

**आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**  
**AND**  
**SHRIB.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.112/Ind/2022**  
**Assessment Year: 2017-18**

Rajendra Prasad Shrivastava, Hoshangabad	<b>बनम/</b> Vs.	Pr. CIT-1 Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AERPS 2537 P</b>		
Assessee by	ShriS.N. Agrawal, & Pankaj Mogra, ARs	
Revenue by	ShriP.K. Mishra, CIT-DR	
Date of Hearing	18.11.2022	
Date of Pronouncement	20.01.2023	

**आदेश/O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by revision-order dated 23.03.2022 passed by learned Pr. Commissioner of Income-Tax-1,Bhopal [**“Ld. PCIT”**]u/s 263 of Income-tax Act, 1961 [**“the Act”**], which in turn arises out of assessment-order dated 27.12.2019 passed by learned ITO-2,Itarsi[**“Ld. AO”**]u/s 143(3) for Assessment-Year [**“AY”**] 2017-18, the assessee has filed this appeal on the grounds raised in the Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that assessee submitted return of relevant AY 2017-18 on 28.07.2017 declaring a total income of Rs.5,38,620/-which included a taxable capital gain of Rs. 5,38,623/-. The case was selected for limited scrutiny to examine “Capital Gain/loss on sale of property” vide notice dated u/s 143(2) dated 08.08.2018. Finally, the assessment was completed accepting the returned income including the taxable capital gain declared by assessee. Subsequently, the Ld. CIT examined the record of assessment-proceeding and viewed that the assessment-order passed by Ld. AO is erroneous in so far it is prejudicial to the interest of revenue, which attracts revisionary-jurisdiction u/s 263. The reasons of framing such a view, as mentioned by Ld. PCIT in the show-cause notice dated 28.02.2022 are reproduced below:



Government of India  
Ministry of Finance, Department of Revenue,  
Office of the Principal Commissioner of Income Tax-1  
AayakarBhawan, 48, Arera Hills, Hoshangabad Road, Bhopal

FAX NO. -0755-2553558

E-MAIL ID - bhopal.pcit1@incometax.gov.in

F. No. Pr. CIT-1/BPL/263/2021-22

Dated: 28.02.2022

To,

Shri Rajendra Prasad Shrivastava  
Sardar Bazar Behind Meenakshi Talkies,  
Hoshangabad-461001

[PAN:AERPS2537P]

**Sub: -Notice u/s 263 of Income-tax Act for AY 2017-18- Show Cause -  
reg.**

Please refer to the assessment order u/s 143(3) the Income Tax Act, 1961 dated 27.12.2019 for A.Y. 2017-18, whereby the return income was accepted.

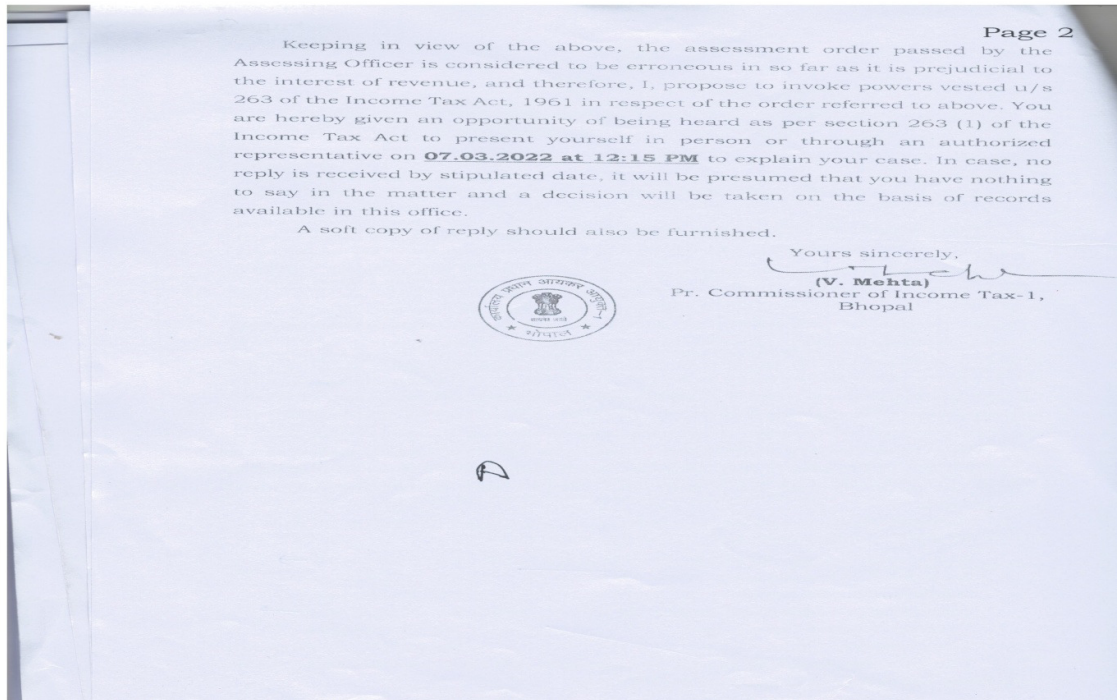
On perusal of case records, it has been observed that the assessee has sold the residential plot of Rs. 30,00,000/- whereas the circle rate of the said property is Rs. 54,46,485/-. Thus, the assessee has allegedly shown to sell the property below the circle rate. As per the office records, the A.O. had called for certain documents and the assessee had submitted documentary evidence and it seems that the same may not have been properly verified during the assessment proceedings. On these grounds, same needs to be verified.

As per the section 50C Of I.T. Act, if the property is sold below circle rate then the circle rate of the property would be deemed to be the rate at which the property has been sold and capital gain would be computed accordingly.

In the light of above the capital gain is to calculated as per circle rate i.e. Rs.54,46,485/- Computation of LTCG are as under:-

Sale proceeds (as per circle rate) 18/07/2016	: Rs. 54,46,485 →
Less: Transfer Expenses	: Rs. 6,000 6000
Net Sale Consideration	: Rs. 53,86,485
Less: Cost of acquisition (Indexed) 01/04/200	: Rs. 1,58,451 →
Taxable Capital Gain (LT)	: Rs. 52,28,034
Tax payable	: Rs. 10,15,174+Interest

The mistake resulted under assessment of LTCG for Rs. 52,46,485/- involving short levy of tax of Rs. 10,15,174/-



4. Finally, the Ld. PCIT passed revision-order dated 23.03.2022 u/s 263 terming the assessment-order as erroneous-cum-prejudicial to the interest of assessee and thereby setting aside the assessment-order with a direction to Ld. AO to make assessment de novo. Thereafter, Ld. PCIT also passed Corrigendum dated 30.03.2022 to rectify the revision-order.

5. Aggrieved by such revision-order, the assessee has filed this appeal.

6. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

7. Ld. AR representing the assessee straightaway carried us two important lacunas in the revision-proceeding conducted by Ld. PCIT, viz. (i) first one in the initiation of revision-proceeding as revealed by show-cause notice dated 28.02.2022; and (ii) second one in the conclusion of revision-proceeding as revealed by the revision-order dated 23.03.2022 plus

corrigendum dated 30.03.2022.

8. Regarding first lacuna, the Ld. AR drew our attention to the show cause notice (reproduced in earlier paragraph) and demonstrated that a bare perusal of the same demonstrates that the Ld. PCIT has mentioned “As per the office records, the A.O. had called for certain documents and the assessee had submitted documentary evidence and it seems that the same may not have been properly verified during the assessment proceedings.” Ld. AR submitted that the Ld. PCIT has himself mentioned in unequivocal terms that the Ld. AO has called for documents and the assessee has submitted documentary evidences. Thereafter, the Ld. PCIT has mentioned “It seems that the same may not have been properly verified during the assessment proceedings”. Ld. AR vehemently contested that these premises mentioned by Ld. PCIT themselves, without saying anything more, demonstrate that the revision-action has been undertaken on mere suspicion, surmise and conjecture and not on a sound or rational basis, which cannot be allowed in the revision-proceeding.

9. Regarding second lacuna, Ld. AR drew our attention to Para No. 3 of the revision-order which reads as under:

**“3. In this case, assessment order u/s 143(3) dated 27.12.2019 was finalized without considering the above mentioned facts. This omission on part of the AO, renders the order u/s 143(3) dated 27.12.2019 for A.Y. 2017-18, erroneous as well as prejudicial to the interests of revenue. Accordingly, vide this office notice dated 28.02.2022 & 11.03.2022, the assessee was required on show cause as to why action u/s 263 should not be resorted to. However, non-attended on the date of hearing and also no further request for adjournment was made through personal appearance/telephone/email.”**

Ld. AR submitted that having noted above Para No. 3, the Ld. PCIT went on concluding that that the assessee had no evidence/submissions to make and accordingly proceeded to complete revision on the basis of information/facts available on record. According to Ld. AR, the Ld. PCIT

passed revision-order *ex-parte* assessee.

Then, the Ld. AR submitted that the fact is such that the assessee filed a written-submission on 03.03.2022 and 14.03.2022 on the ITBA Portal designated by Income-Tax Department but the Ld. PCIT did not take to consider the same. Ld. AR submitted that subsequent to passing of revision-order when the assessee brought this grave mistake to the knowledge of Ld. PCIT, he passed a Corrigendum dated 30.03.2022 as under:

**“Corrigendum**

***The following amendments in the order u/s 263 dated 23<sup>rd</sup> March 2022 in the case of Shri Rajendra Prasad Shrivastava (AERPS2537P) for A.Y.2017-18, is hereby made:-***

- (i) For the para-3 appearing in the aforesaid order, the following para-3 shall be substituted-***

***“3. In this case, assessment order u/s 143(3) dated 27.12.2019 was finalized without considering the above mentioned facts. This omission on part of the AO, renders the order 143(3) dated 27.12.2019 for A.Y.2017-18, erroneous as well as prejudicial to the interests of revenue. Accordingly, vide this office notice dated 28.02.2022 & 11.03.2022, the assessee was required to show cause as to why action u/s 263 should into be resorted to. A written submission from CA Satyanarayan Agrawal, AR of the assessee was received on 03.03.2022 & 14.03.2022 through ITBA which was placed on record. I have carefully gone through the submission and proceed with my findings on the basis of information/facts available on record.”***

Thus, by this Corrigendum as the Ld. AR contends, the Ld. PCIT has simply substituted Para No. 3 of the revision-order but not made any change in the rest of the order which continues to remain in *ex-parte* terms without taking cognizance of the assessee’s submission.

10. With above submissions, Ld. AR strongly argued that the revision-order was perverse, both at the initiation-stage as well as completion-stage, and therefore deserves to be quashed.

11. Per contra, Ld. DR vehemently supported the revision-order and prayed to uphold the same.

12. We have considered rival submissions and also perused the documents referred to by Ld. AR in his pleadings, copies of which are also filed in the case-records. After careful consideration, without repeating the submission of Ld. AR which are noted at length in the foregoing paragraphs, we agree with the Ld. AR that firstly the revision-action had been taken on mere suspicion, surmise or conjecture; and the secondly the revision-order itself has been passed without taking cognizance of the assessee's reply filed on ITBA portal. Further, in the Corrigendum, the Ld. PCIT has just substituted para No. 3 of his order without making any change in rest of his order and thereby not carrying the Corrigendum to a logical end, which makes his revision-order itself erroneous. These fallacies in the action of Ld. PCIT, as we believe, are certainly grave and render the revision-order as perverse. Therefore, we do not support the approach of Ld. PCIT.

13. We are also aware of the order of Hon'ble **ITAT, Cuttack Bench in Pradeep Kumar Mohanty Vs. PCIT, Cuttack, ITA No. 279/CTK/2019 dated 09.09.2020**, where on a similar set of facts, it was held thus:

***“11. It is also the contention of the assessee as stated in the grounds of appeal that written compliance was made in reply to the said notices. However, Ld.Pr CIT has not mentioned anything about the written compliance and simply directed the AO to modify the assessment order by further adding Rs.2,14,584/- towards the expenditure incurred on “fuel and lubricants”. It is a trite law that opportunity of hearing is a sin qua non in Section 263 of the Act for unsettling a statutory order. It was the duty of the Pr. CIT to provide the assessee an effective opportunity to enable him to substantiate its claim. In any case, it is one of the fundamental principles of natural justice that no person can be condemned unheard i.e.audi alteram partem, and the impugned revision order was thus passed in violation of the principles of natural justice in absence of any effective/reasonable opportunity of hearing provided to the assessee. It is mandatory to apply the principles irrespective of the fact as to***

**whether there is any statutory provision or not. In the present case, we find that the assessee was not afforded opportunity as is evident from the impugned order. Even, there is no mention about the written compliance furnished by the assessee, as claimed in the grounds of appeal. In view of above factual position, we are of the opinion that the Pr.CIT has committed a gross error in not providing any effective/reasonable opportunity of being heard to the assessee before passing the order. Accordingly, we quash the revisional proceedings, notice and order framed u/s.263 of the Act by the Pr. CIT and allow grounds of appeal of the assessee**

**12. In the result, appeal filed by the assessee is allowed.”**

14. In view of a detailed discussion made in the foregoing paragraphs and respectfully following the rationale in the Order of **Pradeep Kumar Mohanty**(supra), we are inclined to quash the action of Ld. PCIT. Accordingly, we quash the revision-order and restore the original assessment-order passed by Ld. AO.

**15. Resultantly, this appeal of assessee is allowed.**

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 20/01/2023</i>
<i>Order pronounced in the open court on ...../...../2023</i>

Sd/-

(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक/Dated : 20.01 .2023

Patel/Sr. PS

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*

1.	Date of taking dictation	12.1.23
2.	Date of typing & draft order placed before the Dictating Member	12.1.23.
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	12.1.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	