

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.249/Chny/2021  
निर्धारण वर्ष/Assessment Year: 2015-16

Late P.S. Ulagarakshagan  
Ambika U, L/H of Ulagarakshagan,  
No. 4, Anushya Street, Nagarjuna  
Nagar, 2<sup>nd</sup> Street, Rangarajapuram,  
Kodambakkam, Chennai 600 024.

Vs. The Principal Commissioner of  
Income Tax-3,  
Chennai – 34.

**[PAN:AAIPU8947Q]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Y. Sridhar, F.C.A.  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Senthil Kumaran, CIT  
सुनवाई की तारीख/ Date of hearing : 09.03.2023  
घोषणा की तारीख /Date of Pronouncement : 15.03.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax, Chennai – 3, Chennai dated 11.03.2021 relevant to the assessment year 2015-16 passed under section 263 of the Income Tax Act, 1961 [“Act” in short].

2. The appeal filed by the assessee is delayed by 64 days in filing the appeal due to outbreak of Covid-19 pandemic and accordingly, the delay

in filing the appeal is condoned and admitted for adjudication.

3. The assessee initially raised the following grounds:

1. *The ld. CIT (A) has erred in the facts and circumstances of the case by invoking Section 263 of the IT Act, 1961.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT (A) failed to appreciate that proceedings u/s 263 of the Act are beyond jurisdiction and therefore void of legal effect in the appellant's case.*
3. *The Id. CIT (A) has failed to appreciate the fact that the notice u/s 263 was to be issued in the name of correct person. In this case, the notice was issued on appellant after his death, which was returned undelivered and hence the said issuance of notice is legally void.*
4. *With regard to applicability of Section 50C, the ld. CIT (A) has also failed to appreciate that merely because the guideline value was higher than sale consideration in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue.*
5. *With regard to applicability of Section 56, the ld. CIT (A) failed to consider the documentary evidence regarding existence of liability during the course of assessment.*
6. *In view of the above, the SCN issued u/s 263 is void and requires to be quashed and justice be rendered."*

Subsequently, the Id. Counsel for the assessee filed a petition for admission of additional ground. He has submitted that a notice was issued under section 263 of the Act against a dead person is invalid. Audit objection as cause for the notice under section 263 of the Act against a dead person is a legal ground and it may be raised at any time and same may be considered. The additional grounds raised by the assessee are reproduced as under:

1. *The appellant died on 15/12/2018. A show-cause notice u/s 263 was issued on 13/12/2018. The said SCN was, however, dispatched to the appellant*

only on 18/12/2018. The Ld. CIT passed the Order setting aside the assessment order dated 28/12/2017 and remitting the matter back to the AO to complete the assessment in the manner as mentioned in the revision order u/s 263 dated 11/03/2021.

2. *The issue of notice u/s 263 of the IT Act should be issued in the name of correct person. The sine qua non for acquiring jurisdiction to revise an assessment u/s 263 is that such notice should be issued in the name of the correct person.*
3. *Thus, the notice which has been issued in the name of dead person is also not protected either by provision of section 292B or 292BB of the IT Act. This is evident from Section 263 of the act which required that before proceeding can be taken up for reassessment, a notice must be served on the assessee. The assessee on whom the notice is sent must be a living person i.e., legal heir of deceased, for the same to be responded.*
4. *In the present case the assessee passed away on 15/12/2018, whereas the Section 263 notice was dispatched after his date of death on 18/12/2018, which fact was brought to the knowledge of Commissioner vide letter dated 24/12/2018 and the same was captured in the revision order in para no.3.*
5. *The CIT failed to issue a Section 263 notice against the legal representative of the deceased assessee as provided in Sec.159(2)(b), which is evident from the revision order.*
6. *It seems that Audit objection may be the root cause for issue of show-cause notice u/s 263 of the IT Act. However, it is submitted that it is almost a settled law that on the basis of audit objection or even recommendation of the Assessing Officer, provisions u/s 263 cannot be invoked. It is the prerogative of the Principal Commissioner of Income Tax, on examination of records, to invoke the provisions of Section 263, if he considers that an Order by the AO is erroneous in so far as it is prejudicial to the interests of Revenue.*

*In view of the above, the show-cause notice u/s 263 is void and requires to be quashed.*

7. *Thus, we humbly pray to the Hon'ble forum to admit the above additional ground and render justice.*

4. Facts are, in brief, that the assessee is engaged in the business of real estate and filed his return of income for the assessment year 2015-16 on 31.10.2015 admitting total income of ₹.5,19,01,191/-. The return filed by the assessee was processed under section 143(1) of the Act and the

case was selected for scrutiny through CASS. A notice under section 143(2) of the Act was issued to the assessee on 20.09.2016 and served, followed by a notice under section 142(1) r.w.s. 129 of the Act dated 16.06.2017. In response to the notices, the assessee's CA appeared and furnished the details as called for. Thereafter, the assessment was completed under section 143(3) of the Act dated 28.12.2017.

4.1 Subsequently, the Id. PCIT issued a show-cause notice dated 12.12.2018 under section 263 of the Act calling for explanation from the assessee on the ground that there is a short computation in the sale consideration to the tune of ₹.4,80,00,000/- being difference between the sale consideration offered for LTCG of ₹.12,00,00,000/- and market value of the property sold as per sale deed of ₹.16,80,00,000/-. Further, as per balance sheet, ₹.1,35,00,000/- has been received towards land advance from M/s. Harmony Residences Pvt. Ltd. and admitted that due to unavoidable circumstances the agreement entered with M/s. Harmony Residences Pvt. Ltd. could not be executed and ₹.30,00,000/- was repaid on 19.12.2017, which was duly acknowledged by M/s. Harmony Residences Pvt. Ltd. Remaining balance amount of ₹.1.05 crores has to be considered and assessed as income from other sources under section 56 of the Act. This amount has not been included in the total income and

on the above two counts, the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. In response to the above show-cause notice issued by the Id. PCIT, the assessee's representative filed a letter dated 05.03.2020 and submitted that all the details were filed before the Assessing Officer and the Assessing Officer, after examining the details, the assessment was completed under section 143(3) of the Act by making addition of ₹.33,46,680/-.

4.2 After considering the reply of the assessee, the Id. PCIT has pointed out that the Assessing Officer has not made any enquiry in respect of LTCG offered by the assessee of ₹.12,00,00,000/- and the market value of the property sold as per the sale deed at ₹.16,80,00,000/- and also in respect of amount recovered from M/s. Harmony Residences Pvt. Ltd. of ₹.1.05 crores was not examined by the Assessing Officer. Therefore, the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue and directed the Assessing Officer to redo the assessment afresh after giving an opportunity to the assessee.

5. On being aggrieved, the assessee carried the matter in appeal before the Tribunal. The first ground raised by the assessee is that the

order passed by the Id. PCIT dated 11.03.2021 is an order passed against a dead person and it is an invalid order. In this case, the assessment order under section 143(3) of the Act was passed on 28.12.2017. As on the date of assessment order, the assessee was alive. The Id. PCIT has considered the assessment order passed by the Assessing Officer as erroneous and prejudicial to the interest of Revenue and issued notice under section 263 of the Act on 12.12.2018. On the date of issuance of show-cause notice by the Id. PCIT, the assessee was alive. The assessee's representative filed a letter dated 24.12.2018 stating that the assessee has expired. Subsequently, the Id. PCIT has issued a letter dated 24.01.2019 and 14.07.2019 to the assessee's representative to file legal heir certificate of the deceased assessee. On receipt of the legal heir certificate and death certificate, hearing letter posting the case on 27.02.2020 was sent to the assessee's legal heir on 21.02.2020. The notice issued under section 263 of the Act dated 21.02.2020 has been filed before the Tribunal. In response to the above, the assessee's representative, Shri Y. Sridhar appeared on 28.02.2020 & 06.03.2020 and filed written submissions. Subsequently, on 11.03.2021, the Id. PCIT passed the order under section 263 of the Act. The address of the assessee mentioned in his order is reproduced as under:

To,

POLUR SADAGOPAN ULAGARAKSHAGAN  
Ambika U, L/H Late P.S. Ulagarakshagan, 4, Anushya  
Street, Nagarjuna Nagar, 2<sup>nd</sup> Street Rangarajapuram,  
Kodambakkam, Chennai 600 024, Tamil Nadu, India.

Accordingly, to the Id. Counsel for the assessee, the order passed by the Id. PCIT after the death of the assessee i.e., Polur Sadagopan Ulagarakshagan – on a dead person is invalid.

6. On the other hand, the Id. DR has submitted that when the Id. PCIT has exercised his power conferred under section 263 of the Act as on the date i.e., 12.12.2018, the assessee was alive. The Id. PCIT passed the order under section 263 of the Act on assessee's legal heir and strongly supported the revision order passed by the Id. PCIT.

7. We have heard both the sides, perused the materials available on record and gone through the order passed by the Id. PCIT including paper books filed by the assessee. While exercising his power conferred under section 263 of the Act, as on the date of issuing notice under section 263 of the Act, it was an admitted fact that the assessee was alive. Subsequently, on 15.12.2018, the assessee has expired and when it came to the notice of the Id. PCIT, the Id. PCIT has issued a letter dated 24.01.2019 and 14.07.2019 directing the assessee's representative to file legal heir certificate and death certificate. Not only that, the Id. PCIT

issued a letter dated 21.02.2020 to the wife of the assessee directing to appear in person or through authorized representative. Finally, the Id. PCIT passed the order under section 263 of the Act on assessee's legal heir. Therefore, the argument of the Id. Counsel for the assessee that the order passed on death person is not correct. We find that by following entire procedure, the Id. PCIT has passed the revision order under section 263 of the Act dated 11.03.2021 is in accordance with law.

8. One more argument of the Id. Counsel for the assessee is that the notice issued by the Id. PCIT dated 21.02.2020 is not a statutory notice and not only that it is issued only one legal heir and the Id. PCIT was suppose to issue notice to all the legal heirs. In this context, we find that the Id. PCIT after issuing a notice to the legitimate legal heir viz., wife of the assessee Smt. U. Ambika, concluded the revision order under section 263 of the Act is a valid order. It is not necessary that all other married legal heirs are required to be brought on record. In fact, the order under section 263 of the Act was passed by the Id. PCIT on the ground that the assessment order under section 143(3) of the Act dated 28.12.2017 is erroneous and prejudicial to the interest of the Revenue. At the time of completion of assessment order, the assessee was alive and therefore, the arguments raised by the Id. Counsel for the assessee is an after-

thought and not tenable in the eyes of law. Thus, all the additional grounds raised by the assessee are dismissed.

9. So far as revision order passed under section 263 of the Act is concerned, the Id. PCIT has issued show-cause notice on following two grounds:

1. There is a short computation in the sale consideration to the tune of ₹.4,80,00,000/- being difference between the sale consideration offered for LTCG of ₹.12,00,00,000/- and market value of the property sold as per sale deed of ₹.16,80,00,000/-.
2. As per balance sheet, ₹.1,35,00,000/- has been received towards land advance from M/s. Harmony Residences Pvt. Ltd. and admitted that due to unavoidable circumstances the agreement entered with M/s. Harmony Residences Pvt. Ltd. could not be executed and ₹.30,00,000/- was repaid on 19.12.2017, which was duly acknowledged by M/s. Harmony Residences Pvt. Ltd. Remaining balance amount of ₹.1.05 crores has to be considered and assessed as income from other sources under section 56 of the Act.

On perusal of the assessment order passed under section 143(3) of the Act dated 28.12.2017, the Assessing Officer has not discussed anything about the defects noticed by the Id. PCIT. The Assessing Officer issued notice under section 143(2) of the Act. However, the defects noticed by the Id. PCIT in respect of computation of LTCG and advance payment received from M/s. Harmony Residences Pvt. Ltd. No question has been asked on the above aspects and no reply was given by the assessee. Even under section 142(1) of the Act, the Assessing Officer has not issued any questionnaire in respect of LTCG and advance payments

received from M/s. Harmony Residences Pvt. Ltd. and even no reply was given by the assessee on these aspects.

10. From the above, it is very clear that the Assessing Officer has not examined the above two defects noticed by the Id. PCIT. Therefore, we are of the opinion that the assessment order passed under section 143(3) of the Act is erroneous and prejudicial to the interest of Revenue and the Id. PCIT has rightly invoked the provisions of section 263 of the Act and directed the Assessing Officer to redo the assessment. Thus, we find no infirmity in the order passed by the Id. PCIT.

11. We have also perused the case law filed by the assessee in the form of paper book and find that the case law have no application to the facts of the present case in hand.

12. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 15<sup>th</sup> March, 2023 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 15.03.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &  
6. गार्ड फाईल/GF.