computation of Capital Gam and allowing correct amount of deduction admissible to the assessee. The addition made on undisclosed interest income of the assessee of Rs. 1,47,203/- is sustained."

It is this identical backdrop of facts that we propose to deal with these twin assessee as many appeals in the succeeding paragraphs.

4. We make it clear before proceeding further that Mr.Munot had raised very much elaborate arguments during the course of hearing. This indeed followed by his equally meticulous hardwork in placing on record the assessees' written submission as well. Learned counsel's first and foremost substantive grievance touches upon the validity aspect not only of the impugned assessment(s) herein above as framed by the assessing authority as without jurisdiction, but he having finalized the same without following a valid section 143(2) notice held to be mandatory in ACIT Vs. Hotel Blue Moon [2010]

321 ITR 362 (SC). Mr.Munot continued his vehement contentions in the same breath that these assessees are very much entitled to challenge the Assessing Officer's jurisdiction forming sine qua non for finalizing the twin assessments. And also that the PCIT herein could not have assumed section 263 revision jurisdiction merely on a proposal coming from the field authorities' side than on his own as per this tribunals co-ordinate bench's order in ITA No.1287/PUN/2017 Alfa Laval vs. CIT dated 02.11.2021.

5. The Revenue has strongly supported both these impugned assessments as validly framed on facts as well as law. Learned CIT-DR submitted that the Assessing Officer i.e. ITO, Ward-10(3), Pune had assumed jurisdiction on account of transfer of the assessees' assessments which are valid in the eyes of the law. He further sought to buttress the point that since the impugned twin assessments had been framed without making proper enquiry, the PCIT has rightly assumed his revision jurisdiction.

6. We have given our thoughtful consideration to the instant first and foremost aspect of validity of the Assessing Officer's twin assessments as well as the PCIT's alleged lack of proper exercise of jurisdiction on account of the field authorities proposal and find no merit therein. Coming to the relevant basic facts, the learned counsel himself submitted that the latter assessee Shri Ravikant Balkrishna

Mathe (assessed as an individual) had filed his return on 25.08.2015 stating income of Rs.18,56,110/- from capital gains and income from other sources. The same was selected for scrutiny. The former Assessing Officer i.e. the ITO, Ward-10(2), Pune issued section 143(2) notice dated 19.09.2016 to the assessee. The same followed transfer of jurisdiction to ITO, Ward-10(3), Pune as per page 89 in the Revenue's paper both dt. 14 and 17/09/2017. It is this latter Assessing Officer who took over the assessees assessment. He thereafter served section 142(1) notice dated 20.09.2017 followed by section 143(3) assessment dated 30.10.2017 inter-alia disallowing/adding excess section 54F deduction of Rs.14,69,410/-, restricted section 54 deduction to Rs.10,84,495/-, added undisclosed income of Rs.92,217/- and disallowed section 80C claim of Rs.10,120/- ; respectively.

7. There is hardly any dispute that learned PCIT has thereafter exercised his revision jurisdiction which forms subject matter of the assessees' challenge before us in foregoing terms.

8. We first of all wish to deal with the assessee's challenge to Assessing Officer's jurisdiction. We are of the opinion that although the learned counsel has quoted a catena of case law but the same hardly carries any merit in light of [2018] 405 ITR 1 (Del) Abhishek Jain Vs. ITO that such a challenge ought not to be raised after the

expiry of one month from the date of which section 143(2) notice is served; which falls on 20.09.2016 herein. We observe that section 124(3)(b) is a specific provision dealing with the Assessing Officer's jurisdictional. This is indeed coupled with the fact that honourable apex courts constitutional bench decision in Pannalal Binjraj Vs. Union of India [1957] 31 ITR 565 (SC) has also settled the law long back that a party in income tax proceedings; once having acquiesced to the jurisdiction of transfer of assessment, could not challenge the Assessing Officer's jurisdiction. We therefore, rely on foregoing twin judicial precedents to reject the assessees challenge to Assessing Officer's jurisdiction. That being the case, we further observe that once the former Assessing Officer's had issued his valid section 143(2) notice(supra) having competent jurisdiction, the assessees' corresponding argument to this effect also fails.

9. The outcome of the assessees challenge to the PCIT's assumption of revision section 263 jurisdiction after receiving the Additional CIT's proposal; is also no different once we do not find any such negative covenant in the statutory provision. So far as, learned counsel's reliance on this tribunals co-ordinate bench is concerned(supra), the same hardly carries any binding precedent in light of CIT Vs. B.R.Constructions [1993] 202 ITR 222 (AP) and as per stricter construction principle reiterated in Commissioner Vs.

Dileep Kumar & Co. [2018] 9 SCC 1 (SC) (FB). We hold that the PCIT has rightly exercised his revision jurisdiction independently after having put both these assessees to show cause followed by detailed adjudication extracted in preceding paragraphs.

10. Next comes assessees arguments challenging learned PCIT's assumption on revision jurisdiction on the ground that the Assessing Officer had rightly decided the foregoing claim(s) of section 54B and 54F deduction; as the case may be. He could hardly dispute the legislative amendment by way of insertion of Explanation 2 to section 263 of the Act vide Finance Act, 2015 w.e.f 01.06.2015 which squarely applies in the facts of the instant case wherein the impugned assessments had been completed without determining the correct capital gains from the year 2000 i.e. the year in which the taxpayers had been granted right to acquire 12.5% of the land from the Pimpri Chinchwad New Town Development Authority "PCNTDA". A perusal of the case files reveals that the assessees had paid the corresponding amounts vide registered lease deeds forming part of the records before us dated 21.07.2014. Faced with this situation, we quote Malabar Industrial Company Vs. CIT [2000] 243 ITR 83 (SC) that once the impugned assessments had been framed without detailed or proper enquiries, section 263 of the Act

gets attracted on both limbs i.e. an erroneous assessment causing prejudice to the interest of the Revenue; simultaneously.

11. Learned counsel next disputed the actual payment clause(s) in the foregoing registered sale deeds. We hold that such a challenge is no more available to these assessees at this stage.

12. Mr.Munot further quoted PCIT Vs. Universal Music India Pvt. Ltd. Income Tax Appeal No.238/2018 dated 19.04.2022 (Bom) upholding this tribunals order quashing alleged similar revision directions on the ground that the corresponding discussion raised additional issue over and above those forming part of the show cause notice in issue. We find part merit in assessees instant arguments. This is for the reason that the PCIT's revision show cause notice had raised the issue of capital gains i.e. long term and short term vis-à-vis 54B and 54F deductions whereas his impugned order has gone by assessee's right for alternative plot of land created in the year 2000, cost of acquisition to be taken as per the registered lease document, the said land not being agricultural since falling within 8 kms of municipal limits for the purpose of section 54B deduction etc. And that the property belonged to "HUF" as well would hardly dispute that this HUF issue was never raised in any show cause or hearing in revision proceedings. We thus accept the assessee's arguments to this limit extent of "HUF". We reject the assessee's all other

arguments at the same time once the cost of acquisition as well as nature of the capital asset herein go to the route of the matter.

13. Learned counsel sought to buttress the point that the assessees are eligible for 54B deduction gong by the original agricultural land which stood acquired on 23.09.1986 under the provisions of the land acquisition Act 1894. We note that the assessee has himself quoted [2011] (Mum) Atul G. Puranik Vs. ITO wherein learned co-ordinate bench holds that it is only the latter parcel of land the forms the relevant transferred capital asset which is admittedly not agricultural land herein going by the registered lease dated 21.07.2014. We make it clear that the assessees have also claimed that the cost of acquisition for the purpose of computing capital gains ought to be granted from 01.04.1981 onwards only which is found to be lacking any substance since the said cost (in lieu of acquiring 12.5% of the original land) stood paid only in the year 2014 which forms the actual cost of acquisition in issue. Suffice to say, the learned PCIT has already granted sufficient relief to the assessees whilst directing the Assessing Officer to treat their right to acquire 12.5% land as on 04.08.2000(supra) than in the year 2014 in when they had executed their lease deeds by paying the consideration to "PCNTDA". We accordingly conclude in light of foregoing detailed discussion that the learned PCIT has rightly exercised the section 263 jurisdiction in

the given facts and circumstances. Both these assessees vehement contentions are partly accepted in foregoing terms. Ordered accordingly.

14. Delay of 10 days each in both these appeals in condoned in larger interest of justice.

15. These twin assessees instant as many appeals are Partly Allowed in above terms.

A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 18th October, 2022.

Sd/-	**Sd/-**
(DR. DIPAK P. RIPOTE)	**(S.S.GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 18th Oct, 2022/ *SGR**

<u>आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :</u>

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
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.