

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.171/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2014-15)

(Virtual Court Hearing)

Jairam Gulumal Diyalani M/s Tulsi Saree, Main Bazar, Jambusar, Dist. Bharuch- 392150	Vs.	Income Tax Officer, Ward-1(5), Bharuch
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACGPD 8463 L		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Assessee by : Shri Mehul K Patel, Advocate

राजस्व की ओर से /Respondent by : Shri Ashok B. Koli, CIT-D.R

सुनवाई की तारीख/ Date of Hearing : 17/01/2023

घोषणा की तारीख/Date of Pronouncement: 30/01/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

By way of this appeal, the assessee has challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax-3, Vadodara (in short "ld. PCIT"] dated 07.12.2018, under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for assessment year 2014-15.

2. Grounds of appeal raised by the assessee are as follows:

*"1.0 The learned Commissioner of Income Tax-3, Baroda, has erred in law and on facts in holding that the assessment order dated 29-12-2016 passed under section 143(3) of the Income Tax Act, 1961 is erroneous and prejudicial to the interest of revenue and thereby erred in invoking the provisions of section 263 of the I T Act.*

*2.0 The learned Commissioner of Income Tax-3, Baroda has erred in law and on facts in directing the Assessing Officer to make additions of Rs.9,00,000/- on account of total sums received from investment made in property situated at Mumbai.*

*2.1 The learned Commissioner of Income Tax-3, Baroda ought to have appreciated that the overall additions on account of the total amount received have already been made in one year or the other and that there is no loss of revenue.*

*2.2 The learned Commissioner of Income Tax-3, Baroda ought to have appreciated that the additions as stated hereinabove in the year under consideration shall result in excess addition of income and double taxation of same income.*

*3.0 The learned Commissioner of Income Tax-3, Baroda erred in law and on facts has set aside the assessment order passed on 29-12-2016 under section 143(3) of the I T Act.*

*4.0 The above grounds of appeal are without prejudice to each other.*

*5.0 The appellant craves leave to add to, alter, delete or modify any of the grounds of appeal either before or at the time of hearing of this appeal.”*

3. The facts necessary for disposal of the appeals are stated in brief. The assessee before us is an individual and filed his return of income u/s 139(1) of the I.T. Act, 1961 (for short "the Act") for A.Y.2014-15 on 31.07.2014 declaring total income at Rs.4,39,830/-. The assessment u/s 143(3) of the Act was finalized by the assessing officer on 29.12.2016 determining total income at Rs.65,04,690/- after making addition of Rs.55,80,040/-, Rs.30,000/-, Rs.4,816/- and Rs.4,50,000/- on account of unaccounted income, undisclosed rent income, undisclosed interest income and income from undisclosed sources respectively.

4. Later, Learned Principal Commissioner of Income Tax (in short "ld. PCIT") has exercised his jurisdiction under section 263 of the Income Tax Act, 1961. On examination of the case records, it was noticed by ld PCIT that a survey action u/s 133A of the Act was carried out at the business premises of the assessee on 03.03.2015. During the course of survey, a Diary-2004, containing date-wise actual cash sale receipts and noting regarding financial transactions related to various assessment years, was found and impounded. On being confronted with the contents of the diary, assessee vide letter dated 23.11.2016 and in his statement recorded on oath on 16.12.2016, stated that he and his brothers, namely, Shri Tulsidas G. Diyalani, Shri Prakash G. Diyalani and Shri Ramesh G. Diyalani, made investments of Rs.1,20,00,000/- in properties during the period 2001-2005. It was also stated by the assessee that the investments made were in cash and so were the receipts and there were no documentary

evidences of the same. The assessee furnished no details regarding the source of these investments. In the statement recorded on 16.12.2016, it was admitted by the assessee that amounts of Rs.34,50,000/- and Rs.92,50,000/- aggregating to Rs.1,27,00,000/- were received by way of cash from sale of some of the properties situated in Mumbai and the same were divided amongst he and his three brothers. Amount of Rs.80,00,000/- was received during the period 19.02.2013 to 28.12.2013. Assessee also admitted that the aforesaid transactions had not been shown in his books of account. On perusal of page Nos.19 to 22 of the Diary-2004, impounded during the survey, it was noticed that out of Rs.80,00,000/-, an amount of Rs.9,00,000/- was received by the assessee. The amount of Rs.9,00,000/- received during the financial year 2013-14 relevant to A.Y.2014-15 had not been added to the total income of assessee.

5. Therefore, Id PCIT issued a show cause notice u/s 263 of the Act on 27.08.2018 and was duly served upon the assessee. In response to the same, assessee vide letter dated 06.09.2018, furnished written submission. The relevant portion of the written submission dated 06.09.2018 is reproduced below:

*“At the outset, it is submitted that the impugned notice under section 263 of the Act is void ab-initio inasmuch as the same is issued without verification of the records. This is because, it was clearly and categorically stated at the time of survey that I had invested Rs.1.20 crores in cash jointly with my three brothers in one property situated at Mumbai during the Financial Years relevant to the Asst. years 2000-01 to 2005-06. The Said investment was received back with a total amount of Rs.1,27,00,000/- in cash only in the Financial Years relevant to the Asst. Year 2010-11 and Asst. Year 2013-14 as under:*

*Asst Year 2010-11 -Rs. 34,50,000/- (My share Rs. 7,60,630/-)*

*Asst. Year 2013-14 -Rs.92,50,000/- (My share Rs.20,39,370/-)*

*Thus, during the year under consideration viz. Asst. Year 2013-14, total money received was Rs.92,50,000/-, out of which my share was Rs.20,39,370/-. The balance amount received was on account of my brothers' share for which separate additions have already been made in their individual cases.”*

6. However, after going through the above written submission of the assessee, the Id PCIT noted that assessee has remained silent on the issue of Rs.9,00,000/- received during the year under consideration in his written submission. With reference to the written submission dated 06.09.2018, a factual

report was called from the Assessing Officer through the Jt. Commissioner of Income Tax, Range-1, Bharuch vide letter dated 07.09.2018.

7. The Ld.Jt-CIT vide letter dated 19.09.2018 submitted the report of the A.O. dated 18.09.2018. The Assessing Officer reported that a diary-2004, marked as Annexure BF-21, impounded during the survey u/s 133A of the Act on 03.03.2015 at the business premises of the assessee, contained date-wise actual cash sale receipts and noting regarding financial transactions related to various assessment years. **Accordingly, the cases of the assessee for A.Y.2010-11 and 2013-14 were reopened and additions of Rs.7,60,630/- and Rs.20,39,370/- respectively aggregating to Rs.28,00,000/- (Rs.7,60,630 + Rs.20,39,370) were made on account of the cash receipts from the sale of properties situated in Mumbai. However, during the course of assessment proceedings for A.Y.2015-16, on verification of page Nos. 19 to 22 of the diary impounded during the survey proceedings, it was found that actual cash sale receipts were Rs.19,00,000/-, Rs.Nil and Rs.9,00,000/- for A.Y.2010-11, 2013-14 and 2014-15 respectively totaling to Rs.28,00,000/-.** Against the actual amount of Rs.9,00,000/- received during A.Y. 2014-15, no addition had been made while finalizing assessment for the year under consideration. Therefore, the amount of Rs.9,00,000/- remained to be added to the total income of the assessee for A.Y.2014-15.

8. In respect of the above report of the Assessing Officer, the assessee was given an opportunity of being heard, vide letter dated 27.09.2018. In response to the same, assessee furnished written submission, on 10.10.2018. Relevant portion of the same is reproduced here under for ready reference:

*"While completing the assessment, the additions to the total income on account of investment in the immovable property were as under:*

Assessment Year	Total amount (Rs)	My share amount (Rs)
2010-11	34,50,000/-	7,60,630
2013-14	92,50,000	20,39,370
Total		<b>28,00,000</b>

*Thus, additions on account of my share in the property income aggregating to Rs.28,00,000/- were made in the above Asst. Years. Now the Assessing Officer has submitted a report on my submission stating that the assessee has received money as under:*

Asst. Year	My share Amt.(Rs.)
2010-11	19,00,000
2013-14	- -
2014-15	9,00,000
2015-16	- -

*Thus, it can be seen that the total amount received remains the same. It is only that the date of receipts were wrongly recorded. Hence, I re-iterated that no other amount/money was received by me. It is submitted that on an overall basis there was no under assessment of income. The entire income declared at the time of survey has been assessed and taxed in one year or the other. Thus, no loss of revenue or prejudices to the interests of the revenue have been caused.*

*The revenue can argue that each year is a separate year and the correct income has to be assessed for each year but then taking recourse to section 263 of the Act is totally against the principles of law."*

9. However, Id PCIT has rejected the contention of the assessee and observed that assessee received a total amount of Rs.9,00,000/- from the aforementioned investment in properties situated in Mumbai during the assessment year under consideration, i.e 2014-15. No addition against the same had been made while finalizing assessment proceedings for A.Y.2014-15 u/s 143(3) of the Act. During the course of proceedings u/s 263 of the Act, assessee, in his submission dated 06.09.2018, stated that during A.Y.2010-11 and 2013-14, total money received was Rs.34,50,000/- and Rs.92,50,000/- out of which his share was Rs,7,60,630/- and Rs.20,39,370/- respectively. However, assessee remained silent in respect of the amount of Rs.9,00,000/- received during the year under consideration.

10. The Id PCIT thus noted that total income of the previous year of the assessee is chargeable to tax u/s 4 of the Act. Two of the principles deductible from the section are: (i) that the tax is levied on the total income of the assessable entity and (ii) that each previous year is a distinct unit of time for the purpose of assessment and the profits made or liabilities or losses incurred before or after the relevant previous year are wholly immaterial in assessing income of the year. Useful reference may be made to the decision of the Hon'ble Supreme Court in

the case of Tarulata Shyam Vs. CIT 108 ITR 345 (SC). Further, as per section 5(1) of the I.T. Act, 1961, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-

*(a) is received or is deemed to be received in India in such year by or on behalf of such person; or*

*(b) accrues or arises or is deemed to accrue or arise to him in India during such year ;or*

*(c) accrues or arises to him outside India during such year.*

11. Thus, ld PCIT noted that assessee had received an amount of Rs.9,00,000/- from the said investment in property and the same is required to be taxed in the year of receipt i.e. A.Y. 2014-15. After considering the facts of the case, provisions of the Act and ratio of the decision cited supra, the ld PCIT held that order passed by the assessing officer is erroneous as well as prejudicial to the interest of Revenue. Therefore, the assessment order was set aside by ld PCIT with a direction to the Assessing Officer to add the entire receipt of Rs.9,00,000/- to the income of the assessee in A.Y. 2014-15 in accordance with law.

12. Aggrieved by the order of Ld. PCIT, the assessee is in appeal before us.

13. Shri Mehul K Patel, Learned Counsel for the assessee, at the outset, submitted that Ld.PCIT has invoked his jurisdiction only to tax Rs.9,00,000/- which according to ld PCIT pertains to the assessment year 2014-15, under consideration but however as per assessee, the said amount pertains to previous assessment year i.e. 2013-14. The ld Counsel explained the Bench that said amount of Rs.9,00,000/- has already been taxed in assessment year 2013-14, therefore, it should not be taxed again in assessment year 2014-15.

14. Ld.Counsel for the assessee again submitted that for assessment years 2013-14 and 2014-15, the income tax rate for individual is same, that is, there is no change in income tax rate, hence there is no loss to the Revenue. Therefore, there is no loss to the Revenue, whether Rs.9,00,000/- is taxed in the current

assessment year 2014-15 or in previous assessment year 2013-14, hence it is revenue neutral and there is no impact on the revenue as the income tax rate for both the assessment years were same. Hence, the order passed by the Assessing Officer should not be erroneous and prejudicial to the interest of revenue as there is no loss to the revenue.

15. Without prejudice to the above, Ld. Counsel, took us through paper book page-3 and pointed out that if amount of Rs.9,00,000/- is considered for current assessment year 2014-15 than in that situation, necessary instruction should be given to the Assessing Officer to make the adjustment in the previous assessment year's (2013-14) taxable income and such instruction may be given by the Tribunal as per section 254(1) of the Act.

16. On the other hand, Learned CIT-DR for the Revenue submitted that relevant income should be taxable in the relevant assessment year. The amount of Rs.9,00,000/- does not pertain to assessment year 2013-14, however it pertains to assessment year 2014-15 under consideration. Therefore, it should be taxable in the relevant assessment year inasmuch as this amount pertains to total aggregate amount of Rs.28,00,000/- on the principle that the right income should be taxable in the right assessment year. Therefore, ld DR stated that order passed by the assessing officer is not in accordance with law, hence order passed by the assessing officer is erroneous.

17. After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. AR, we find that the issue involved in the present appeal is whether amount of Rs. Rs.9,00,000/- should be taxable in assessment year 2013-14 or in assessment year 2014-15, and tax rate in both the assessment years are same, whether there is loss to the Revenue? Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. We note that assessee's share of income of Rs.28,00,000/- has been taxed in two assessment years as follows:

Assessment Year	Total amount (Rs)	Assessee share (Rs)
2010-11	34,50,000/-	7,60,630
2013-14	92,50,000	20,39,370
Total		<b>28,00,000</b>

The assessee claimed that disputed amount of Rs.9,00,000/-, (which is included in Rs.20,39,370/-) has been taxed in assessment year 2013-14, therefore, it should not be taxed again in assessment year 2014-15, under consideration.

However, the stand of Id PCIT is that amount of Rs.9,00,000/- should be taxable in assessment year 2014-15, (not in assessment year 2013-14) but we note that total taxable amount of Rs. 28,00,000/- remains same, as follows:

Asst. Year	Share Amt.(Rs.)
2010-11	19,00,000
2013-14	- -
2014-15	9,00,000
Total	<b>28,00,000</b>

From the above facts, we notice that total taxable amount remains same. We also note that tax rate for assessment year 2013-14 and 2014-15 are same therefore Id Counsel contended that there is no loss to Revenue, whether Rs.9,00,000/- is taxed in assessment year 2013-14 or assessment year 2014-15.

18. In order to invoke the jurisdiction under section 263 of the Act, two conditions should be satisfied viz: (1) order passed by the Assessing Officer should be erroneous and (2) prejudicial to the interest of Revenue. We note that Assessing Officer taxed the disputed amount of Rs.9,00,000/- in assessment year 2013-14 instead of assessment year 2014-15, therefore order passed by the Assessing Officer is erroneous. However, we note that since in both the assessment years 2013-14 and 2014-15 tax rate was same, therefore order passed by the Assessing Officer should not be prejudicial to the interest of Revenue, (as there is no loss to the Revenue). Hence, one of the conditions (prejudicial to the interest of Revenue) is not getting satisfied in the assessee's case under consideration.

19. Therefore, we note that the issue raised by Ld.PCIT is revenue neutral, as it does give loss to the Revenue. Since one of conditions is that order should be prejudicial to the interest of revenue, which is absent in assessee's case under consideration. We note that although the order passed by the Assessing Officer is erroneous because the right income should be taxable in right assessment year however, since the tax rates are same in assessment year 2013-14 and 2014-15 therefore, we note that there is no loss to the Revenue. Besides, the disputed amount is very small (at Rs.9,00,000/- only), and ld PCIT pointed out that it should be taxable in assessment year 2014-15 instead in assessment year 2013-14. Therefore, considering the smallness of amount and considering the fact that tax rate in both the assessment years are same, hence there is no loss to the Revenue, *(one of the conditions is not satisfied to invoke jurisdiction u/s 263)* therefore, we do not instruct the Assessing Officer to tax the impugned amount of Rs.9,00,000/- in assessment year 2014-15, as no any useful purpose would be served and it would be unnecessary burden on the Assessing Officer to make the compliance to tax the disputed amount Rs.9,00,000/- in assessment year 2014-15.

At this juncture it is appropriate to quote a famous observation made by Hon`ble Supreme Court in the case of Excel Industries Ltd, [2013] 38 taxmann.com 100 (SC), wherein Hon`ble Supreme Court had observed as follows:

*".....32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers...."*

20. Considering this practical and factual position, as narrated above, we quash the order passed by ld PCIT.

21. Since we have quashed the order of ld PCIT therefore we do not deal with other arguments advanced by ld Counsel. We have adjudicated the issue involved

in this appeal based on peculiar facts and circumstances, as narrated above, therefore, it is also made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.

22. In the result, appeal of the assessee is allowed.

Order is pronounced on 30/01/2023 by placing record on Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 30/01/2023

***Dkp Outsourcing Sr.P.S***

**Copy of the Order forwarded to**

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2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
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By Order

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