

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Aby T.Varkey, Judicial Member

ITA No. 151/Coch/2021
(Assessment Year: 2016-17)

Viswanatha Manoj Kumar
39/421, Temple Road
Kadavanthara
Ernakulam 682020
[PAN:ADWPM1619G]

[Appellant]

Pr. Commissioner of
Income Tax - 1
vs. C.R. Building, I.S. Press Road
Kochi 682018

[Respondent]

Appellant by: Shri K.M.V. Pandalai, Advocate
Respondent by: Shri Prasanth V.K., CIT-DR

Date of Hearing: 18.05.2023
Date of Pronouncement: 12.06.2023

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee agitating the Order under section 263 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 03.3.2021 by the Principal Commissioner of Income Tax-1, Kochi ('Pr. CIT') in respect of his assessment under section 143(3) of the Act for AY 2016-17 vide order dated 07.12.2018.

2. The brief facts of the case are that the assessee filed his return of income for the relevant year on 30.6.2016, which was selected for complete scrutiny in view of large exempt income. The assessment was completed assessing the total income at Rs.129.86 lakhs. The learned Pr. CIT, on an examination of record, found that no enquiry in a matter, which *prima facie* warranted enquiry, was made. The assessee, it was observed by him, had purchased land admeasuring 18.54 ares for Rs.139.18 lakhs during the relevant year, even as its' fair market value (FMV), going by the

stamp valuation, i.e., the price fixed by the State Government for the purpose of levy of stamp duty, was at Rs.215.21 lakhs, i.e., at Rs.76.03 lacs higher. The provision of section 56(2)(vii)(b)(ii) of the Act, reading as under, was thus attracted, applicability of which had not been examined by the Assessing Officer (AO) in assessment:

Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i) .. (vi)

(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 but before the 1st day of April, 2017,—

(a)

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

The assessment was accordingly set aside by him for *de novo* consideration, and making an assessment in accordance with law per a speaking order.

3. We have considered the rival contentions, and perused the material of record. The assessee's first objection before us, adverting to the notice u/s. 263(1) of the Act dated 25.01.2021 by the Id. Pr. CIT, was as to the absence of jurisdiction inasmuch as the said notice was not a valid notice, having been issued without quoting

the Document Identification Number (DIN), mandatory for all communications by the Revenue, except under circumstances specified therein per the Board Circular No. 19 of 2019 dated 14.8.2019 (PB pgs. 60-61). There was no mention of DIN in the notice issued u/s. 263 issued by the Id. Pr. CIT on 25.01.2021 (PB pgs. 38-39). Notice u/s. 263(1) of the Act, even as observed by the Bench during the hearing, is not a jurisdictional notice. As explained by the Hon'ble Apex Court per a series of decisions, viz. *Gita Devi Aggarwal v. CIT* [1970] 76 ITR 496 (SC); *CIT v. Electro House* [1971] 82 ITR 824 (SC); *CIT v. Amitabh Bachchan* [2016] 384 ITR 200 (SC), that a show cause notice is not a concomitant of the proceedings u/s. 263. The whole premise of a notice is to put the assessee to notice of the proceedings under section 263 having been initiated against it and, two, afford an opportunity of hearing thereto. Nothing more and, nothing less. It may be relevant to quote from the decision in *Amitabh Bachchan* (supra):

‘Unlike the power of reopening an assessment under section 147 of the Act, the power of revision under section 263 is not contingent on the giving of a notice to show cause. In fact, section 263 has been understood not to require any specific show-cause notice to be served on the assessee. Rather, what is required under the provision is an opportunity of hearing to the assessee. The two requirements are different: the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. There is nothing in the section to raise the notice to the status of a mandatory show-cause notice affecting the initiation of the exercise in the absence thereof or to require the Commissioner to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of section 263.’

Both these attributes of putting the assessee to notice as well as extending due opportunity of hearing, are met in the instant case, i.e., the assessee being communicated the fact of initiation of section 263 proceedings, and also extended due opportunity of hearing, which in fact stands availed. There is no dispute in this regard. The assessee’s technical argument would thus be of no assistance thereto.

4. Coming to the assessee’s objection on the merits of section 263 proceedings, Shri Pandalai, the Id. counsel for the assessee, could not show us any evidence or

material *qua* consideration of the issue arising, i.e., stamp value of the immovable property (IP), being land, acquired by the assessee during the relevant previous year, being higher than the stated purchase consideration and, consequently, the applicability of sec. 56(2)(vii)(b)(ii) of the Act on the said acquisition. The only enquiry made in assessment with regard to the purchase of land was with reference to the source of investment, i.e., as disclosed, and which was explained by the assessee vide his reply dated 03.12.2018 as by way of withdrawal from his capital in his proprietary firm, M/s. Prabhu Steels. There is no whisper of valuation thereof and, accordingly, of it being a case of under-valuation, i.e., with reference to the FMV, to which therefore sec. 56(2)(vii)(b)(ii) of the Act may apply. The failure to make enquiry, where it is *prima facie* warranted, would make an order of adjudication erroneous and prejudicial to the interests of Revenue, liable for revision u/s. 263 of the Act. Case law in the matter is legion, and toward which the Id. Pr. CIT cites two, i.e., *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83 (SC) and *Raja & Co. v. CIT* [2011] 335 ITR 381 (Ker).

5. It is then said that ‘purchases’ do not amount to ‘receipt’, and that the matter ought to have been referred by the Id. Pr. CIT to the Valuation Officer (DVO). We are unable to appreciate the import of the said objection. The revisionary authority has not adjudicated on merits of the matter, but only set aside the assessment, directing the AO to examine it afresh, and decide in accordance with law. All contentions are open for being made before the assessing authority, and the assessee can make out a case of it being, despite apparent, undenied difference in value, not a case of under-valuation or falls under the *provisos* to the provision. The stamp value is a *prima facie* evidence, available with the Revenue, of the value of the subject property being at Rs.76.03 lakhs higher than the stated sale consideration at the relevant time, i.e., of its purchase by the assessee. Even as s. 56(2)(vii)(b)(ii) specifically adverts to stamp-duty value, apparent, is, even otherwise, presumed in law to be real, and the burden to show that it is not so is

on the person who so claims. Like-wise, for the argument of 'purchase' being not a 'receipt'. The argument, made *dehors* any exposition of law in the matter, is misplaced inasmuch as the same would stand to be made only in appropriate proceedings, where this aspect of the matter is challenged and deliberated upon on merits. *Prima faice*, it is though difficult to accept the contention; the word 'receipt' being a word of wide import, encompassing within its fold all acts where a property is received, i.e., in one's own right.

6. We, accordingly, have no hesitation in upholding the impugned order and, further, find no reason for interference therewith. We decide accordingly.

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

Order pronounced on June 12, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Aby T. Varkey)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: June 12, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.