

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN CIRCUIT BENCH, DEHRADUN  
BEFORE  
SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.2187/Del/2018  
(ASSESSMENT YEAR 2010-11)**

Sh. Sanjay Kumar 170, Vasant Vihar-1 Dehradun PAN-AKKPK 1007F	Vs.	Pr. CIT Dehradun
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No.2029/Del/2018  
(ASSESSMENT YEAR 2010-11)**

Sh. Dariyav Singh 28-Chakrata Road, Dehradun PAN-AWKPS 6026L	Vs.	Pr. CIT Dehradun
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Dr. Rakesh Gupta and Mr. Sherey Jain, Advocates
Respondent by	Mr. N.S.Jangpangi, CIT-DR

Date of Hearing	23/06/2023
Date of Pronouncement	28/06/2023

**ORDER**

- (A) Both the appeals by Assessee are filed against the separate orders of Learned Principal Commissioner of Income Tax,

Dehradun [Ld. PCIT(A)], for short], dated 23/03/2018 and 24/01/2018 for Assessment Year 2010-11.

(B) Grounds taken in these appeals are as under:

ITA No.2187/Del/2018

“1 That having regard to fact & circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and has further erred in observing that the assessment order passed u/s 143(3)/148 on 15/03/2016 is erroneous in so far as it is prejudicial to the interest of revenue and that too by recording incorrect facts and findings and without observing the principles of natural justice.

2. That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in holding as under:-

- That the assessee has not complied with the conditions enumerated for claiming deduction u/s 54B of the I.T. Act.
- That the issue of said deduction has not been examined while completing the re-assessment u/s 143(3)147 dated 15/03/2016.
- That the re-assessment order is hereby set aside with the direction to AO to re-examine the issue of claim of deduction u/s 54B afresh.
- That the assessee came forward with fabricated documents to claim deduction u/s 54B which is not admissible.

3. That having regard to the facts and circumstances of the case, order u/s 263 is bad in law for the reason that the proceedings u/s 147 initiated itself was bad in law as the order u/s 143(3)/147 dated 15/03/2016 was not maintainable and an invalid re-assessment cannot be set aside u/s 263 of the Act.

4. That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.

ITA No.2029/Del/2018

“1 That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in assuming jurisdiction u/s 263 and has further erred in observing that the assessment order passed u/s 143(3)/148 on 18/03/2016 is erroneous in so far as it is prejudicial to the

*interest of revenue and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

2. *That having regard to facts and circumstances of the case, Ld. Pr. CIT has erred in law and on facts in holding as under:-*

- *That the assessee has not complied with the conditions enumerated for claiming deduction u/s 54B of the I.T. Act.*
- *That the issue of said deduction has not been examined while completing the re-assessment u/s 143(3)/ 147 dated 21/03/2016.*
- *That the re-assessment order is hereby set aside with the direction to AO to re-examine the issue of claim of deduction u/s 54B afresh.*
- *That the assessee came forward with fabricated documents to claim deduction u/s 54B which is not admissible.*

3. *That having regard to the facts and circumstances of the case, order u/s 263 is bad in law for the reason that the proceedings u/s 147 initiated itself was bad in law as the order u/s 143(3)/ 147 dated 18/03/2016 was not maintainable and in invalid re-assessment cannot be set aside u/s 263 of the Act.*

4. *That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”*

2. The identical issues are involved in both these appeals and hence, they are taken up together and disposed off by this common order for the sake of convenience.

3. The only effective issue to be decided in these appeals is as to whether the Ld. PCIT was justified in assuming revision jurisdiction u/s 263 of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. With the consent of both the parties, the facts pertaining to Sh. Sanjay Kumar in ITA No.2187/Del/2018 is taken up for adjudication and the decision rendered thereon would apply with equal force for another co-owner Sh. Dariyav Singh also.

5. The assessee is an individual deriving income from salary, business and house property. The return of income for A.Y.2010-11 was filed on 30/09/2010 declaring total income of Rs.11,80,610/- showing capital gains at Nil. The assessee sold an agricultural land along with Sh. Dariyav Singh and Sh. Omwati during the year under consideration. The assessee had capital gains of Rs.35,08,250/- and from the sale proceeds of the said land, the assessee purchased another land for Rs.80 lacs (50% of share of 1,60,00,000/-) and claimed deduction u/s 54B of the Act. The Ld. A.O. issued notice u/s 148 of the Act on 08/04/2014 for verification of correctness of the capital gain. In response to such notice, the assessee filed his return of income on 09/05/2014 showing the capital gains on sale of agricultural land to be at

Rs.35,08,250/- and consequently claimed deduction u/s 54B of the Act in view of the fact that the assessee had purchased another agricultural land for Rs.80 lacs. The nil capital gain reported by the assessee was accepted by the Ld. A.O. in the re-assessment and concluded u/s 143(3) r.w.s. 147 of the Act on 15/03/2016. This assessment was sought to be revised by the Ld. PCIT by invoking revision jurisdiction u/s 263 of the Act on the ground that the Ld. A.O. had not examined the claim of deduction u/s 54B of the Act made by the Ld. AO, thereby making reassessment order erroneous and prejudicial to the interest of the Revenue.

6. In fact, we find that the assessee in the original return of income filed had duly disclosed the capital gains showing the lesser consideration. Therefore, the case was reopened and assessee filed his return in response to notice u/s 148 of the Act offering the correct figure of sale consideration and disclosing the capital gains correctly. In the said return, the assessee had also made the claim of deduction u/s 54B on acquisition of agricultural land which is evident from the computation of income enclosed in page 7 of the Paper Book. The Ld. A.O. in the course of re-assessment

proceedings had even issued notice u/s 142(1) of the Act dated 13.11.2014 specifically making enquiries particularly into the details of property purchased by the assessee and also calling for making for capital gains on sale of property. The assessee duly replied to the same furnishing all the requisite details together with claim of deduction u/s 54B of the Act. Further, the Ld. A.O. vide yet another u/s 142(1) of the Act dated 14/07/2015 made enquiry again with regard to claim of deduction u/s 54B of the Act vide Question No.3 thereon. This was duly replied by the assessee before the Ld. A.O. furnishing the requisite details together with the supporting documents and assessee also furnished the copy of purchase deeds containing the agreement of sale with possession of the agricultural land which are enclosed in page 70 to 78 of PB. Further, the Ld. A.O. again vide notice u/s 142(1) of the Act dated 14/03/2016 sought to re-examine the claim of deduction u/s 54B of the Act, which was also duly replied by the assessee before the Ld. A.O. After being satisfied with the various replies given by the assessee, the Ld. A.O. proceeded to accept the claim of the assessee with regard to computation of capital gain and claim of deduction u/s 54B of the Act. Hence, it could be safely concluded that the Ld.

A.O. had indeed made sufficient enquiries with regard to the capital gains and claim of deduction u/s 54B of the Act. Hence, in our considered opinion, the action of the Ld. PCIT invoking the revision jurisdiction u/s 263 of the Act on the ground that no enquiries made by the Ld. A.O. is factually incorrect. By placing reliance on the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Company Ltd. vs. CIT reported in 43 ITR 83 (SC)*, we hold that when adequate enquiries were indeed carried out by the Ld. A.O., the same cannot be subjected to revision by the Ld. Pr. CIT u/s 263 of the Act. Hence, the revision order passed by the Ld. PCIT deserves to be quashed on this point.

7. Further, we find on perusal of para-1 at page 1 of the order of Ld. PCIT u/s 263 of the Act, that there was a proposal u/s 263 of the Act dated 16/03/2018 received from ITO, Ward-2(3), Dehradun duly forwarded by the Addl. Commissioner of Income Tax, Range-2, Dehradun dated 16/03/2018 to the Ld. PCIT. This fact goes to prove conclusively that revision proceedings u/s 263 of the Act got triggered only based on this proposal sent by the Ld. A.O. through the Addl. CIT and that the revision proceedings were not initiated

by the Ld. PCIT on his own and based on the independent examination of records from his side. Keeping in perspective the aforesaid factual position, if we read section 263 of the Act, it becomes clear that learned Pr. CIT or the Commissioner may call for and examine the record of any proceeding under this Act, and if on such examination, he finds that any order passed in such proceedings by the Assessing Officer is erroneous and prejudicial to the interests of the revenue, he may initiate proceedings under section 263 of the Act. Thus, the words used in section 263 of the Act clearly indicate that the revisionary authority has to independently apply his mind to the materials on record before coming to a conclusion that the order sought to be revised is erroneous and prejudicial to the interests of revenue. The decision making process under section 263(1) of the Act has to be that of the revisionary authority and cannot be at the behest of some other subordinate authority. In the facts of the present appeal, it is abundantly clear that the exercise of powers under section 263 of the Act is not due to any independent application of mind by the revisionary authority, but at the behest of the Income-tax Officer. Had the ITO not sent any proposal for initiating proceedings under

section 263 of the Act, it is quite probable, the revisionary authority may not have exercised his powers under section 263 of the Act. That being the factual and legal position, in our view, the exercise of powers under section 263 of the Act in the present case has to be declared invalid. In support of our conclusion, we rely upon the following decisions:

- (i) Vinay Pratap Thacker (ITA No. 2939/Mum/2011 dated 27.02.2013)
- (ii) Ashok Kumar Shivpuri (ITA No. 631/Mum/2014 dated 07.11.2014)
- (iii) Shanti Exim Lt. Vs. CIT (2017) 88 taxmann.com 361(Ahmedabad)

8. Thus, considering the totality of facts and circumstances of the case, we hold that the impugned order passed under section 263 of the Act is unsustainable. Accordingly, the order passed under section 263 of the Act is quashed and the assessment order is restored.

9. In view of the aforesaid observations, we have no hesitation to quash the revision proceedings u/s 263 of the Act by the Ld. PCIT and the decision rendered herein above for Sanjay Kumar in ITA

No.2187/Del/2018 shall apply *mutatis mutandis* for Dariyav Singh also in ITA No.2029/Del/2018.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 28<sup>th</sup> June, 2023.

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 28/06/2023

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI