

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. 84/Ahd/2021  
Assessment Year 2015-16**

Shri Ramanbhai Bholidas Patel 3, Popular Park, Shree Ghanshyam Park Society, B/H Paraskunj Society, Nr. Ashwamegh, Bungalows, 132 Ft. Ring Road, Satellite, Ahmedabad  PAN No:AEHPP8756M (Appellant)	Vs	The Principal Commissioner of Income Tax-3, Ahmedabad  (Respondent)
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**Appellant by : Ms. Nupur Shah, A.R.  
Respondent by : Shri James Kurian, CIT/D.R.**

Date of hearing : 28-09-2022  
Date of pronouncement : 21-12-2022

**आदेश/ORDER**

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

This appeal is filed by the Assessee as against the Revision order dated 28.03.2021 passed by the Principal Commissioner of Income Tax, Ahmedabad-3, 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 brief facts of the case, the assessee is an individual and also Directors of M/s. Popular Estate Management Ltd. drawing income from salary, rent and interest income. For the Assessment Year, 2015-16, the assessee filed his Return of Income on 24/08/2015 declaring an income of Rs. 21,21,340/-. The return was selected for scrutiny assessment and completed regular assessment u/s. 143(3) of the Act on 16.10.2017 accepting the returned income.

2.2. On scrutiny of the assessment records by the Ld. PCIT, it is noticed that the assessee has shown Long Term Capital Gain of Rs. 80,21,324/- and Rs. 15,92,194/- on sale of land at Thaltej bearing Block No. 747/A and Block No. 748/A. On further verification of the sale deed, assessee's share being 15% in the above property is Rs. 1.05 crores. Subsequently appellant purchased another agricultural land situated at Survey No. 310 Taluka Mouje Thaltej vide purchase deed dated 04.04.2015 for an amount of Rs. 17,82,00,300/- and appellant's share being 15 per cent comes to Rs. 2,67,30,045/-. The assessee claimed of exemption u/s. 54B of Rs. 96,13,518/- from the above Long Term Capital Gain and reinvested in another agricultural land. However it is noticed that the said land sold was not used for agricultural purpose during the financial years 2013-14 & 2014-15 and the assessee has not shown any agricultural income from the above land. Thus the conditions envisaged for claiming exemption u/s. 54B of the Act

are not fulfilled by the assessee, thereby the assessee is not eligible for exemption u/s. 54B of the Act. Thus the assessing officer failed to verify the details or any supporting documents with regard to the claim of exemption u/s. 54B of the Act. Therefore the assessment order passed by the Assessing Officer is an erroneous insofar as it is prejudicial to the interest of Revenue thereby the assessee was requested to show cause as to why a fresh assessment not be made by invoking the provisions of Section 263 of the Act after proper verification and consideration of the exemptions under section 54B of the Act. Further the assessee was requested to furnish the details /documents of documentary evidences is as follows:

*i) Copy of Form 8A for holding of agricultural land for Blocks bearing No. 747/A & 748/A by you for the year under consideration.*

*ii) Details of the land used for agricultural purposes for Blocks bearing No. 747/A & 748/A for the last two preceding and current years along with details of revenue paid and a certificate from the Talati for the crops taken, etc.*

*iii) Details of agricultural income earned for the last two preceding and current year along with details of sale of crops with copies of sales bills and show whether the same has been disclosed for the last two preceding and current year.*

2.3. In response, the assessee filed its written submission vide letter dated 22.03.2021 claiming that the assessee submitted all the required documents before the Assessing Officer and explanations were given for claiming exemption u/s. 54B of the Act. The assessing officer having satisfied with the above reply passed the assessment order without making any addition or making any adverse comment on the submissions made by the assessee. Therefore the invocation of Revision proceedings is bad in law.

2.4. The assessee also further submitted copies of the details required by the Ld. PCIT and explained that the assessee sold agricultural land on 07.01.2015 and within three months the assessee had purchased another agricultural land on 04.04.2015. Thus the assessee has fulfilled the conditions of provisions of Section 54B within a period of two years, immediately preceding the date of sale. Hence, the assessee rightly claimed the deduction under 54B of the Act. The assessee further submitted the usage of the said land for agricultural purpose, the assessee along with other co-owners who appointed one farmer, Mahendrasing Vaghela to take care and to carry out the agriculture activity in the above said land. However on account of improper irrigation facility and lack of water supply, the land does not produce much crop and whatever crop is cultivated from the said land is distributed amongst themselves. Therefore the assessee has not shown any income in its Income Tax Return.

2.5. The assessee further submitted Form 8A which clearly reflects that the land is an agricultural land. The assessee further submitted whatever the agricultural activity carried out prior to the same of the said land has to be considered as carrying on the agricultural operations in the said land and the assessee cannot be denied deduction u/s. 54B on mere technicalities. Thus the assessee relied upon various case laws and claimed that the exemptions u/s. 54B of the Act is correct and the assessment order is not an erroneous order or prejudicial to the interest of Revenue, therefore requested to drop the Revision proceedings.

3. On considering the above reply filed by the assessee, the Ld. PCIT held that it is seen from the assessment record that the A.O. had not asked any question with regard to the justification for claim of deduction u/s. 54B of the Act and also conditions required to be fulfilled to claim deduction under 54B of the Act. Thus the contention of the assessee that the A.O. had examined all the issues with regard to the claim of deduction by the assessee is therefore not borne out from the facts on record. Thus the Ld. PCIT held as follows:

*6. As regards the assessee's contention that the land sold by the assessee was agricultural land and was eligible deduction u/s.54B, it is seen that the assessee had purchased the said land in the year 2011 The assessee had submitted a copy of 07/12 in which his name is reflected which pertains to the year 2013-14. In this form, no details of any crop grown on the land has been mentioned. The land has been shown as fallow land. The assessee has also submitted Form 8A. However, this form does not pertain to the, land revenue survey of the land sold by the assessee and also does not carry the name of the assessee. On the issue of the land being used for agricultural purposes in the two years immediately preceding the date of transfer, the assessee has furnished a copy of affidavit from Shri Mahendra Singh Vaghela and has contended that the assessee had appointed Shri Mahendra Singh Vagehla to carry out agricultural activities on the land. The assessee submitted that all the co-owners of the land had entrusted the; and to Shri Vaghela to carry out agricultural activities and as per the understanding with Mr. Vaghela, it had been decided that rom the year 14-15, all the expenses for the agricultural will be borne by Shri Mahendra Singh Vaghela. The assessee had also admitted that no agricultural (income from this land had been shown in the return of income filed by the assessee as on account of improper irrigation facilities and lack of water supply, the land does not produce much crop and whatever crop was cultivated was distributed amongst themselves. It is apparent from the aforesaid facts that the assessee had failed to furnish any evidence in support of his claim that the land was used for agricultural purposes in the two years preceding the date of transfer. The affidavit filed by the assessee is a mere self-serving document without any supporting evidence. There is no evidence of any expenditure incurred by the assessee on agricultural activities. The contention of the assessee in this regard that the expenses were incurred by Shri Mahendra Singh Vaghela is also without any basis and supporting*

*evidence. No person would incur expenses on agricultural activities in a land which has been declared fallow land by the revenue authorities and which admittedly had improper irrigation facilities. The crop produced on this land also was claimed to have been distributed amongst the co-owners and therefore, there was hardly any benefit arising to Shri Vaghela from the so called agreement. The assessee failed to furnish any supporting evidences and that the land was used for agricultural purposes in the two years preceding the date of transfer. Even the copy of agreement with Shri Vaghela was not provided. The assessing officer had failed to take note of any of these facts and without verifying this issue allowed the claim of the assessee.*

*7. Keeping in view of the aforesaid facts it is evident that the Assessing Officer had failed to verify claim deduction u/s.54B and carry out any investigation to examine whether the assessee was eligible for deduction u/s.54B. The order passed by the AO is therefore, erroneous and prejudicial to the interest of revenue.*

*8. In the instant case, the Assessing Officer has neither collected any facts nor conducted any enquiry pertaining to the eligibility of the claim of exemption claimed U/S.54B of the Act of Rs.96/13,518/-. Such lack of enquiry makes the assessment order erroneous and prejudicial to the interest of revenue. There is no evidence on record that any inquiry was carried out by the Assessing Officer. It is for the Assessing Officer to collect the facts, give an opportunity to the assessee, examine whether the claim of exemption claimed u/s.54B of the Act of Rs.96,13,518/- was in accordance with the provisions the law and to apply the correct position of law thereafter. There is absolute failure on the part of the Assessing Officer in this regard and it is such failure which calls for revision of the assessment order u/s.263 of the Act. The present case is squarely covered by the decision of the Hon'ble Supreme Court of India in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No.2396/2017) did.29.11.2017, wherein the Hon'ble Supreme Court of India has dismissed the SLPs in cases where Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) in so far as receipt of share application money is concerned.*

*9. It has been held in the following cases that jurisdiction for revision proceedings u/s.263 by the Commissioner is warranted in a case where assessments have been made without enquiry or verification:*

*i) Where the Assessing Officer had accepted entry in the statement of account filed by the assessee showing certain income as agricultural income, without making any enquiry, the exercise of jurisdiction by the Commissioner u/s 263(1) would be justified- Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66/243 ITR 89 (SC).*

ii) Not holding an enquiry as is normal and not applying mind to the relevant material would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction.

*CIT v. Jawahar Bhattacharjee (2012) 20 taxmann.com 652/342 ITR 74/249 CTR 529 (Gau.)*

iii) Where enquiry is warranted but not made, it would certainly constitute prejudice to revenue, so that jurisdiction for the Commissioner is available for remanding the matter for such enquiry. *C/7 Vs Raja Industries (2C12) 340 ITR 344 (P&H).*

iv) Commissioner is free to exercise his jurisdiction on consideration of all relevant facts, provided an opportunity of hearing is afforded to assessee to contest facts on basis of which he had exercised revisional jurisdiction. *CIT, Mumbai Vs. Amitabh Bachchan [2016]69 taxmann.com 170[SC]*

v) Where no inquiry was conducted by the Assessing Officer in passing assessment order after accepting revised return filed by the assessee. Commissioner was well within his powers under Section 263 to direct fresh assessment *Virbhadra Singh (HUF) vs PCIT [2017] 86 Taxmann.com 113 (Himachal Pradesh)*

10. After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order u/s. 143(3) of the Act dated 16.10.2017 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act as the order is passed without making inquiries or verification which should have been made and hence it has made the assessment order passed not only erroneous but also prejudicial to the interest of revenue. Accordingly, the impugned assessment order is set aside with a direction to the Assessing Officer to make requisite inquiries and proper verification with regard to the issues mentioned above and redo the assessment de-novo after due consideration of the facts and law in this regard. The assessee is at liberty to adduce the facts as deemed relevant before the assessing officer at the time of assessment proceedings in consequence to this order and the Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions. It may be ensured that the fresh assessment order is passed within the prescribed time as stipulated under section 153(3) of the Act.

4. Aggrieved against this Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The Ld. PCIT has erred in law and on facts in passing the order u/s. 263 of the Act by making an observation in Para 10 on Page 5 of the order

*u/s. 263 of the Act dated 28.03.2021 that " after having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order u/s. 143(3) of the Act dated 16.10.2017 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act as the order is passed without making inquiries or verification which should have been made and hence it has made the assessment order passed not only erroneous but also prejudicial to the interest of revenue. Accordingly, the impugned assessment order is set aside with a direction to the Assessing Officer to make requisite inquiries and proper verification with regard to the issues mentioned above and redo the assessment de-novo after due consideration of the facts and law in this regard. The assessee is at liberty to adduce the facts as deemed relevant before the assessing officer at the time of assessment proceedings in consequence to this order and the Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions. It may be ensured that the fresh assessment order is passed within the prescribed time as stipulated under section 153(3) of the Act".*

*2. The Ld. PCIT has erred in law and on facts in passing the order under section 263 of the Act dated 28.03.2021 without properly considering the contention of the appellant vide letter dated 22.03.2021.*

*3. The Ld. PCIT has erred in law and on facts in failing to appreciate the fact that during the course of assessment proceedings for A.Y. 2015-16, the Ld. AO issued the Notice u/s. 143(2) dated 16.01.2017 and Notice u/s. 142(1) dated 16.01.2017 and 10.07.2017 and in response to the same, the appellant attended from time to time and furnished all details in respect of land at Shilaj bearing Block No. 747/A and Block No. 748/A vide submission dated 16.08.2017 and 10.10.2017. The appellant submitted all the relevant details in respect of sale of land at Shilaj bearing Block No. 747/A and Block No. 748/A with all the supporting documents and the explanations were given in respect of exemption claimed u/s. 54B by the AR of the appellant and the Ld. AO on being satisfied passed the assessment order u/s. 143(3) dated 16.10.2017 without making any addition or making any adverse comments on the same.*

*4. The appellant sold the co-ownership agricultural land at Shilaj bearing Block No. 747 Paiki and land bearing Block No. 748 Paiki during A.Y.2015-16 vide Sale Deed dated 07.01.2015 for an amount of Rs. 7,00,00,000/-. In the sale deed of the said land it is referred that the said land is agriculture land and appellant's share on the said land being 15 per cent which comes to Rs.1,05,00,000/-. Subsequently appellant purchased another agricultural land with co-owner situated at Survey No. 310 Taluka Mouje Thaltej vide purchase deed dated 04.04.2015 for an amount of Rs. 17,82,00,300/- and appellant's share being 15 per cent comes to Rs.*

*2,67,30,045/- and claimed the deduction under section 54B of the Act for an amount of Rs. 96,13,518/- in A.Y. 2015-16.*

*5. In view of the aforesaid facts and cogent material evidence placed by the appellant on record from time to time during the course of assessment proceedings and after application of due and proper mind to such details and explanation, the Ld. AO rendered the order u/s. 143(3) of the Act dated 16.10.2017, hence it cannot be said that such order is erroneous and prejudicial to the interest of revenue and therefore, the order passed by the Ld. AO u/s. 143(3) of the Act dated 16.10.2017 is neither erroneous nor prejudicial to the interest of revenue.*

4.1. The Ld. Counsel Ms. Nupur Shah appearing for the assessee reiterated the grounds and the submissions made before the Ld. PCIT and further brought to our notice to the reply filed by the assessee in response to 142(1) notice dated 16.01.2017 at page no. 42 of the Paper Book in Serial No. 4 namely

- (iv) Income/Capital Gain on sale of Land and Building and
- (v) Deduction claimed under the head Capital Gains.

4.2. The assessee in his reply dated 16.08.2017 submitted a Sale deed and purchase of immovable property sold during the year along with calculation sheet as Annexure-2 which are at page no. 44 and 45 of the Paper Book. Thus the Ld. Counsel submitted that the Assessing Officer after verification and all the details placed before him, allowed the deduction u/s. 54B of the Act. Therefore the assessment is neither erroneous order nor prejudicial to the interest of Revenue and pleaded that the Revision proceedings is liable to be quashed.

5. Per contra, the Ld. D.R. appearing for the Revenue supported the order of the Ld. PCIT and also brought to our notice that the

assessment order passed by the Deputy Commissioner of Income Tax is a very cryptic order, namely first paragraph of the assessment order are the details about the return of income filed, change in officers and issuance of notices and attendance of the Authorized Representative before the Assessing Officer. The remaining operative portion of the assessment order is as follows:

*2. In response to the notices issued Shri Ashok Patel, CA & AR of the assessee attended from time to time and furnished the relevant details. The assessee is one of the Directors of M/s Popular Estate Management Ltd, The case is discussed with the A.R. of the assessee and he was heard carefully.*

*3. Subject to the above verification, the total income of the assessee is assessed at returned income.*

*Total Income as per return of income                      Rs. 21,21,340/-*

*4. Assessed under section 143(3) of the Income tax Act. Charge interest u/s 234A, 234B and 234C of the Act as applicable. Issue demand notice and challan refund, as the case may.*

5.1. Thus the Assessing officer has not discussed any details either in the assessment order or in the notices issued to the assessee whether the assessee fulfills the conditions as prescribed u/s. 54B of the Act. The Assessing Officer had not applied his mind with regard to the said lands were been put to use for Agricultural purposes two years before such transfer, which is a condition precedent for claim of deduction u/s. 54B of the Act. Thus literally the Assessing Officer has not made necessary inquires and verification before allowing deduction u/s. 54B of the Act. Since the Assessing Officer failed to conduct such enquires and draw inference based on the correct legal provision and passed the assessment order without inquiring into the correctness of deduction claimed by the assessee. It is certainly erroneous order

in the eyes of law and also prejudicial to the interest of Revenue which is correctly revised u/s. 263 of the Act by the ld. PCIT. Therefore the same does not require any interference. Thus the ld. D.R. pleaded to dismiss the appeal filed by the assessee.

6. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. It is seen that the assessment order passed by the Assessing Officer is without any details and no information about the claim of deduction u/s. 54B of the Act more particularly when the claim is to the extent of Rs. 96,13,518/- by the assessee. Though the Ld. A.O. asked the assessee to justify the deduction claimed in computation of capital gain along with supporting evidences through notice issued u/s. 143(2) of the Act and the assessee made simple reply without proper evidences and nature of cultivation or any agricultural income derived from the above lands in any other previous assessment years.

6.1. Thus in our considered opinion, the Assessing Officer has not made necessary inquiry before allowing deduction u/s. 54B but grossly allowed claim made by the assessee. Section 54B of the Act is not applicable, if the land was not used for agricultural purposes in the two years preceding the date of transfer. Thus without applications of the provisions of law, the assessing officer has granted the relief to the assessee which otherwise the assessee is not eligible for the claim of deduction u/s. 54B of the Act.

6.2. In this connection it is appropriate to quote the Five Judges Constitutional Bench Judgment rendered by Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai vs. M/s. Dilip Kumar Company and Ors. vide judgment dated 30/07/2018 in C.A. No. 3327 of 2007 as follows:

*“..... 51. In Hari Chand Case (supra), as already discussed, the question was whether a person claiming exemption is required to comply with the procedure strictly to avail the benefit. The question posed and decided was indeed different. The said decision, which we have already discussed supra, however, indicates that while construing an exemption notification, the Court has to distinguish the conditions which require strict compliance, the non-compliance of which would render the assessee ineligible to claim exemption and those which require substantial compliance to be entitled for exemption. We are pointing out this aspect to dispel any doubt about the legal position as explored in this decision. As already concluded in para 50 above, we may reiterate that we are only concerned in this case with a situation where there is ambiguity in an exemption notification or exemption clause, in which event the benefit of such ambiguity cannot be extended to the subject/assessee by applying the principle that an obscure and/or ambiguity or doubtful fiscal statute must receive a construction favouring the assessee. Both the situations are different and while considering an exemption notification, the distinction cannot be ignored.*

*52. To sum up, we answer the reference holding as under –*

*(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

*(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*

*(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands over ruled.*

6.3. Similarly, the Hon'ble Supreme Court in the case of Daniel Merchants Pvt. Ltd. vs. Income Tax Officer in SLP(C) No.

27799/2017 and Ors. dated 29.11.2017 while dismissing the assessee's appeal has held as follows:

*In all these cases, we find that the Commissioner of Income Tax had passed an order under Section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court.*

*The Special Leave Petitions are dismissed.*

*Pending application(s), if any, stands disposed of accordingly.*

6.4. In our considered opinion, the Ld. PCIT has invoked the provisions of Section 263 thereby set aside the erroneous assessment order passed by the Assessing Officer and directed the A.O. to pass a fresh assessment order, after allowing adequate opportunities to the assessee in accordance with law following the prescribed procedure and duly examining the issue of allowability of deduction u/s. 54B of the Act. We do not find any infirmity in the order passed by the ld. PCIT, therefore, it does not require any interference. Thus the Grounds raised by the Assessee are hereby rejected.

7. In the result, appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 21-12-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 21/12/2022**

**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