

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.115/Ahd/2022
Assessment Year : 2017-18

Jogeshbhai Ramanlal Patel C.A. Ashokkumar S. Gupta, 203/1, New Cloth Market, O/s. Raipur Gate, Raipur, Ahmedagad-380002	Vs	The PCIT-3, C-411, Pratykash Kar Bhavan, Ambawadi, Gujarat-380009
[PAN No. : AAXPP3232E]		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Appellant by :	Shri Chetan Agarwal, A.R.	
Respondent by :	Shri A. P. Singh, CIT DR	
मुनवाई की तारीख/Date of Hearing:	06.09.2022	
घोषणा की तारीख /Date of Pronouncement:	02.12.2022	

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee as against the revision order dated 31.03.2022 passed by the Principal Commissioner of Income Tax-3, Ahmedabad under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the "the Act") relating to the Assessment Year 2017-18.

2. The brief facts of the case is the assessee is an individual and filed his Return of Income for the A.Y. 2017-18 on 01.01.2018 declaring total income of Rs. 12,30,170/-. The Return was processed under Section 143(1) of the Act and then taken for complete scrutiny assessment for the reasons that low capital gains with respect to sale consideration and also less sale

consideration is reported in Form 26QB, etc. However, after issuing notices under Section 142(1) of the Act; Assessment was completed based on the written submission filed by the assessee. The returned income of Rs. 12,30,170/- was accepted and assessment order under Section 143(3) dated 12.11.2019 was passed by the Assessing Officer.

3. This assessment order was examined by the Principal Commissioner of Income Tax (for short "PCIT") and noticed that the assessee alongwith other co-owner sold immovable property for Rs. 3,57,36,000/- on 25.07.2016 which was purchased on 19.09.2009 for a consideration of Rs. 3,51,30,000/- and the assessee has shown Long Term Capital Loss of Rs. 1,19,28,034/-. On verification of the register sale deed dated 25.07.2016 the Stamp Duty paid was Rs. 26,62,300/- at the prevailing Stamp Duty rate of 4.9%, thereby, the cost of Non-Agricultural land works out to Rs. 5,43,32,653/-. As per the provisions of Section 50C of the Act the value of the said land should have been considered for Rs. 5,43,32,653/-. Further verification of the sale deed dated 25.07.2016 that the assessee has taken an advance of Rs. 3,51,30,000/- as early as 18.03.2009 i.e. just one day before purchase of this piece of land namely 19.09.2009 from the very same parties, that is whatever purchase value paid by the assessee was received back in the same F.Y. 2009-10, hence the question of indexation while working out the capital gain does not arise. Thus, the Assessing Officer while passing assessment order failed to make necessary enquiries and verification with regard to the two issues which is erroneous in so far as is prejudicial to the interest of Revenue, which is required to be revised under Section

263 of the Act. Hence, a show-cause notice dated 10.06.2021 was issued to the assessee calling for his reply. The assessee was also requested as to why the Long Term Capital Gain (in short 'LTCG') should not be taken as Rs. 97,98,327/- without affording Cost Inflation Index as worked as under:

Sr. No.	Particulars	Amount in Rs.
1.	<i>Value of land as per stamp duty paid</i>	5,43,32,653
2.	<i>Value shown in sale deed</i>	3,57,36,000
3.	<i>Long Term Capital Gain</i>	1,85,96,653
4.	<i>Share of assessee (50%)</i>	92,98,327

4. In response the assessee filed the detailed reply contending that during the course of assessment proceedings, an query was raised by the Assessing Officer vide notice under Section 142(1) dated 23.10.2019 and the same was replied by the assessee vide letter dated 07.11.2019 and 09.11.2019 and also filed revised working of Long Term Capital Loss with Jantry Value and also computation of Long Term Capital Loss. Thus, the Assessing Officer conducted detailed enquiry with regard to the Jantry Value and the working of capital loss which was accepted by the Assessing Officer after due enquiry and verification. Thus, the Assessment Order has no element of error which was prejudicial to the Revenue, therefore, requested to drop the Revision proceedings.

5. The Ld. PCIT on verification of the assessment records found that the assessee originally filed the computation of income offering Long Term Capital Loss of Rs. 1,19,28,034/- and after enquiry conducted by the Assessing Officer and the revised working given by the assessee, adopting the sale value under Section 50C, the capital loss is worked to Rs. 66,22,337/-, thus there is no tax effect on the total taxable income. Therefore, the

Ld. PCIT dropped the proceedings initiated under Section 263 on application of Section 50C of the Act. On the second issue of wrong allowance of indexation to the cost of acquisition of the land, the assessee contended that he purchased the property by registered sale deed in 2009 which is final evidence for purchase and assessee has received back a sum of Rs. 3,51,30,000/- in the same Financial Year 2009-10 was an independent transaction between the same parties of purchase of property by way of a loan transaction. Therefore, the assessee claimed that he was eligible for indexed cost of acquisition as per the provisions of Section 48 of the Act, which cannot be denied by any extraneous observation. The Assessing Officer having examined the issue of applicability of the provision of Section 48 of the Act and accepted assessee's claim during the original assessment proceedings, the same cannot be an erroneous order passed by the Assessing Officer which is also prejudicial to the interest of Revenue. Therefore, this issue is also liable to be dropped for initiation of 263 proceedings.

6. The Ld. PCIT after considering the objection filed by the assessee and held as follows:

"13. The contentions of the assessee have duly been considered. However, on perusal of Sale Deed vide Regn. No. 10813/2016, it is noticed that there is mention of advance taken by the assessee of Rs.3,51,30,000/- on 18.03.2009 which means that whatever purchase value paid was received back in the same financial year i.e. F.Y. 2009-10. Thus, it is noticed that the assessee had not paid any amount against purchase of the impugned sold property as by executing the said purchase deed, the assessee along with other co-owner had received amount of loan back and therefore, the indexation for the cost of acquisition is not allowable. By taking this view, the capital gain is worked out as under:

Sale value as per Regd.Deed – Rs. 3,57,36,000/-

Jantri value of the sale property

Less: Cost of acquisition

Rs.5,43,32,653/-

Rs. 3,51,30,000/-

LTCG arisen
50% share of the assessee

Rs.1,92,02,653/-
Rs. 96,01,327/-

13.1 In the Return of Income, the assessee while computing the capital gain/loss arisen, has not claimed any stamp duty, registration expenses, etc. for arriving net capital gain tax liability. The assessee has claimed the same during the course of original assessment proceedings by filing revised working of capital gain/loss arisen. The claim for deduction towards expenditure incurred on Stamp Duty registration etc. of Rs. 20,72,820 is bonafide claim and based on documentary evidence, should be allowed after due verification by the AO during the fresh assessment proceedings.

13.2 In view of the above, addition of Long Term Capital Gain of Rs.75,28,507/- (Rs. 96,01,327 – Rs. 20,72,820) as worked out above being 50% share in the sold property is required to be made under the head “Capital Gain” as Long Term Capital Gain arisen on sale of the impugned property.”

7. Thus, the Ld. PCIT held that the Assessing Officer while making the original assessment has not considered the issue relating to the allowance to indexation cost of acquisition without making even verification and passed the assessment order under Section 143(3) of the Act. Therefore, the Assessment Order is clearly erroneous one and prejudicial to the interest of Revenue: A clear case of explanation 2 (a) and 2 (b) to Section 263(1) of the Act namely:

“Explanation 2.-For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, it, in the opinion of the Principal Commissioner of Commissioner,-

(a) The order is passed without making inquiries or verification which should have made;

(b) The order is passed allowing any relief without inquiring into the claim;

.....”

Thus, the Ld. PCIT relying upon the Supreme Court judgment in the case of Malabar Industrial Co. Ltd. vs. CIT (2000) 109 taxman 66/243 ITR 89 (SC) where the Hon’ble Apex Court has held that both the twin conditions namely order is erroneous and prejudicial to the interest of Revenue, should be satisfied to the exercise powers

under the provisions of Section 263 of the Act and an incorrect assumption of fact or an incorrect application of law by the Assessing Officer will satisfy the requirement of order being erroneous. Thus, the Ld. PCIT held that the Assessing Officer failed to bring the correct income to tax as discussed above and invoking the powers vested under him under Section 263 of the Act is partly set-aside the assessment order passed under Section 143(3) of the Act and directed the Assessing Officer to pass a fresh assessment order after making enquiries and verification thereof and pass fresh assessment order by offering proper opportunity to the assessee.

8. Aggrieved against the Revision order, the assessee is in appeal before us raising the following grounds of appeal:

“1. Ld. PCIT-3 has erred in law as well as on fact in assuming jurisdiction u/s 263 of the IT Act.

2. Ld. PCIT-3 has erred in law as well as on fact in holding that assessment order passed u/s 143(3) of the IT Act is erroneous and prejudicial to the interest of revenue.

3. Ld. PCIT-3 has erred in law as well as on fact in passing order u/s 263 of the IT Act.

The appellant craves leave to amend, alter, modify and/or raise additional ground of appeal.”

9. The Ld. Counsel Mr. Chetan Agarwal appearing for the assessee filed before us a Paper Book containing show-cause notice issued under Section 263, reply filed by the assessee, Assessee's Purchase Deed and Assessee's Sale Deed. He reiterated the same arguments placed before the PCIT. The Ld. Counsel submitted that the assessee purchased the land for a consideration of Rs. 3,51,30,000/- on 19.09.2009 vide registered sale deed bearing document 10131 of 2009 which is the final evidence for purchase of the land. Though, the assessee received an amount of Rs. 3,51,30,000/- in F.Y. 2009-10 from the same seller, it is

independent transaction between the parties, thereby the assessee cannot be denied the benefit of indexed cost of acquisition as provided under Section 48 of the Act while computing the capital gain; Explanation (iii) to Section 48 reads as under:

“indexed cost of acquisition means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, [2001], whichever is later;”

Thus, the Ld. Counsel pleaded that the assessee is eligible to claim indexed cost of acquisition as per the provision of Section 48 of the Act, though the entire sale consideration of Rs. 3,51,30,000/- received by the assessee from the same seller of the land. Thus, the Assessing Officer has not committed any error while passing the Assessment Order, which does not require revision under Section 263 of the Act and therefore, requested to quash the Revision order passed by the Ld. PCIT.

10. Per contra, the Ld. CIT D.R. Mr. A. P. Singh appearing for the Revenue strongly contended that the assessee purchased the agricultural property vide document dated 19.09.2009 from Hasmukhbhai Javanmal and Ratilal Javanmal for a consideration of Rs. 3,51,30,000/- whereas the assessee sold the same land by converting it into a non-agricultural land to the very same parties namely Hasmukhbhai Javanmal and Ratilal Javanmal by Sale Deed dated 25.06.2016 for a consideration of Rs. 3,57,36,000/-. As per the registered Sale Deed a sum of Rs. 3,51,30,000/- amount which was paid by various cheques numbers drawn by Bank of Baroda all dated 18.03.2010 is adjusted against the present sale consideration and the remaining balance amount of Rs. 5,99,940/- was paid by

two cheques drawn on HDFC Bank both are dated 22.07.2016 and also made TDS of Rs. 6,06,600/-. Thus, the Ld. D.R. submitted the assessee has received Rs. 3,51,30,000/- as early as 18.03.2010 and the remaining 5,99,940/- in the year 2016. Thus, the assessee has received the sale consideration as early as 2009, therefore, the question of indexation for cost of acquisition cannot be provided to the assessee. This issue was not considered by the Assessing Officer while passing the assessment order, though copy of the Sale Deed was produced by the assessee, which is clearly reflecting in the registered Sale Deed the details of transaction. Thus, the Assessing Officer order is erroneous and prejudicial to the interest of Revenue, therefore, initiation of the revision proceedings only to this issue is made within the provision of law under Section 263 of the Act and the same does not require interference and the assessee's appeal is liable to be dismissed.

11. We have heard rival parties and carefully gone through the Paper Book filed by the assessee including English Translated copy of the Purchase Deed and Sale Deed which were in vernacular language namely Gujarati. On perusal of the original assessment order dated 12.11.2019 passed by the Ld. Assessing Officer is a very cryptic order without any details and discussion on any of the enquiries made by the Assessing Officer. However, the Assessing Officer simply accepted the returned income filed by the assessee of Rs. 12,30,170/- as the assessed total income. It is further seen from the assessment order the case was selected for complete scrutiny for the reason of no capital gains with respect to sale consideration and also less sale consideration reported in Form 26QB by the assessee. However, the Assessment Order does not describe whatever the kinds of enquiries made and how he is

satisfied with the returned income made by the assessee. When the Ld. PCIT proposed to revise this Assessment Order on two counts namely non-consideration of the sale value of the property as per Section 50C and the second issue namely wrong allowance of indexation of cost of acquisition of the property by issuing the show-cause notice. After considering the detailed reply filed by the assessee and the revised Long Term Capital Loss of Rs. 66,22,337/- by the assessee the Ld. PCIT has fairly dropped the revision proceedings on the application of Section 50C in the computation of capital gain. Regarding the second limb of the notice namely non-application of cost inflation indexed by the assessee. The Ld. PCIT has clearly brought out from the registered Sale Deed dated 25.06.2016 that a sum of Rs. 3,51,30,000/- was paid by the assessee as early as 18.03.2010 by various cheques numbers drawn of Bank of Baroda all dated 18.03.2010 and is adjusted against the sale consideration. However, remaining balance amount of Rs. 5,99,940/- was paid by two cheques drawn on HDFC Bank dated 22.07.2016 to the assessee. It is further seen from the Registered Sale Deed that the above amount of 3,51,30,000/- was given at the time of Banakhat. However, the assessee claims the same sum of Rs. 3,51,30,000/- as loan transaction which is an independent transaction between the same parties is not proved by the assessee with proper documentation and evidences. In the absence of the same, we do not find any merits in the arguments of the assessee. It is further seen from the Revision Order the assessee has not made the claim of Stamp Duty expenses of Rs. 20,72,820/- which is also been directed by the Ld. PCIT to be allowed, after due verification by the Assessing Officer, during the fresh assessment proceedings. Thus, it could be seen that the Revision Order passed by the Ld. PCIT is a well judicious order and also giving proper opportunity to

the assessee de novo proceedings. For the above reasons, we do not find any infirmity in the order passed by the Ld. PCIT and therefore, the grounds raised by the assessee does not found any merits and therefore, the same are rejected.

12. In the result, the appeal filed by the assessee is hereby dismissed.

Order pronounced in the Court on 02.12.2022 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 02/12/2022

Tanmay, Sr. P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad