

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 283/Ahd/2021
Assessment Year 2015-16**

Parimal Chandrakant Zaveri 5/9A, Dreamland Building, New Queen Road, Opera House, Mumbai 400004 Maharashtra PAN: AACPZ2367D (Appellant)	Vs	The Pr. Commissioner of Income Tax-1, Vadodara (Respondent)
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**Appellant by : Shri Piyush Chhajer, A.R.
Respondent by : Shri James Kurian, CIT-DR**

Date of hearing : 26-09-2022
Date of pronouncement : 16-12-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This is an appeal filed by the Assessee as against the Revision order dated 03.03.2020 passed by the Principal Commissioner of Income Tax-1, Vadodara under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2015-16.

2. The registry has noted that there is a delay of 548 days in filing the appeal by the assessee. This appeal is filed by the assessee on 01.11.2021 which was immediate after the under the Covid-19 period wherein Hon'ble Supreme Court in M.A. No. 665 of 2021 in SMW(C) No. 3 of 2020 dated 23.09.2021 passed the following orders:

“.....

8. *Therefore, we dispose of the MA No.665 of 2021 with the following directions: -*

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

.....

2.1. Thus there is no delay in filing the above appeal by the assessee.

3. The brief facts of the case is that the assessee is an individual and is engaged in the business of import, export, manufacturing and trading of precious & semiprecious gemstones in the name of Harshil Jewellers. The assessee is also engaged in the business of giving premises on lease and license basis. The assessee filed its Return of Income on 22/10/2015 declaring total income of Rs. 98,39,760/-. The case was selected for scrutiny and assessment was completed u/s. 143(3) of the Act on 26/07/2017 making an

addition of Rs. 1494/- on account of interest u/s. 244A thereby assessed the total income at Rs. 98,41,250/-.

3.1. Perusal of the above assessment order by the Ld. PCIT, the assessee had sold a residential flats in Mumbai on 20.12.2014 for a consideration of Rs. 2.66 crores jointly with others and assessee's 20% share was Rs. 53,20,000/-. The assessee has not offered the long term capital gain on sale of the aforesaid property in his Return of Income, no addition was made on account of capital gain while completing the assessment order u/s. 143(3) by the Assessing Officer.

3.2. Therefore a show cause notice dated 20.01.2020 under section 263 was issued by ld. PCIT that the capital gain of Rs. 53,20,000/- has escaped assessment which rendered the assessment order as an erroneous order and prejudicial to the interest of the Revenue. The assessee replied that he had accounted all the entries pertaining to his share of sale of property, after deducting the cost of acquisition of the property namely Rs. 49,31,580/- and the net profit on sale of the property of Rs. 3,88,500/- was being shown on credit side on the profit and loss account and applicable tax thereon is already paid by the assessee. The assessee has provided all the details about the profit on sale of this property while scrutiny proceedings in response to 142(1) notices issued by the Assessing Officer. Thus the assessment order passed by the Assessing Officer is not an erroneous order and not prejudicial to

the interest of the Revenue. Therefore requested to drop the revision proceedings.

4. After considering the above reply by the Ld. PCIT, it is observed that the assessee has declared the profit of Rs. 3,88,500/- in his profit and loss account for the financial year 2014-15. However this is not acceptable since the assessee in his audited report furnished for the present assessment year as well as earlier assessment years this asset is not declared by the assessee. Further the assessee is engaged in the business of import, export, manufacturing and trading of precious & semiprecious gemstones in the name of Harshil Jewellers. It is nowhere submitted by the assessee that he is engaged in business of real estate or carries out the sale and purchase of immovable property, therefore he cannot be allowed to treat the aforementioned net profit of Rs. 3,88,500/- on sale of flats as his business income. Even, if it is accepted that the aforesaid immovable property was used by the assessee for his business purpose then the same acquires the character of depreciable asset and was required to be shown in the depreciation statement and the profit on the sale of the same should have been treated as short term capital gain and offered to taxation u/s. 50 of the Act. However this was not done by the assessee. The assessee also not produced any valuation report in support of his claim of cost of acquisition of the aforesaid immovable property. Thus the Ld. PCIT held that the assessment order passed by the Assessing Officer is an erroneous order and has not conducted necessary

inquiries on the vital aspects which is an erroneous order and prejudicial to the interest of the Revenue.

4.1. The Ld. PCIT relied on the Madras High Court judgment in the case of K.A. Ramaswamy Chettiar (220 ITR 657), wherein it was held that the ITO is expected to make an enquiry of a particular item of income and if he does not make an enquiry as expected, that would be a ground for Commissioner of Income Tax to interfere under section 263 holding that the assessment order passed by the A.O. is an erroneous and prejudicial to the interest of Revenue. Therefore the Ld. PCIT set aside the assessment order with a direction to the Assessing Officer to frame fresh assessment after proper enquiries and verification on the aforementioned issue, examining the accounts and records of the assessee and after allowing reasonable opportunity of being heard to the assessee.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. *On the facts and in the circumstances of the case, the Learned Principal Commissioner of Income Tax -1, ought to have appreciated that the Assessment Order passed for A.Y. 2015-16 did not fall under the Provisions of Explanation 2 to Section 263 of the Income Tax Act and therefore the Order passed u/s.263 is beyond jurisdiction.*
2. *On the facts and circumstances of the case, the Learned Principal Commissioner of Income Tax erred in initiating proceedings with a view to start the fishing and roving enquiries in order which is already concluded and the same is not permitted as held by Hon Supreme Court in case of Parashuram Pottery Works Co. Ltd., 106 ITR 1 and by the Bombay High court in case of Gabriel India Ltd, 203 ITR 108.*
3. *On the facts and circumstances of the case, the Learned Principal Commissioner of Income Tax erred in passing the order under section 263 merely been change of opinion. The order under section 143(3) passed by*

the Ld. AO was not erroneous and neither prejudicial to the interest of/revenue.

4. On the facts and circumstances of the case, the Learned Principal Commissioner of Income Tax erred in applying the provisions of sec. 263 as it was on record that the appellant had sold the business assets and offered the income under the business head and the same was submitted and accepted. There was nothing on record to doubt the taxability of the sale of business assets.

5.1. Ld. Counsel appearing for the assessee reiterated the same arguments made before Ld. PCIT by filing a Paper Book and more particularly page 18 of the Paper Book showing the profit and loss account for the financial year 2014-15. The Ld. Counsel also taken us through the questionnaire issued by the A.O. at Page No. 25 as follows:

"It is seen that sale consideration of property in ITR is less than sale consideration reported in Form 26QB. You are requested to furnish the justification for the same alongwith documentary evidences thereof. "

5.2. And reply filed by the Assessee at Page No. 29 of the Paper Book as follows:

Reply to Point 10 - Explanation of Property Sale Consideration

During the year, my co-owners & I have sold premises no. 4B&C on 4th floor of Dreamland Building, New Queens Road, Opera House, Mumbai 400004 to Mr. Sanjeev Lodha & Mrs. Archana Lodha. I had 20% share in the said premises which were sold. The total consideration received by me as per my 20% share was Rs. 53,20,000/- (Rupees Fifty Three Lakhs Twenty Thousand Only) on which TDS @ 1% of Rs. 53200/-was deducted by the Purchasers. The sale consideration and TDS amount deducted are matching. There is no mis-match. The copy of the Deed of Transfer of Apartment in question and also the TDS certificate issued by Mr. Sanjeev Lodha are attached as "Annexure 9".

5.3. Thus the Ld. Counsel pleaded that it is nothing but change of opinion by the Ld. PCIT which is not permissible under section 263

of the Act and therefore requested to quash the same. In this connection, Ld. Counsel relied upon various case laws:

1.	<ul style="list-style-type: none">• Nirav Modi vs. CIT [2017] 77 taxmann.com 15 (SC)• Nirav Modi vs. CIT [2016] 71 taxmann.com 272 (Bombay)
2.	<ul style="list-style-type: none">• Century Plyboard (P) Ltd. Vs. CIT [2019] 103 taxmann.com 179 (SC)• Century Ply Board India Ltd. Vs. CIT LTU, Kolkata (2019) 103 taxmann.com 178
3	<ul style="list-style-type: none">• Shree Gayatri Associates vs. Pr. CIT (2019)106 taxmann.com 31(SC)• Shree Gayatri Associates vs. Pr. CIT (2019)106 taxmann.com 30 [High Court of Gujarat])
4	<ul style="list-style-type: none">• Gabriel India LTd vs. CIT (1993) 71 Taxmann 585 (Bombay)
5	<ul style="list-style-type: none">• Vikas Polymers vs.CIT (2010) 194 taxmann.com 57(delhi)
6	<ul style="list-style-type: none">• Sunbeam Auto Ltd vs. CIT (2010) 189 Taxmann 436 (Dehli)
7	<ul style="list-style-type: none">• Dilip Kumar Swami vs. Pr. CIT, Bikaner (2019) 106 Taxmann.com 59 (Rajasthan)
8	<ul style="list-style-type: none">• Colour Publications (P) Ltd. Vs. Pr. CIT, Mumbai (2018) 97 taxmann.com 116 (Mumbai- Tribunal)
9	<ul style="list-style-type: none">• M/s Anisha Jewellery vs. Pr. CIT, Mumbai, ITA No. 2467/MUM/2019

6. Per contra, Ld. D.R. appearing for the Revenue supported the order of the Ld. PCIT and submitted that the Assessing Officer has not verified the sale of the property is a business asset of the assessee, which is not reflecting in the balance sheet of the assessee during this assessment year as well as the previous assessment years. Further the assessment order passed by the Assessing Officer is also very cryptic order without any discussion about the enquiries conducted by him. In fact, when the assessment was selected for limited scrutiny assessment by issuing notice u/s. 142(1), one of the reasons is “(v) Mismatch in income/Capital Gain on sale of land or building”. The Ld. A.O. has

not verified whether it is a capital asset as business asset. The assessee now claims before the Ld. PCIT that the sale of the property at Mumbai is a business asset, but to the corresponding entries are not reflected in the balance sheet of the assessee. Even in the reply given by the assessee before the A.O., he has not discussed the nature of the property how it is a capital asset or Stock-in-trade.

6.1. In the absence of the same, the Ld. PCIT is correct in holding that the assessment order passed by the A.O. is an erroneous order without conducting necessary inquiries and therefore prejudicial to the interest of Revenue and it is a fit case for invoking Revision proceedings under section 263 of the Act. Further the assessee also neither explained any detail before the Ld. PCIT nor filed any supporting evidence before this Tribunal, claiming the property as business asset. Therefore the Ld. PCIT's direction to the Assessing Officer to verify the same and redo the assessment order in accordance with law, does not require any interference and the appeal filed by the assessee is to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. As rightly pointed by the Ld. D.R. the assessee has not produced before us, the details relating that the property sold is a business asset or stock-in-trade of the assessee. The assessee has not produced any concrete materials before any authorities that it is business asset and not liable for capital gain.

8. In the absence of the same, we do not find any merit in the arguments of the assessee, that the invocation of Revision proceedings under section 263 is bad in law. Further the reply given by the assessee to the assessing officer in the notice u/s. 142(1), not given any details that the sale of the immovable property as the business asset of the assessee. The case laws relied by the assessee are clearly distinguishable to the facts of the present case. Thus the grounds raised by the assessee does not hold any merits, the same are hereby rejected. Thus we don't find any infirmity in the Revision order passed by Ld. PCIT, who has remanded the case to the AO to verify the facts and pass order in accordance with law.

9. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 16-12-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER *True Copy*
Ahmedabad : Dated 16/12/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद