

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA No.107/Ind/2021
Assessment Year: 2015-16**

Keshav Kanungo, vs. Pr. Commissioner of Income Tax-1,
282, Rohit Nagar, Phase-1, Bhopal.
Bawadiakala, Bhopal.
[PAN – ABVPK 2942 F]
(Appellant) (Respondent)

Appellant by : None
Respondent by : Shri P.K. Mitra, CIT (DR)

Date of hearing : 17.10.2022
Date of pronouncement : 22.11.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 25.03.2021 passed by the PCIT-1, Bhopal for the Assessment Year 2015-16.

2. The grounds of appeal are as under:

- “1. That on the facts and circumstances of case and in law the order of the learned CIT is bad in law and without jurisdiction hence be quashed.
2. That on the facts and circumstances of case and in law the assessment order of the learned AO is not erroneous and it is also not a prejudicial to the interest of revenue. Hence the order of the learned CIT be kindly quashed.
3. That on the facts and circumstances of case and in law that the learned AO has passed the order after making inquiries or verification and therefore the order of learned CIT is bad in law and without jurisdiction hence be quashed.
4. That on the facts and circumstances of case and in law the learned AO has passed the order after making inquiry into the claim of the assessee

hence the order is bad in law and without jurisdiction and hence be quashed.

5. *That on the facts and circumstances of case and in law as the entire sale consideration has been invested in the bonds and amounts were also deposited in capital gain scheme account and therefore provisions of section 50C are not applicable, hence the learned AO was lawfully justified in not evoking the said provisions in the assessment. Hence the order of learned CIT is bad in law and without jurisdiction and hence be quashed.*
6. *That on the facts and circumstances of the case and in law the learned AO has passed the assessment in accordance with the law and therefore the order of the learned CIT is bad in law and without jurisdiction. Hence be quashed.”*

3. The assessment for A.Y. 2015-16 was completed under Section 143(3) vide order dated 26.10.2017. The Assessing Officer made addition of Long Term Capital Gain (LTCG) amounting to Rs.91,57,000/-. The PCIT observed that the assessee had taken total sale consideration of Rs.1,41,57,000/- against Rs.2,00,45,000/- being 50% share of Rs.4,00,90,000/- which was adopted by Stamp Valuation Authority. In view of Section 50C of the Income Tax Act, 1961 the sale consideration of land was required to be adopted for Rs.2,00,45,000/- resulting under-valuation of LTCG for Rs.29,44,000/-. Therefore, the PCIT set aside the assessment order and directed the Assessing Officer to make *denovo* examination, enquiry and verification.

4. Being aggrieved by the order under Section 263 of the Act, the assessee filed appeal before us.

5. At the time of hearing none appeared on behalf of the assessee despite giving notice. Therefore, we are proceeding on the basis of the submissions of the assessee before the Assessing Officer and before the PCIT which are reproduced in the respective orders.

6. The Ld. DR submitted that the Assessing Officer failed to adopt value of property as per Stamp Duty Valuation as given under the provisions of Section 50C of the Act while computing the capital gain. Therefore, the Assessing Officer erred by not taking sale value of property as adopted by the Stamp Duty Authority that the sale value as per Section 50C of the Act which rendered the order of the Assessing Officer not only erroneous but also prejudicial to the interest of the Revenue. Therefore, the Ld. DR prayed that the PCIT has rightly invoked Section 263 of the Act.

7. We have heard the Id. DR and perused all the relevant material available on record. The Assessing Officer has specifically asked for the query during the assessment proceedings regarding the sale of land/property. Thus, there was lack of enquiry or verification of this aspect regarding LTCG. Besides this, the submissions made by the assessee before the Assessing Officer was that during the relevant F.Y the assessee sold and undeveloped agricultural land for Rs.1,41,57,000/- (i.e. $\frac{1}{2}$ of 28,31,400/-) at Village Jatkhedi, Bhopal. Out of the sale proceeds, Rs.50,00,000/- were deposited in bonds and Rs.91,57,000/- deposited in capital gain account as per the provisions of the Income Tax Act and, therefore, the assessee claimed exemption under Section 54 by depositing Rs.91,57,000/- in capital gain account and under section 54EC purchased bond of Rs.50,00,000/-. The details were given before the Assessing Officer. The Assessing Officer observed that the assessee is not eligible for deduction under Section 54 and under Section 54F of the Act on account of his failure to comply with the various conditions specified therein to be eligible for this deduction and, therefore, the Assessing Officer has rightly made the addition of Rs.91,57,000/- as LTCG. But the view taken by the PCIT differs and it amounts to change of opinion. The PCIT has not taken into account the reasoning given by the Assessing Officer and simplicitor stated his view that the particular value has to be adopted under Section 263 of the Act does not allow to take second opinion/view but it is invoked only when the assessment order is erroneous and prejudicial to the interest of Revenue. But in the present case there was addition made by the Assessing Officer after taking cognisance of all the material provided by the assessee during the assessment proceedings and the view taken by the Assessing Officer is in consonance with Section 54 and 54F of the Act. The value adopted by the Assessing Officer was also in consonance with the value actually shown in the documents and as

per the norms of the value to be adopted by the Assessing Officer. Therefore, the PCIT was not right in invoking the provisions of Section 263 of the Act. Hence, appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 22nd day of Nov., 2022.

Sd/-
(BHAGIRATH MAL BIYANI)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Indore, the 22nd day of Nov., 2022

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore

1. Date of taking dictation: 15.11.05.2022
2. Date of typing & draft order placed before the Dictating Member: 15.11.2022
3. Date on which the approved draft comes to the Sr. P.S./P.S.:
4. Dt. on which the fair order is placed before the Dictating Member for Pronouncement:
5. Date on which the file goes to the Bench Clerk:
6. Date on which the file goes to the Head Clerk:
7. The dt. on which the file goes to the Astt. Registrar for signature on the order:
8. Date of despatch of the Order: