

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B" CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.380/CHD/2022

निर्धारण वर्ष / Assessment Year : 2012-13

Late Shri Shiv Raj Singh Through L/H Smt. Kamlesh Chaudhary, Old House No.120/1, Ogli, Nahan, Distt. Sirmour (HP).	Vs	The ITO, Nahan.
स्थायीलेखासं./PAN NO: CILPS6949D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Rohit Kapoor, CA and
Shri Virsain Aggarwal, CA
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT- DR

सुनवाई की तारीख/Date of Hearing : 18.10.2022
उद्घोषणा की तारीख/Date of Pronouncement : 27.10.2022

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 23.03.2022 passed by the ld. PCIT exercising the Revisionary jurisdiction u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, the ld. counsel for the assessee has submitted that the ld. PCIT has wrongly and illegally set aside the order of the AO exercising his jurisdiction u/s 263 of the

Income Tax Act whereas the order of the Assessing Officer (hereinafter referred to as 'the AO') passed u/s 147 read with Section 143(3) of the Act was neither erroneous nor prejudicial to the interests of the Revenue.

3. The ld. counsel has brought our attention to para 2 of the impugned order of the ld. PCIT stating the reasons, because of which ld. PCIT was of the view that the order of the AO was erroneous and prejudicial to the interests of the Revenue as under :

2. A perusal of the relevant assessment records revealed that the proceedings u/s 148 of the Act were initiated on the basis of an information that the assessee had sold an immovable property at Village Gulavali, Pargana Dankaur, Dist: Gautum Budh Nagar vide sale deed dated 18.10.2011 for a consideration of Rs, 23,00,000/-. For the purpose of Stamp value, the said property was valued at Rs. 1,24,75,000/- by the Stamp Valuation Authority. During the course of assessment proceedings, the Assessing Officer not conducted the requisite enquiries in respect of the reason for which the proceedings u/s 148 of the Act were initiated. Therefore, the order passed u/s 143(3).r.w.s 147 of the I.T.Act. 1961 appeared to be erroneous, and thus prejudicial to the interest of revenue. Accordingly, a notice u/s 263 was issued to the assessee vide letter ITBA/REV/F/REV1/2021-22/1040648731 (1) on 12.03.2022. elaborating the omissions on the part of AO. The assessee was requested to show cause as to why the assessment order dated 30.09.2019 for assessment year 2012-13 u/s 143(3) r.w.s, 147 of the Act should not be cancelled by invoking the provisions of section 263 of the Act.

4. A perusal of the above observations made by the ld. PCIT reveal that the ld. PCIT noted that the AO had failed to conduct necessary enquiries in respect of the reasons for which the assessment was reopened by the AO u/s 147 read with Section 148 of the Act. The ld. counsel has further invited our

attention to the following reasons recorded for re-opening of the assessment :

"The assessee has not filed his Income Tax Return for the relevant period. As per assessee, he is an agriculturist and does not have any taxable income.

2. Information has been received from the office of Director of Income Tax (I & CI), vide letter F.No. DIT(I & C.I)/Chd/2016-17/582 dated 30.11.2016 that the assessee has sold his immovable property at Village Gulawali, Pargana-Dankaur, Distt. Gautam Budh Nagar (UP) vide Sale Deed No. 19818 of 2011 dated 18.01.2011. He has sold 2.4949 hectares of land for a total sale consideration of Rs.23,00,000/-. As per the value adopted by the Stamp Valuation Authority, the property has been valued at Rs. 1,24,75,000/- It has been further informed that the said property comes within the municipal limits of Noida and is thus covered u/s 2(14) of Income Tax Act, being capital asset

3. Information available on record further reveal that the assessee, during query raised in this regard has vide letter dated 01.05.2017 stated that the said land is rural agricultural land. The relevant portion of the letter is reproduced here under:

1. "I am a agriculturist and have no taxable income and have not filed any income tax return.

2 I had disposed off my ancestral rural agricultural land situated at Village Gulawali, Pargana Dankaur, and District Gautam Dudha Nagar(UP) in 2011-12.

3. Further the aforementioned land is located at a distance of approximately 22 Kilometers from municipal limits (Nagar Panchayat, Dankaur). A copy of the certificate issued by Tehsildar, Sadar, Gautam Budh Nagar (UP) dated 24.04.2014 is also enclosed for ready reference. This land is rural agricultural land sale proceeds of the same are not taxable under Income Tax Act 1961, not being a capital asset u/s 2(14) of the Act."

4. I have analyzed the case and have also considered the information available on record. The issue involved is whether the land sold by assessee is capital asset or not. Letters issued by the undersigned to the Tehsildar, Gautam Budh Nagar have not been responded. However independent enquiries have revealed that the said property comes under notified area of NOIDA "(New Okhla Industrial Development Authority), and is Sector 162 of NOIDA. The official website <http://www.noidaauthorityonline.com> has been explored in this regard and it has been revealed that vide Special Board meeting held on 09.09.2005, the master plan of notified area was approved which includes Sector 162 under the said notified area. Apparently the property sold by assessee is a capital asset, being under the notified area.

5. *From the records available, it is seen that the sale consideration of said capital asset works out at Rs. 1,24,75,000/-, being value as per the Section 50C of Income Tax Act. The land is stated to be ancestral land and therefore value for cost indexation is to be adopted for the year 1981, As on date, there is no such data of value of land available as on 01.04.1981. I presume the value of land at Rs. 10,00,000/-, for the purpose of capital gain, subject to verification of it, at the time of assessment. Accordingly the Long Term Capital Gain works out at Rs.46,25,000/-. I therefore prima facie have reasons to believe that income of Rs.46,25,000/- have escaped assessment.*

6. *In this case no return of income was filed for the year under consideration accordingly, in this case, no assessment was made and the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above.*

7. *It is pertinent to mention here that in his case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee has exceeded the maximum amount which is not chargeable to tax as discussed in paragraph 5 above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment .*

8. *In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has been obtained separately from Pr CIT as per the provisions of Section 151 of the Act.”*

5. A perusal of the above reasons recorded shows that earlier the office of DIT(I) had issued Show Cause Notice to the assessee stating that the land sold by the assessee was within the municipal limits and thus was a capital asset as per the provisions of Section 2(14) of the Income Tax Act. However, the assessee replied to the said notice of the Investigation Wing that this land in question was a rural land which was located at a distance of approximately 22 kms. from the municipal limits of Nagar Panchayat, Dankaur. The assessee also furnished a copy of certificate issued by Tehsildar, Gautam Budh Nagar (UP) dated 24.04.2014 in this respect. Thereafter,

the Investigation Wing did not proceed with the further enquiries.

5.1 However, later on the AO reopened the assessment observing that from the independent enquiries, it revealed that the property in question comes under the Notified Area of Noida (new Okhla Industrial Development Authority). The AO, therefore, reopened the assessment and show caused the assessee as to why the land in question be not treated as capital asset and why the capital gains on the sale of the land may not be taxed. However, the assessee in the re-assessment proceedings furnished the necessary details not only relating to the distance of the property from the limits of the municipal limits but also regarding the fact that the population of the village Gulavali, where the land was situated, was 1828 only and that as per provisions of Section 2(14) of the Income Tax Act, since the population in an area which is comprised within the jurisdiction of a municipality or Notified Area Committee was less than 10000, the land in question will not be considered as capital asset u/s 2(14) of the Act.

6. The ld. counsel for the assessee has further invited our attention to the application moved by the assessee to the Tehsildar, Gautam Budh Nagar requesting him to issue him a certificate regarding the distance of his land from the limits of

the Municipal Council where upon, the Tehsildar called report from the Land Revenue officials, who after verification, reported that the land was situated at a distance of 22 kms. from Nagar Panchayat. The report was duly signed by the Tehsildar under his seal/stamp. The ld. counsel for the assessee has further invited our attention to the assessment order dated 30.09.2012, wherein, the AO has also noted that information was also obtained u/s 133(6) of the Act from the Tehsildar, Gautam Budh Nagar (UP) which was placed on record. After examining the information/documents placed on record, the AO accepted the returned income. However, the ld. PCIT in para 3 of the Show Cause Notice observed as under :

“3. A perusal of the relevant assessment records reveals that the assessee had sold 2.4949 hectares of land at Village Gulavali Dankaur, Distt. Gautam Budh Nagar vide sale deed no. 199818 of 2011 dated 18.10.2011 for a consideration of Rs. 23,00,000/-, but the value of the given land was determined at Rs. 1,24,75,000/- by the Stamp Valuation Authority for the stamp valuation purpose. From the perusal of the assessment record, it is further noted that, during the course of assessment proceedings, the AO had not made any enquiry or verification regarding the distance of the said land from the notified area. The distance certificate submitted by the assessee that the land was situated more than 23 Kms from the limits of the Municipal Corporation Dankaur is found contrary to the facts of the case, as the assessee himself had admitted that some parts of the Gautam Budh Nagar where the land was situated had been notified. The assessee had further stated simply that the said land was never a part of such notified land, but had failed to furnish any documentary evidence to prove that the distance of the said land was more than 8 Kms from the notified area.”

6.1 Further, the ld. PCIT in para 4 of the impugned order passed u/s 263 has observed under :

“4. A perusal of the relevant assessment records reveals that the assessee had sold 4949 hectares of land at VHlag© Gulavali Dankaur, Dist: Gautam Budh Nagar vide sale deed no.199818 of 2011 dated 18.10.2011 for a consideration of Rs. 23,00,000/- but value of the given land was determined at Rs.1,24,75,000/- by the Stamp Valuation authority for the stamp valuation purpose. From the perusal of the assessment record, it is further noted that, during the course of assessment proceedings, the AO had not made any enquiry or verification regarding the distance of the said land from the notified area. The distance certificate submitted by the assessee that the land was situated more than 23 Kms from the limits of the Municipal Corporation Dankaur is found contrary to the facts of the case, as the assessee himself had admitted that some parts of the Gautam Budh Nagar where the land was situated had been notified. The assessee had further stated simply that the said land was never a part of such notified land, but had failed to furnish any documentary evidence to prove that the distance of the said land was more than 8 Kms from the notified area.

7. A perusal of the above reproduced observations of the Id. PCIT coupled with the Show Cause Notice would reveal that the main concern of the Id. PCIT forming the belief that order of the AO was erroneous and prejudicial to the interests of the Revenue was that the AO has not made proper enquiries. However, the order of the Id. PCIT is silent as to what further enquiries the AO was required to make. It seems that the PCIT has formed his belief that the order of the AO was erroneous only after perusal of the assessment order without consulting the assessment records. The documents furnished by the assessee reveal that initially the enquiry was conducted by the Office of the DIT(I) in this respect where upon, the assessee furnished a reply and certificate to the Tehsildar that the land in question was situated at a distance of 22 kms from Gram Panchayat. Thereafter, the office of DIT(I) did not proceed with

further enquiries. Thereafter the assessment was reopened on the same issue whereupon the assessee furnished the necessary documents not only in respect of the fact that the land was situated at a distance of 22 kms. from Gram Panchayat but also in respect of the fact that the total population of the area was less than 10000 and therefore, the land did not fall within the definition of 'capital asset' as per the provisions of Section 2(14) of Income Tax Act.

Apart from that, the AO made independent enquiry by seeking information u/s 133(6) of the Act from the Tehsildar of Gautam Budh Nagar and after perusal of the information and evidences furnished by the assessee, the AO had accepted the claim of the assessee.

7.1 The order of the ld. PCIT does not speak of the aforesaid evidences nor any discussion has been made by the ld. PCIT as to how the AO was not justified in relying upon the aforesaid evidences. The ld. PCIT has passed the impugned revision order without consulting the assessment records and without pointing out the error or omission in the evidences furnished by the assessee based upon which the ld. AO had accepted the claim of the assessee. For exercise of jurisdiction u/s 263 of the I.T.Act, the twin condition must be satisfied that the order is erroneous and prejudicial to the interest of Revenue. In this

case, the first and foremost condition that the “order of the AO should be erroneous” has not been satisfied. In view of this, we hold that the ld. PCIT was not justified in exercising his jurisdiction u/s 263 of the Act and thereby setting aside the assessment order. The impugned Revisionary Order passed by the ld. PCIT is, therefore, not sustainable and the same is hereby quashed. The appeal of the assessee stands allowed.

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

Order pronounced on 27th October, 2022.

Sd/-

(VIKRAM SINGH YADAV)
लेखा सदस्य/ Accountant Member
“Poonam.”

Sd/-

(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar