

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" , HYDERABAD**

**BEFORE**

**SHRI R.K. PANDA, VICE PRESIDENT  
AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / <b>ITA Nos.496 and 497/Hyd/2021</b> (निर्धारण वर्ष / Assessment Year: 2012-13)		
Suresh Kumar Bachiraju, Hyderabad.  PAN : AFKPB6727Q	Vs.	The Income Tax Officer, Ward – 11(5), Hyderabad.
(Appellant)		(Respondent)
Appellant By :	Sri S. Rama Rao.	
Respondent By :	Ms. TH Vijaya Lakshmi, CIT-DR	
Date of Hearing :	05.07.2023	
Date of Pronouncement :	17.07.2023	

**आदेश / ORDER**

**PER LALIET KUMAR, JM:**

The appeals of the assessee for A.Y. 2012-13 arises from the order of Principal Commissioner of Income Tax – 2, Hyderabad dated 31.03.2021 invoking proceedings under section 263 of the Income Tax Act, 1961 (in short, “the Act”) wherein the order passed by Assessing Officer on 26.12.2017 was set aside.

2. As the facts of the case in both the appeals are identical, we are reproducing the facts in ITA No.496/Hyd/2021 for A.Y. 2012-13 for the sake of brevity.

3. The grounds raised by the assessee in ITA 496/Hyd/2021 read as under :

*"1. The order of the learned Pr. Commissioner of Income Tax, u/s 263 of the Income Tax Act dated 31.03.2021 is erroneous both on facts and in law.*

*2. The Learned Pr. Commissioner of Income Tax erred in holding that there is any error which is prejudicial to the revenue in the order filed u/s 143(3) rws 147 of the I.T.Act by the Assessing Officer dated 26.12.2017*

*3. The learned Principal Commissioner of Income Tax erred in holding that the genuineness and source of cost of improvements of Rs.7,99,31,280/- was not examined by the Assessing Officer when all the material was produced before the Assessing Officer;*

*4. The learned Commissioner of Income Tax erred in holding that the genuineness and source of commission paid of Rs.31,13,000/- was not examined by the Assessing Officer.*

*5 . The learned Commissioner of Income Tax erred in holding that the source of cash deposits were not examined by the Assessing Officer;*

*6. The order of the Pr.Commissioner of Income Tax u/s 263 of the I.T.Act is not justified as the Assessing Officer issued notice u/s 147 of the I.T.Act and completed the assessment u/s 143(3) rws 147 after duly considering the facts on record."*

4. The grounds raised by the assessee in ITA No.497/Hyd/2021 read as under :

*"1. The order of the learned Pr. Commissioner is erroneous of Income both on Tax, facts u/s and 263 of the Income Tax Act dated 31.03.2021.*

*2. The Learned Pr. Commissioner of Income Tax ought to have seen that the Assessing Officer on receipt of the explanation from the appellant dropped the penalty proceedings u/s 271(1)(c) of the I.T.Act.*

*3. The learned Principal Commissioner of Income Tax ought to have seen that there is no order which can be revived by virtue of the provisions of Sec.263 of the I.T.Act when the Assessing Officer dropped the proceedings u/s 271(1)(c) of the I.T.Act.*

*4. The learned Pr. Commissioner of Income Tax ought to have seen that the Assessing Officer rightly dropped the penalty proceedings as the addition was made by invoking the provisions of Sec.50C of the I.T.Act and there is no concealment of income and, therefore, the learned Pr.CIT ought to have considered the fact that there is no error in dropping the penalty proceedings u/s 271(1) (c) of the I.T.Act.”*

5. The brief facts of the case are that assessee is a real estate agent, filed his return of income on 07.12.2017 for A.Y. 2012-13 declaring total income at Rs.3,18,750/- under the head “Income from other sources’ and claiming short term capital loss of Rs.3,47,26,430/- towards the sale of immovable property dated 09.11.2011 in favour of M/s. Vignana Jyothi for a sale consideration of Rs.8,92,50,000/- out of which the share of assessee was Rs.7,14,00,000/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) r.w.s. 147 of the Act on 26.12.2017 determining the income at Rs.1,03,18,750/-.

6. The learned Principal Commissioner of Income Tax (PCIT), upon examining the records, observed that assessee had furnished only self-made cash vouchers as evidence for commission paid in cash of Rs.31,13,000/- and cash expenditure of Rs.7,99,31,280/- claimed to be incurred for the improvement of property. Ld.PCIT opined that the same were allowed by the Assessing Officer without proper verification and that the bills / vouchers furnished by the assessee to be unreliable and self-made. He, therefore, issued a show cause notice u/s 263 of the Act to the assessee on 12.11.2018, proposing the revision of assessment. Despite receiving notices at various intervals, the assessee did not respond

until submitting written submissions on 17.03.2020. On perusal of entire material available on record, the learned PCIT set aside the assessment order dt.26.12.2017 considering it to be erroneous and prejudicial to the interests of Revenue, to verify the following issues :

1. Genuineness and sources of cost of improvement of Rs.7,99,31,280/-.
2. Genuineness and sources of commission paid in cash of Rs.31,13,000/-.
3. Sources of cash deposited and other credits in bank account and natures of such cash receipts and its taxability.

7. The appeals filed by the assessee are barred by limitation by 185 days. However, he has moved a condonation petition explaining reasons for the delay. We have heard both the parties on this preliminary issue. Considering the reasons mentioned in the petition, we condone the delay and admit the appeals for hearing.

8. Feeling aggrieved with the order passed by the Id.PCIT u/s 263 of the Act, assessee is now in appeal before us.

9. Before us, the Id. AR drew our attention to the original order passed by the AO, specifically highlighting Paras 3 and 4 of the order, which are as follows:

*“3. During the F.Y. 2011-12 relevant to the A.Y. 2012-13, the assessee along with one Mr. K. Gopal Reddy sold a plot of land admeasuring 5 acres at Sy.No.150 to 155 (part), Bachupally village, Quthballapur Mandal, R.R. Dist., to M/s. Vignana Jyothi, Hyderabad on 09.11.2011 vide document No.9507/2011 for a total sale consideration of Rs.14,52,00,000/- (value as per provisions of*

*section 50C of the Income Tax Act, 1961). Out of the said transaction, his proportionate share of land was 4 acres and proportionate share of consideration was arrived at Rs.11,61,60,000/-. The said land was acquired by the assessee by an agreement of sale cum general power of attorney vide document no.1407/2009 dated 28.01.2009 for a total consideration of Rs.44,02,150/-.*

*04. During the course of assessment proceedings, it was submitted that the assessee was dealing with disputed land and on sale of the said land, the total sale consideration involved was Rs.8,52,00,000/- only out of which his proportionate share was Rs.7,14,00,000/-. Further, the assessee claimed to have made certain expenditure towards commission, transfer expenses and improvement of property and claimed to have incurred "short term capital loss" to the tune of Rs.3,47,26,430/-."*

10. Ld.AR further brought our attention to the order sheet of the AO dated 21.12.2017, whereby the assessee was asked to produce the bills / vouchers and other details relating to the expenditure claimed towards the "Cost of construction". The ld.AR submitted that following the above-said direction, the assessee submitted the bills/vouchers as evidence for the cost of construction. The learned AR had argued that after reviewing the vouchers/bills furnished by the assessee, the AO had allowed the expenditure which is the subject matter of the proceedings. Ld.AR further submitted that once the AO had considered the documents furnished by the assessee, then it would not be beneficial for the ld.PCIT to invoke jurisdiction under section 263 of the Act. The ld.AR requested the cancellation of the order passed by the ld.PCIT based on these reasons.

11. On the other hand, the ld. DR strongly relied upon the order passed by the ld.PCIT. Ld.DR submitted that the learned AO had neither posed a question to the assessee nor examined the genuineness of the commission incurred for the improvements of the property / construction expenses. The ld. AO failed to examine the genuineness of the transactions and the source of the cash payment by the assessee towards commission and construction.

12. The learned DR had submitted that in the present case, the assessee had purchased the property through General Power of Attorney (G.P.A.) on 21.12.2019 for a sum of Rs.44,02,150/-. According to the ld.DR, the assessee claimed to have incurred alleged expenses of Rs.7,99,31,280/- for property improvements, the total of purchase value and cost of improvement would be Rs.8,43,33,430/-. Furthermore, the assessee allegedly paid commission of Rs.31,13,000/- in cash, and also made payments of Rs.1,42,80,000/- to Shrimati P. Sarada and Rs.44,00,000/- to M/s. Sigma Constructions. If the above two amounts i.e. Rs.1,73,93,000/- and Rs.8,43,33,430/-, were added, sum would be Rs.10,17,26,430/-. This amount represents the cost of the land sold by the assessee.

12.1. Ld.DR argued that it is highly improbable for the assessee to sell the said land at a cost of Rs.8,52,00,000/-. The ld.DR submitted that while passing the assessment order, Assessing Officer failed to examine, whether assessee was having

funds to spend in cash towards improvement cost of the property and commission paid. It was submitted that since the AO had failed to discharge his duty as required in conducting the assessment, the action taken on the part of Id.PCIT is justified, as the order passed by the Assessing Officer, by itself, is prejudicial and erroneous to the interests of the revenue.

13. In rebuttal, it was submitted by the Id.AR that the present case is not a case of lack of inquiry; rather, it is a case of inadequate inquiry.

15. We have heard the rival submissions and perused the material and record. Admittedly, in the present case, the assessee purchased the land on 28/01/2009 for a total consideration of Rs. 44,02,150/- and incurred a significant amount of Rs.7,99,31,280/- towards the cost of improvement / construction purposes. Besides that commission was also paid by the assessee. After taking into account, the purchase cost, improvement / construction cost, the commission paid, the net cost of the asst would come to Rs. 10,17,26,430/-. Admittedly, the assessee had sold this property for a consideration of Rs.8,92,50,000/- on 09/11/2011. In the return of income, the assessee had claimed deduction of the cost of improvement / construction and the commission paid in cash as deduction, which was allowed by the Assessing Officer.

16. It is the case of the assessee, that the AO has called for the bills/vouchers incurred for carrying out the construction on the property. However, we do not agree with the above said contention as the Assessing Officer has not examined the bills / vouchers of

expenses incurred towards cost of improvement / construction. The Id.PCIT, in para 7 provided the details of the alleged expenditure incurred in cash as follows :

Sl.No.	Date of Transaction	Transaction amount	Remarks
1	25.05.2011	Rs.25,00,000/-	Cr by Cash Deposits
2	30.05.2011	Rs.14,80,000/-	Cr by cash deposits
3	20.07.2011	Rs.10,00,000/-	Cr. By clearing (Chq.No.850938)
4	26.07.2011	Rs.5,00,000/-	Cr. By clearing (Chq.No.501610)
5	07.02.2012	Rs.10,00,000/-	Cr. By clearing (Chq.No.600683)
6	07.02.2012	Rs.10,00,000/-	Cr. By clearing (Chq.No.600682)
7	07.02.2012	Rs.5,00,000/-	Cr. By clearing (Chq.No.600684)

17. From the perusal of the above, it is abundantly clear that the alleged charges were incurred between September, 2009 to March, 2011. In our view, if the expenditures were incurred from September 2009 to March 2011, then it should have reflected in the balance sheet of the assessee. No such document was brought to our notice, furthermore, it was incumbent upon the AO to conduct test check of the vouchers/bills to determine their genuineness. None of the persons, who had issued the said bills were examined by the Assessing Officer. The Assessing Officer had also not examined whether the assessee was having the availability and capacity to incur expenditure of Rs.7,99,31,280/- in cash and whether incurring such huge expenditure was permissible within the four corners of law. No enquiry was made by the Assessing Officer for incurring the expenditure in cash towards the commission paid by the assessee for a sum of Rs.31,13,000/-. In our view, the Assessing Officer has passed order in cryptic and casual manner without conducting any enquiry of the above said subject.

18. Furthermore, we find that the assessee incurred a substantial cash expenditure of Rs.7,99,31,280/- for making improvements within a span of less than 2 years, allegedly to make it saleable. Surprisingly, neither the AO examined the source of the significant cash amount incurred for these expenditures nor verified the genuineness of the cash transactions. In our considered opinion, if the AO had failed to discharge his duties and assess the correct tax liability, resulting into passing of erroneous order, which resulted into prejudicial to the interests of the Revenue. In light of the above, the appeal of the assessee is dismissed.

19. In the result, the appeal of the assessee is dismissed.

20. Now we will deal with the other appeal of assessee i.e., ITA No.497/Hyd/2021.

21. This appeal has been filed against the order passed under Section 263 of the Income Tax Act, in which the Id.PCIT has cancelled the orders passed by the Assessing Officer, whereby the assessee had sought to drop the proceedings under Section 271(1)(c) of the Act.

22. We have heard both sides and perused the material on record. In our opinion, once the revision order passed by the AO has been cancelled and fresh directions have been issued by the Id.PCIT, the order dropping the proceedings under Section 271(1)(c) of the Act becomes invalid and it will be replaced by any fresh proceedings initiated by the AO under Section 271(1)(c) of the Act

after analyzing the facts of the case. In our view, there is no valid cause of action for the assessee to challenge the order under Section 263 of the Act, which is the subject matter of this appeal. Considering the above, this appeal is also dismissed.

23. In the result, the appeal of assessee in ITA No.497/Hyd/2021 is dismissed.

24. To sum up, both the appeals of assessee are dismissed. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 17<sup>th</sup> July, 2023.

<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE PRESIDENT</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 17<sup>th</sup> July, 2023.  
**TYNM/SPS**

Copy to:

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2	The Income Tax Officer, Ward 11(5), Hyderabad.
3	The Pr.CIT-2, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*