

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'B', CHANDIGARH**  
**BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER  
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA Nos. 118/Chd/2021**  
(Assessment Year: 2012-13)

Shri Surjit Singh S/o Mehtab Singh Proprietor M/s Beli Ram Surjit Singh, Gujjar Mal Road, Ludhiana	बनाम	Pr. CIT-1 Ludhiana
स्थायी लेखा सं./PAN NO: AFTPS0872A		

निर्धारित की ओर से/Assessee by : Shri Parikshit Aggarwal, CA  
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT, DR  
सुनवाई की तारीख/Date of Hearing: 01/09/2022  
उद्घोषणा की तारीख/Date of Pronouncement: 17/11/2022

**आदेश/ORDER**

**PER VIKRAM SINGH YADAV, A.M.:**

This is an appeal filed by the assessee against the order of the Ld. Pr. CIT, Ludhiana-1 dt. 29/03/2021 passed under section 263 of the Income Tax Act, 1961 wherein the assessee has taken the following grounds of appeal:

1. That the Learned Principal Commissioner of Income Tax-1, Ludhiana has passed the order without considering the facts of the case which is illegal and bad in the eyes of law. Therefore, order passed by the Learned Principal Commissioner of Income Tax-1, Ludhiana is illegal and bad in the eyes of law.
2. That the Learned Principal Commissioner of Income Tax-1, Ludhiana has erred in set-aside the Assessment, without considering the facts of the case and also without considering the material facts available on records, as filed by assessee with department during the proceedings u/s 147 of the Act. Therefore, order passed by the Learned Assessing Officer is illegal and bad in the eyes of law and needs to be quashed.
3. That the Learned Principal Commissioner of Income Tax, Ludhiana-1 has erred in set aside the Assessment, without giving any opportunity to the assessee. Therefore, order passed by the Learned Assessing Officer is illegal and bad in the eyes of law and needs to be quashed.
4. That the appellant craves to leave or to amend the Ground of appeals before or at the time of hearing.

2. Briefly the facts of the are that the case of the assessee was reopened under section 147 and reasons were recorded by the Assessing officer before issuance of notice under section 148 on 8/09/2016 stating that the assessee

has sold a property for Rs. 32,50,000/- during the Financial Year 2011-12 relevant to impugned assessment year and in the return of income filed on 27/09/2012, the transaction has not been reflected / disclosed by the assessee and therefore he has reason to believe that income to the extent of Rs. 32,50,000/- chargeable to tax has escaped assessment. In response to the notice under section 148, the assessee filed a copy of revised return filed on 30/09/2012 disclosing the capital gains on sale of the property and declaring an income of Rs. 2,52,645/-. Thereafter notice under section 143(2) and 142(1) were issued and after considering the information/documents submitted by the assessee, the return of income of Rs. 2,52,645/- was accepted.

3. The assessment records were thereafter called for and examined by the Ld. PCIT. On examination of the assessment records, the Ld. PCIT observed that the assessee has shown capital gain in his ITR at Rs. 25,67,392/- in respect of sale of house on 29/02/2011 and claimed entire capital gain exempted under section 54 being amount deposited in capital gain account scheme on 12/09/2012 with maturity date of 12/09/2015. The assessment was finalized on 28/09/2018 and as per provisions of Section 54, there are time limits wherein the assessee is required to purchase a new residential property within one year before or within two years after the date of transfer of the original residential house property or construct a new residential property within three years from the date of transfer of the original residential house property. The Ld PCIT observed that on examination of bank account of the assessee, it is revealed that the entire amount i.e. principal and interest of Rs. 29,63,696/- was transferred on 22/09/2014 from capital gain account to saving account No. 01030100004075 and subsequently Rs. 15,00,000/- transferred on 22/09/2014 in the bank account maintained by M/s Bali Ram Surjit Singh out of which Rs. 7,00,000/- was stated to be withdrawn for the purchase of property. As per the Ld. Pr. CIT, the AO has not carried out any enquiry and assessment has been framed by relying upon reply of the assessee that the property worth Rs. 32,50,000/- has been sold during the

financial year. The AO has also failed to examine the purchase consideration, source of purchase of said property and year of purchase with supporting evidence and has also failed to examine the person to whom the property has been purchased. In view of the same, in his prima facie opinion, the order so passed by the AO is erroneous in so far as prejudicial to the interest of the Revenue and accordingly a show cause was issued to the assessee on 10/03/2021. In response to the show cause, neither anybody attended the proceedings nor sought any adjournment on behalf of the assessee and thereafter the Ld. PCIT decided the matter on merit as per record available with him.

4. As per the Ld. PCIT, on perusal of the assessment records including the questionnaire and noting sheet entry, it is revealed that the hearing in the case took place on multiple occasions and assessee also made submission during the course of assessment proceedings and copy of sale deed as well as bank account statement were furnished. However the entire capital gain claim as exempt remained unverified by the AO at the time of assessment proceedings in terms of Section 54 of the Act. Further AO only relied upon the assessee that the property worth Rs. 32,50,000/- has been sold without any documentary evidence. Accordingly, he is of the considered opinion that the assessment proceedings so completed by the AO under section 143(3) read with 147 is erroneous and prejudicial to the interest of the Revenue and the same was set aside to the file of the AO to pass a fresh order of assessment after providing reasonable opportunity to the assessee. Against said findings and direction of the Ld. PCIT, the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that it is undisputed fact that the assessee has sold the property on 29/02/2011 and has invested the entire capital gain amounting to Rs. 26,00,000/- in the Capital Gain Account Scheme maintained with SBI on 12/09/2012 and has claimed the

entire capital gains as exempt under section 54 of the Act. It was submitted that as the assessee couldn't purchase / construct the new property before the date of filing of return of income, the amount of capital gain was invested in the Capital Gain Account Scheme and accordingly claimed exempt under section 54 of the Act. It was submitted that where there is any violation or breach of the condition so stipulated in section 54 in terms of purchase or construction of the new house property within the stipulated time frame as so specified, the same has to be examined and looked at only on the expiry of the two years or three years from the date of transfer of the original asset and not in the year under consideration and our reference was drawn to the provisions of section 54(2) of the Act.

6. Further, reliance was placed on the decision of Coordinate Chandigarh Benches in case of Smt. Gurmeet Kaur Vs. The Pr. CIT (ITA No. 46/Chd/2021 dated 26.08.2021) wherein the relevant findings are contained at para 7 which read as under:

*"7. What emanates from the above findings of the Id. Pr. CIT is that during the impugned year the assessee had earned Long Term Capital Gains of Rs. 3.05 crores and had claimed Rs. 2.89 crores exempt by investing in capital gains scheme. The balance had been returned to tax. There is no anomaly pointed out by the Ld. Pr. CIT in the aforesaid claim of the assessee. His only/sole contention is that during assessment proceedings the assessee had submitted that in the subsequent years he had partly utilized the amount parked in the capital gains account scheme in the construction of a new house and balance had been utilized/invested in purchase of agricultural land. As per the Ld. Pr. CIT the documents evidencing the sale of land revealed that almost all plots of land sold were residential plots, therefore, the Ld. Pr. CIT was of the view that the assessee was not entitled to any exemption u/s 54B of the Act on account of investment of capital gains in agricultural land, since section 54B allows exemption of capital gains earned on sale of agricultural land which is reinvested in purchase of agricultural land. And as per his own admission this denial of claim of exemption of capital gains on account of investment in agricultural land was to be given effect in subsequent year i.e. assessment year 2018-19 when the amount parked in capital gains account scheme was so utilized for purchasing agricultural land. Therefore, there were no anomaly or error, even as per the Ld. Pr. CIT, in the assessment order for the impugned year accepting the assessee's claim of exemption of capital gains on account of parking the same in the capital gains account scheme. Any inquiry, therefore, conducted on the transaction by the AO would have made no difference to the outcome of the assessment order for the impugned year. The utilization of the amount invested in capital gains account scheme, could be and was to be examined in subsequent years when so utilized and addition on account of disallowance of exemption granted earlier*

*for incorrect utilization was also to be done in subsequent years only. Even the Ld. Pr. CIT admits in the same in his order."*

7. Per contra, the Ld. CIT/DR relied on the order of the Ld. PCIT. It was submitted that the Ld PCIT has held that the assessee had withdrawn the amount from capital gains account scheme on account of purchase of property and which has not been examined by the AO. In this regard, our reference was drawn to the show-cause notice where the Ld PCIT has stated that the AO failed to examine the purchase consideration, the source of purchase of said property and year of purchase with supporting evidence and also failed to examine the person from whom the property was purchased. It was accordingly submitted that where there is no failure on part of the AO to carry out the necessary enquiry and verification, the order so passed by him has been rightly held as erroneous and prejudicial to the interest of the Revenue and has been rightly set-aside by the Ld PCIT.

8. We have heard the rival contentions and perused the material available on record. On perusal of the show-cause notice, it is noted that the Ld PCIT has stated that the assessee has sold the house property on 29/02/2011 and has claimed entire capital gains as exempt u/s 54 being money deposited in capital gain account scheme on 12/09/2012. Therefore, it is an undisputed fact that before filing of the return of income on 30/09/2012, the assessee has invested the entire capital gain amounting to Rs. 26,00,000/- in the Capital Gain Account Scheme maintained with SBI on 12/09/2012 and has claimed the entire capital gains as exempt under section 54 of the Act. As the assessee couldn't carry out the purchase/construction of new property within the stipulated time and that too, before the date of furnishing of the return of income and has invested the entire capital gains in the capital gains account scheme (to be utilized subsequently), the said claim is clearly in consonance with the express and unambiguous wordings of sub-section (2) of section 54 of the Act which reads as under:

*“(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset”*

9. As far as utilisation of the amount so deposited in the capital gains account scheme is concerned, it is imperative that the assessee utilized the same for the stated purposes of purchase/construction of new property within the stipulated time frame and equally for the Assessing officer to verify the same and in case of any breach/violation/partial non-compliance thereof, the necessary mechanism for bringing the same to tax has been provided in proviso to sub-section (2) to section 54 which reads as under:

*“Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

*(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and*

*(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.”*

10. Therefore, any action on part of the Assessing officer to verify such utilization needs to be undertaken or examined in the year when the period of three years from the date of transfer of original asset expires and not in the year of the transfer of the original asset. Consequently, any inaction on part of the Assessing officer to carry out such verification will call for action u/s 263 in the year of expiry of three years and not in the year of transfer. Similar view has been taken by the Coordinate Chandigarh Benches in case of Smt

Gurmeet Kaur (*supra*) where it was held that "Any inquiry, therefore, conducted on the transaction by the AO would have made no difference to the outcome of the assessment order for the impugned year. The utilization of the amount invested in capital gains account scheme, could be and was to be examined in subsequent years when so utilized and addition on account of disallowance of exemption granted earlier for incorrect utilization was also to be done in subsequent years only."

11. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the exercise of jurisdiction u/s 263 by the Id PCIT cannot be sustained in view of the express provisions of claim of exemption u/s 54 and the order so passed by the PCIT is set-aside and that of the AO is sustained.

12. In view of the aforesaid discussions, other contentions raised by the Id AR regarding challenge to validity of proceedings u/s 147 in collateral proceedings u/s 263 have become academic and the same are not adjudicated upon and left open.

13. In the result, appeal of the Assessee is allowed.

Order pronounced on 17/11/2022.

Sd/-  
**(DIVA SINGH)**  
न्यायकि सदस्य/Judicial Member

Sd/-  
**(VIKRAM SINGH YADAV)**  
लेखा सदस्य/Accountant Member

**Dated: 17/11/2022**

**AG**

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar