

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 367/Kol/2022**  
**Assessment Year: 2013-14**

Shri Gautam Sett (PAN: ALAPS 5475 N)	Vs.	PCIT-8, Kolkata (Now PCIT-5, Kolkata)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	18.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.05.2023
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate
For the Respondent/ राजस्व की ओर से	Shri Subhrajyoti Bhattacharjee, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax -8, Kolkata (hereinafter referred to as the Ld. PCIT”) passed u/s 263 of the Income tax Act, 1961 (hereinafter referred to as the Act) dated 20.03.2020 for the AY 2013-14.

2. The only issue raised by the assessee in its appeal is against the invalid exercise of jurisdiction u/s 263 of the Act by the ld. PCIT.

3. The PCIT on perusal of the assessment record observed that the assessee had made a high value property transaction of sale of land for Rs. 80,00,000/- and, after taking into account the indexed cost of Rs. 2,44,86,180/-, claimed total long term capital loss of Rs. 1,64,86,480/-. The PCIT further noted that the stamp value as per

Stamp Valuation Authority was Rs. 4,84,60,044/-. However AO while passing the order made an addition of only Rs. 4,04,60,044/-. According to Id. PCIT addition was made of Rs. 4,04,60,044/- by allowing reduction of Rs. 80,00,000/- resulting into the capital gain of Rs.80,00,000/- being under assessed with consequential tax effect of Rs. 8,24,400/- and therefore the assessment framed by the AO is erroneous as well as prejudicial to the interest of the revenue. Henceld. PCIT issued notice u/s 263 of the Act on 4.3.2020 which was replied by the assessee on 18.03.2020. The Id. PCIT, after taking into account the said written submissions, revised and set aside the order framed by the AO u/s 143(3)/147 of the Act dated 28.12.2017 vide revisionary order passed order u/s 263 of the Act dated 20.03.2020 and further directed the AO to pass fresh assessment order after taking into account the facts and legal position by affording a reasonable opportunity to the assessee.

4. The Ld. A.R vehemently submitted before us that the assessee has filed return of income on 23.07.2013 showing total income of Rs. 2,82,515/- which was processed u/s 143(1) of the Act. Thereafter upon receipt of information from the I & CI, Wing, Kolkata, the case of the assessee was reopened u/s 147 of the Act on 7.2.2017 by issuing notice u/s 148 of the Act on 01.03.2017. The Ld. A.R submitted that the case of the assessee was reopened on the same ground or the issue that assessee having made high value transaction of sale of a landed property situated at 70, Ashutosh Mukherjee Road, Kolkata-700025 for which the assessee has received consideration of Rs. 80,00,000/- whereas the stamp value of the property was Rs. 4,84,60,044/- as per Stamp Valuation Authority which has to be the deemed consideration u/s 50C of the Act. The Ld. A.R submitted that after doing detailed examinations and verification of the issue in the light of the evidences filed by the assessee, the AO made an addition of Rs. 4,04,60,044/- on account of capital gain by taking deemed sale consideration at Rs. 4,84,60,044/- u/s 50C of the Act. The Ld. A.R submitted that the assessee has challenged the assessment framed by the AO u/s 143(3)/147 of the Act dated 28.12.2017 before the First Appellate Authority which was pending for adjudication and in the mean time, the PCIT invoked the revisionary jurisdiction u/s

263 of the Act on the ground that the AO has allowed deduction of Rs. 80,00,000/- from the deemed sale consideration and therefore the long term capital gain to this extent has been under assessed and accordingly assessment framed is erroneous as well as prejudicial to the interest of the revenue. The Ld. A.R pointed out that the assessee has computed long term capital loss at Rs. 1,64,86,480/- by taking actual sale consideration of Rs. 80,00,000/- and indexed cost of land as 2,44,86,480/- by indexing the FMV as on 1.4.1981. the ld AR stated that this is the property which was devolved upon the assessee by inheritance. The Ld. A.R submitted that even the AO has not referred the issue to the Valuation Officer and wrongly adopted the deemed consideration as per Section 50C of the Act equal to the value as per Stamp Valuation Authority. The Ld. A.R therefore prayed that the assumption of jurisdiction by the PCIT is wrong on two counts namely i) the provision of section 263 of the Act cannot be invoked when the issue is sub-judice before the Commissioner of Income Tax (appeals) in terms of clause (c ) explanation (1) to Section 263 by relying on the decision of Co-ordinate Bench in the case of Rabi Pal vs. ITO in ITA No. 193/Kol/2022 for AY 2017-18 dated 5.9.2022 and ii) that the said property was occupied forcibly by ruling political party and different powerful leaders such as South Calcutta District Congress Committee Office, Rajib Gandhi Memorial Office under control Late Priyo Ranjan Das Munsi, Ex-MP and Former Central Minister, Tarak Smriti Pathagar under control of Shri Madan Mitra, former MLA and minister of ruling party and TMC Party Office. Those leaders forcibly occupied the building and the assessee since a long time period tried his best to sell the property but failed due undue pressure and threats by the local political leaders. The ld AR submitted that ultimately a tenant purchased the building with a minimum price at Rs. 80,00,000/- The ld. AR stated that the assessee was compelled to sell the property at much lower price than value as per stamp valuation authority. The AR also submitted that assessee was not having any control over the said property. The Ld. A.R submitted that the assessee computed long term capital loss of Rs. 1,64,86,480/- by taking indexed cost of Rs. 28,74,000/- by indexing FMV as on 01.04.1981 and calculated the long term capital loss accordingly. The Ld. A.R submitted that the

issue has been examined by the AO in the assessment proceedings and has taken a possible view and therefore on this count also the exercise of jurisdiction u/s 263 is bad in law as the view taken by the AO one whereas in the opinion of the PCIT another view should have been taken. The ld AR prayed that the revisionary proceedings as well as the order u/s 263 of the Act may kindly be quashed.

5. The Ld. D.R on the other hand relied on the order of PCIT and submitted that the jurisdiction of PCIT has been validly exercised as the AO has failed to compute correct long term capital gain on the said sale of property and thus the order passed by the AO was erroneous and prejudicial to the interest of the revenue and was rightly revised. The Ld. D.R therefore prayed that the appeal of the assessee may kindly be dismissed.

6. After hearing the rival contentions and perusing the material on record, the undisputed facts as culled out of the records are that on the date of exercise of jurisdiction and passing of order by ld. PCIT, the appeal was pending before the First Appellate Authority which is in clear violation of provisions of Clause (c) explanation (1) to Section 263 of the Act which provides that no revisionary jurisdiction shall be exercised when the issue is sub-judice before the Ld. CIT(A). The case finds support from the decision of Co-ordinate Bench of Kolkata in the case of Rabi Pal vs. ITO in (supra). The operative part is reproduced as under:

*“5. After hearing the rival contentions and perusing the materials as placed before us, we note that the said assessment order as framed originally u/s 143(3) of the Act dated 04.12.2019 has been challenged by the assessee before the First Appellate Authority and appeal is pending for adjudication. In the light of these facts, we are unable to understand as to how the jurisdiction of the Ld. PCIT u/s 263 of the Act is maintainable on this issue. The provisions of clause (c) of Explanation (1) to Section 263 provides that when the appeal is pending before the Commissioner of Income Tax (Appeals) on some issue, the exercise of jurisdiction u/s 263 of the Act on the said issue is not available to the ld PCIT. In the present case also the ld. Commissioner of Income Tax (appeals) is seized of the issue and therefore jurisdiction u/s 263 of the Act has been invalidly exercised by the Ld. PCIT. The case of the assessee finds support from the several decisions of various High Courts namely Smt. Renuka Philip vs. ITO reported in [2018] 409 ITR 567 (Mad), decision of Hon’ble Allahabad High Court in the case of CIT vs. Vam Resorts and Hotels Pvt. Ltd. [2019] 418 ITR 723 (All). In both the above decisions of the Hon’ble High Courts has held that when the appeal is pending before the Commissioner (appeals), the exercise of jurisdiction u/s 263 of the Act*

*is not available to the Ld. PCIT. Accordingly, we are inclined to quash the order passed u/s 263 of the Act.”*

7. We note that the AO has examined the issue and has taken a plausible view whereas the PCIT on the other hand has not explained or set out s to how the capital gain to the tune of Rs. 80,00,000/- has been under assessed. In our considered view where in the opinion of the Id PCIT the enquiry has wrongly been conducted by the AO then the PCIT is duty bound to make enquiry and find out as to how the assessment framed by the AO is erroneous and prejudicial to the interest of the revenue. However in the present case, the Id PCIT stated that the long term capital gain was short computed by Rs. 80,00,000/- whereas the AO has properly taken all the aspect and taken a plausible view. We note that the AO took into account the sale consideration of Rs. 4,84,60,044/- and after reducing indexed cost as furnished by the assessee, the AO has added entire sales consideration by reducing Rs. 80,00,000/- sale consideration as was disclosed by the assessee without referring the matter to the DVO which was also not correct and has been challenged before the Ld. CIT(A). Under the facts and circumstances, we are of the view the PCIT has exercised the resorted to provisions of section 263 of the Act without valid jurisdiction and consequently, the proceedings as well as order passed u/s 263 of the Act are invalid and nullity in the eyes of law and accordingly same are quashed.

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

Order is pronounced in the open court on 31<sup>st</sup> May, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 31<sup>st</sup> May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Gautam Sett, Palpara, Chandannagar, Hooghly-712136
2. Respondent – PCIT-8, Kolkata (Now PCIT-5, Kolkata)
3. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata