

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI G D PADMAHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 56/RPR/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Greenone Construction and Development
Private Limited
C21/22, 1st Floor Shyam Market,
Pandri, Raipur (C.G.)-492 004
PAN : AAFCG5846C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1(C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Goyal, CA
Revenue by : Shri Debashish Lahiri, CIT-DR

सुनवाई की तारीख / Date of Hearing : 22.12.2022

घोषणा की तारीख / Date of Pronouncement : 23.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax, Raipur-1, (for short 'Pr. CIT) u/s.263 of the Income-tax Act, 1961 (for short 'Act'), dated 02.03.2022, which in turn arises from the order passed by the A.O. u/s.143(3) of the Act dated 15.11.2019 for A.Y. 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. That on the facts and in the circumstances of the case and in law, the order passed by the Id. Pr. CIT-1, Raipur u/s. 263 of the Act dated 02/03/2022 is illegal and void-ab-initio.

2. That on the facts and in the circumstances of the case and in law, the revision order passed u/s.263 of the Act was passed on the premise that the appellant has claimed benefit of provisions of section 10(37) of the Act and provisions of RFCTLARR Act whereas as the appellant has not claimed any such exemption in the return of income filed u/s.139(1) of the Act.

3. That on the facts and in the circumstances of the case and in law, the issue of claim of exemption u/s.10(37) and exemption as per provisions of RFCTLARR Act is sub-judice before first appellate authority in the appeal filed u/s 246A of the Act.

4. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.

2. Succinctly stated, the assessee company which is engaged in the business of real estate had e-filed its return of income for A.Y.2017-18 on 29.10.2017, declaring an income of Rs.10,52,480/-. Subsequently, the

assessee company revised its return of income on 26.06.2018 disclosing the same income as was originally returned. Original assessment was thereafter framed by the A.O u/s. 143(3) dated 15.11.2019 determining the income of the assessee company at Rs.14,98,431/-.

3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. Observing, that the A.O while framing the assessment had under RECTLARR Act, 2013 wrongly allowed the assessee's claim for exemption of capital gain pertaining to the amount which was received by it on acquisition of its lands situated at Nimora, Bhatgaon & Abhanpur by NHAI, the Pr. CIT called upon the assessee to explain vide his "Show Cause Notice" (SCN), dated 16.08.2021 as to why the order passed by the A.O u/s.143(3) dated 15.11.2019 may not be revised u/s.263 of the Act. In reply, it was the claim of the assessee that it had not claimed income from sale/transfer of the lands in question as exempt u/s.96 of the RECTLARR Act, 2013. Further, clarifying the issue, it was submitted by the assessee that the net income/surplus on acquisition of its lands by NHAI was accounted for by it as its revenue from operations. Elaborating on his contention, it was submitted by the assessee that the net profit of Rs.19,78,143/- that was earned from the aforesaid transaction of acquisition of its lands by NHAI was disclosed by it as its business income under the provisions of the Act. To sum up, it was the claim of the assessee that neither it had earned any capital gain nor

while filing its return of income claimed any exemption u/s.10(37) r.w. RECTLARR Act, 2013. At the same time, it was submitted by the assessee that though it had in the course of the assessment proceedings raised a claim for exemption u/s.10(37) of the Act r.w. RECTLARR Act, 2013 of the amount that was received on acquisition of its lands by NHAI, but the same was not accepted by the A.O. Also, it was stated by the assessee that it had thereafter assailed the order of the A.O declining its request for exemption u/s.10(37) of the Act before the CIT(Appeals) which was pending adjudication as on date.

4. The Pr. CIT after deliberating on the issue in the backdrop of the explanation of the assessee, found no merit in the claim of the assessee had held the order passed by the A.O as erroneous in so far as it was prejudicial to the interest of the revenue for the following reasons:

“1. The Central government has not issued notification in terms of sub-section (3) of Section 105 of the RFCTLARR Act, 2013 within one year from the date of commencement of that Act in respect of acquisition made under the National Highways Act and as such assessee is not entitled to exemption under RFCTLARR Act read with section 105(3) of that Act. [Reference to para 4.1 at page no. 4 of the notice]

2. The benefits of Rehabilitation and Resettlement Entitlements as mentioned in the Second Schedule of the RFCTLARR Act cannot be extended to those families whose land has been acquired under the National Highway Act, 1956 as the acquired land is not primary source of livelihood of those family. Kindly refer Para 4.3 at Page no. 5 of the notice.

3. Further, the CBDT, New Delhi has issued Notification dated 06.06.2019 and clarified the issue that section 96 of the RFCTLARR Act, 2013 is not applicable to the cases where acquisition has been

made by entities mentioned in the Fourth Schedule of RFCLARR Act, 2013. In this case, land acquisition has been made by the NHAI which is an entity mentioned in fourth schedule of RFCTLARR Act, 2013.”

Observing, that the A.O had failed to apply the provisions of RECTLARR Act, 2013 & O.M dated 06.06.2019 of CBDT, New Delhi by conducting necessary enquiries, the Pr. CIT set-aside the assessment order with a direction to the A.O to apply the provisions of RECTLARR Act, 2013 and O.M. dated 06.06.2019 of CBDT, New Delhi and adjudicate the issue afresh after conducting necessary enquiries and affording a reasonable opportunity of being heard to the assessee.

5. The assessee being aggrieved with the order passed u/s.263 of the Act by the Pr. CIT dated 02.03.2022 has carried the matter in appeal before us.

6. The Ld. Authorized Representative (for short 'AR') for the assessee, at the very outset of hearing of the appeal submitted, that the order passed by the Pr. CIT u/s.263 of the Act dated 02.03.2022 was based on misconceived and incorrect facts. Elaborating on his aforesaid contention, it was averred by the Ld. AR that the assessee company in its return of income had neither offered any amount received on acquisition of its lands by NHAI for tax under the head “capital gain” nor claimed any exemption u/s.10(37) r.w.s 96 of RECTLARR Act, 2013. On the contrary, it was submitted by the Ld. AR that the surplus (net) of Rs.80,23,548/- received

on acquisition of its lands by NHAI was disclosed by the assessee company, a real estate developer, as its revenue from operations in its financial statements, Page 29 of APB. It was further submitted by the Ld. AR that the net profit of Rs.19,78,143/- that was earned by the assessee company from the aforesaid transaction was duly disclosed as its “income from business” and offered for tax in its return of income for the year under consideration i.e. A.Y.2017-18, Page 20-24 of APB. On the basis of the aforesaid facts, it was the claim of the Ld. AR that now when the assessee had not raised any claim for exemption of the amount that was received as compensation on acquisition of its lands by NHAI under section 10(37) r.w. RECTLARR Act, 2013, therefore, there was no basis for the Pr. CIT to have held the order passed by the A.O u/s.143(3) dated 15.11.2019 as erroneous on the ground that he had wrongly allowed the assessee’s claim for exemption of capital gain under RECTLARR Act, 2013.

7. Per contra, the Ld. Departmental Representative (for short ‘DR’) could not rebut the contentions advanced by the assessee’s counsel. On a specific query by the bench that now when the assessee had neither claimed the amount received as compensation on acquisition of its lands by NHAI as exempt u/s.10(37) r.w. RECTLARR Act, 2013, then on what basis the Pr. CIT had vide his order passed u/s.263 dated 02.03.2022 set-aside the order passed by the A.O u/s. 143(3) dated 15.11.2019, for the

reason that he had wrongly allowed the impugned claim for exemption of capital gain, the Ld. DR failed to come forth with any reply.

8. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record.

9. Ostensibly, it is a matter of fact borne from record that the assessee who is engaged in the business of real estate was in receipt of compensation of Rs.98,31,546/- on acquisition of three pieces of land at Nimora, Abhanpur & Bhatgaon, as under:

Sl. No.	Land acquired at	Khasra No.	Area acquisition	Corresponding cost	Amount of compensation received
1.	Bimora	Part of 474	209 Sq. mtr.	6,06,532/- (purchase price of 470 sq. mtr is 9,83,000/-)	28,72,866/-
2.	Parasathi (Abhanpur)	Par tof 169	470 sq. mtr.	1,55,515/- (purchase price of 680 sq. mtr is Rs.2,25,000/-)	42,98,808/-
3.	Bhatgaon	Part of 547	200 sq. mtr.	6,00,000/-	29,59,872/-
Total				13,62,047/-	98,31,546/-

The assessee company which had claimed to have acquired the aforesaid lands for a consideration of Rs.18,08,000/-, had offered the surplus (net) of Rs.80,23,548/- on the compulsory acquisition of the same as its

revenue from operations in its profit & loss account for the year under consideration, Page 29 of APB. As the A.O observed that the assessee had wrongly claimed cost of acquisition of the lands at Rs.18.08 lac as against the actual cost of Rs.13,62,047/-, therefore, the assessee in the course of the assessment proceedings on being confronted admitted the said mistake, and, accordingly, the A.O after meeting out the aforesaid discrepancy reworked out assessee's revenue from operations at Rs.84,69,499/-, and vide his order passed u/s.143(3) dated 15.11.2019 assessed the income at Rs.14,98,431/-.

10. On a perusal of the financial statements of the assessee a/w. its return of income, it transpires that it had accounted for the surplus (net) arising/accruing on compulsory acquisition of its lands by NHAI as its revenue from operations. We are unable to fathom as to on what basis the Pr. CIT had observed that the assessee company had disclosed the income from acquisition of its lands by NHAI under the head "capital gain", and claimed the same as exempt u/s.10(37) r.w. RECTLARR Act, 2013. In fact, the very basis so adopted by the Pr. CIT for revising the order passed by the A.O u/s.143(3) dated 15.11.2019, i.e., his observation that the assessee had sought for exemption of the capital gain on compulsory acquisition of its lands by NHAI u/s.10(37) r.w. RECTLARR Act, 2013 is beyond understanding. As the assessee had neither offered the surplus(net) on acquisition of its lands by NHAI as capital gain nor raised

any claim for exemption in its return of income, therefore, there could have been no reason for the A.O to have allowed any such claim. Admittedly, it is also a fact that the assessee in the course of the assessment proceedings had sought for exemption of the surplus(net) on acquisition of its lands by NHAI u/s.10(37) r.w.s.96 of RECTLARR Act, 2013, but as stated by the Ld. AR the same was declined by A.O. Be that as it may, the assessee had neither disclosed income/surplus arising on acquisition of its lands by NHAI under the head "capital gain" or sought for any exemption of the said amount, nor any such exemption was allowed to him by the A.O vide his order passed u/s.143(3) dated 15.11.2019.

11. Considering the aforesaid facts, we are of the considered view that now when neither any claim for exemption u/s.10(37) r.w. RECTLARR Act, 2013 had ever been raised by the assessee nor allowed by the A.O, therefore, there could be no justification on the part of the Pr. CIT to have held the order passed by the A.O u/s.143(3) dated 15.11.2022 as erroneous in so far as it was prejudicial to the interest of the revenue u/s.263 of the Act, for the reason that he had wrongly allowed it's claim for exemption u/s.10(37) r.w. RECTLARR Act, 2013. Interestingly, it is a case where the order u/s.143(3) dated 15.11.2019 had been held by the Pr. CIT as erroneous on the ground that he had wrongly allowed a claim of exemption which, in fact, had never been so allowed by the A.O. We, thus, in terms of our aforesaid observations finding no justification on the part

of the Pr. CIT for having revised the order passed by the A.O u/s.143(3) dated 15.11.2019, set-aside his order and restore that passed by the A.O u/s.143(3) dated 15.11.2019.

12. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
G D PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 23rd January, 2023

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-I, Raipur (C.G)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.