

IN THE INCOME TAX APPELLATE TRIBUNAL
Jodhpur Bench

Before Shri B.R. Baskaran (AM) & Shri Sandeep Gosain (JM)

I.T.A. No. 34/Jodh/2021 (A.Y. 2016-17)

Surinder Singh Sidhu Rattanpura, Sangaria Rajasthan-333 513. PAN : AFEPS8982G (Appellant)	Vs.	PCIT, Jodhpur-1 Sri Gangasagar Rajasthan (Respondent)
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Assessee by	Shri Suresh Ojha & Shri Shashank Khatri
Department by	Smt. Alka Rajvanshi Jain
Date of Hearing	04.11.2022
Date of Pronouncement	17 .01.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 23-03-2021 passed by Ld PCIT-1, Jodhpur and it relates to the assessment year 2016-17. The assessee is challenging the validity of revision order passed by Ld PCIT.

2. The facts relating to the case are stated in brief. The assessee is in real estate business and sells lands by plotting them into plots. The assessment in the hands of the assessee was completed by the AO u/s 143(3) of the Act on 04-12-2018. The Ld PCIT examined the assessment record and noticed that the AO has not examined certain vital issues, viz:-

(a) The assessee had claimed sale of certain land as agricultural land in Chak area. The Ld PCIT took the view that these lands are located within 2 kms from the municipal limit of Sangaria and the population of that area is more than 10,000/-. However, the AO accepted the claim of the assessee without verification.

(b) In respect of sale of plot shown as assessee's taxable turnover, the Ld PCIT has noticed that the AO did not examine the DLC value.

Accordingly, the AO took the view that the assessment order is erroneous and prejudicial to the interests of revenue. Hence, the AO initiated revision proceedings u/s 263 of the Act. After hearing the assessee, the Ld PCIT held that the assessment order is erroneous and prejudicial to the interests of revenue. The assessee is aggrieved.

3. Before us, the Ld A.R appearing for the assessee raised a legal contention. He submitted that the Ld PCIT has initiated revision proceedings upon the proposal given by the AO and hence the impugned revision order is vitiated.

4. On examination of revision order, we notice that the Ld PCIT has nowhere mentioned that he has initiated revision proceedings upon the receipt of proposal sent by the AO. Hence the bench asked the Ld A.R as to how he came to know that the impugned revision order was passed on receipt of proposal from the AO. The Ld A.R submitted that the assessee has somehow collected the said details and he does not know how the assessee collected the details.

5. The Ld D.R, on the contrary, strongly objected to the legal contention raised by Ld A.R. She submitted that it is an internal matter regularly followed in the Income tax department to ask the AO to send the proposal. It does not always mean that the Ld PCIT has initiated revision proceedings upon the proposal given by the AO. Even if the AO has sent the proposal on its own for initiation of revision proceedings, yet the revision order passed u/s 263 of the Act would not be vitiated if the Ld PCIT has independently applied his mind on the proposal and thereafter taken decision to initiate revision proceedings. The Ld DR further submitted that, in any case, the veracity of the document furnished by the assessee also needs verification.

6. We heard rival contentions. With regard to the legal contention raised by Ld A.R, we are of the view that there is merit in the submissions made by Ld D.R. What is required to be seen is

- (a) Whether the proposal was sent by the AO on its own or after the direction of Ld PCIT?
- (b) Whether there was application of mind on the part of Ld PCIT before initiation of revision proceedings, even if the AO has sent the proposal on its own?

If the proposal has been sent as per the direction given by Ld PCIT or if there is independent application of mind, in our considered view, the same would not vitiate revision proceedings.

7. Further, the assessee has not disclosed the sources through which he got the copy of proposal alleged to have been given by the AO. Hence the said document also needs verification with the records available with the AO and PCIT. With regard to the above said legal contention, it may not be proper on our part to decide against the revenue without putting the same before Ld PCIT, since the Ld PCIT has not stated in the impugned revision order that he has initiated the revision proceedings upon receipt of proposal from the AO.

8. Under these set of facts, we are of the view that the legal contention raised by assessee requires examination at the end of Ld PCIT. Accordingly, we set aside the order passed by Ld PCIT and restore all the issues including the legal contention raised by the assessee to his file for examining them afresh. After affording adequate opportunity of being heard, the Ld PCIT may take appropriate decision in accordance with law.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced on 17-01-2023

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Rajasthan; Dated : 17/01/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Rajasthan
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Rajasthan

S.No	Description	Date	Intls	
1	Prepared by BRB	4.1.23		
2	Draft dictated on	4.1.23		Sr.P.S.
3	Draft placed before author	4.1.23		Sr.P.S.
4	Draft proposed & placed before the second Member			JM/AM
5	Draft discussed/approved by second Member			JM/AM
6	Approved Draft comes to the Sr.P.S./PS			Sr.P.S.
7	Kept for pronouncement on	17 .1.23		Sr. P.S.
8	File sent to the Bench Clerk	17 .1.23		Sr.P.S.
9	Date on which file goes to the Head Clerk			
10	Date of Dispatch of order			