

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 100/Ind/2021**  
**(Assessment Year:2012-13)**

Nayana Jayesh Patel 29/5, South Tukoganj Indore	Vs.	Pr. CIT Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AFYPP 2075H</b>		
Assessee by	Shri Sudhir Padliya, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	01.06.2023	
Date of Pronouncement	02 .08.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the revision order dated 31.03.2021 of Pr. Commissioner of Income Tax, Indore -1, passed u/s 263 of the Act for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

*“That Ld. Commissioner of Income Tax has erred in setting aside the assessment completed by Ld. AO dated 16.12.2018 treating the same as prejudicial to the interest of revenue as per the provisions of section 263 of the Act without considering the submissions and documents the submission and documents as submitted either before him or before Ld. AO.”*

2. The assessee is individual and did not file any return of income u/s 139 of the Act for the year under consideration. The AO received the information of various transactions done by the assessee during the year under consideration as under:

1. Deposited Rs.2,00,000/- in cash in saving bank account.
2. Invested Rs.2500000/- in mutual fund.
3. Purchased immovable property of Rs.39,00,000/-
4. Time deposit of Rs.30,00,000/-
5. Received interest of Rs.270282/-

3. Accordingly the AO reopened the assessment by issuing notice u/s 148 of the Act on 29.03.2018. The assessee filed return of income on 14.11.2018 declaring total income of Rs.4,84,350/-. In the assessment completed u/s 147 r.w. section 143(3) on 16.12.2018 the AO made addition of Rs. 1,73,349/- on account of interest income from the saving bank account as well as on fixed deposit. Subsequently ongoing through the assessment record Ld. Pr. CIT found that certain points were not taken into consideration by the AO while completing assessment vide order dated 16.12.2018. The Pr. CIT noted that the AO passed order without making required examination/investigation which has resulted the assessment order being erroneous in so far as prejudicial to the interest of revenue. Accordingly show cause notice u/s 263 was issued on 19.02.2020 raising the issue of allowability of the claim of deduction u/s 54B in view of the deemed full value consideration u/s 50C at Rs.2,30,26,000/- as against the consideration shown by the assessee of Rs.1,60,00,000/-. The assessee file the reply to show cause notice on 27.02.2022. The pr. CIT was not satisfied with the reply filed by the assessee and passed impugned revision order whereby the order of the assessing officer was set aside being erroneous so far as prejudicial to the interest of revenue and directed the AO to examine the issue discussed in the revision order and passed an order as per law after necessary

verification, inquiry and investigation. Aggrieved by the impugned order of the Ld. Pr. CIT the assessee filed present appeal.

4. Before the Tribunal Ld. AR of the assessee has submitted that at the time of assessment proceedings the AO raised various queries vide notice u/s 142(1) followed by order sheet entries from time to time. The assessee complied all the queries raised by the AO through his submission dated 25.11.2019, 06.12.2019 & 07.12.2019. Ld. AR has referred to the submissions filed by the assessee before the AO and submitted that the AO examined all the issues on which the assessment was reopened and only after the examination and satisfaction the AO accepted the computation of long term capital gain as disclosed by the assessee. Therefore, the order passed by the AO is after consideration and appreciation of the explanation offered by the assessee. Thus, the Ld. AR has submitted that this is not a case of lack of inquiry on the part of the AO so as to give power to the Pr. CIT to set aside the assessment order being erroneous and prejudicial to the interest of revenue. He has relied upon the decision of Kolkata Benches of the Tribunal in case of Peerless General Finance & Investment Company Ltd. v. DCIT (2021) 87 ITR 281 / 211 TTJ 823 / 203 DTR 103 (Kol.)(Trib.) and has also relied upon the decision of the Raipur Bench of this Tribunal in case of Mahabir Prasad Ajirma v. PCIT 213 TTJ 610/206 DTR 361 (Raipur)(Trib.)

5. Ld. AR has submitted that the AO has finalized the assessment order after accepting assessee's computation of capital gain. The AO raised specific query which were explained by the assessee in connection different transaction value of the sale consideration and value adopted by the Stamp Duty Authority. Thus, it proves that the AO has after making proper inquiry and applied his mind accepted the claim of the assessee it cannot be termed as erroneous and prejudicial to the interest of revenue.

6. Ld. AR has submitted that the assessee entered into an agreement for sale of agricultural land in the year 2011 through registered agreement dated 29.10.2011 thereafter the sale deed was executed and registered on

10.01.2013 and 28.03.2013. Therefore, the stamp duty valuation as on the date of agreement will be applicable and not on the sale deed. Ld. AR has thus submitted that the sale consideration shown in the sale deed is not less than stamp duty valuation as shown in the agreement dated 29.10.2011 and therefore, there is no deemed consideration can be adopted based on the stamp duty valuation as on the date of sale deed. Thus, the Ld. AR has submitted that the impugned order passed by the Pr. CIT is not sustainable in law and liable to be quashed. He has referred various decisions on the point that if the prior agreement to sale is entered between the parties and the agreement is registered and part payment is made then the stamp duty value u/s 50C would be applicable as on the date of agreement. The amendment in the provisions of section 50C are held to be retrospective and therefore, the same is effective from 1<sup>st</sup> April 2003 and not from 1<sup>st</sup> April 2017.

7. On the other hand, Ld. DR has submitted that the assessment order is completely silent on the issue and therefore, it is clear case of lack of inquiry on the part of the AO while passing the assessment order. He has referred to the impugned order of the Pr. CIT and submitted that the Ld.Pr. CIT has considered all the objections raised by the assessee in response to the show cause notice. He has relied upon the impugned order of the Pr. CIT.

8. We have considered the rival submissions as well as relevant material on record. Since there was no return of income filed by the assessee the assessment was reopened by the AO and the assessee was asked vide notice dated 12.10.2018 u/s 142(1) to submit copy of purchase deed and sale deed of the property sold during the financial year 2011-12 and also submitted copies of all agreement to sale and purchase of property executed during the year under consideration. The relevant query in para 9 of annexure to notice u/s 142(1) is as under:

*“9.Please submit copy of purchase deed and sale deed of the property sold during FY 2011-12 relevant to AY 2012-13. Also submit the copies*

*of all agreements to sale or purchase of properties, executed during the year under consideration.”*

9. The AO has not taken up the issue of correctness or allowability of deduction u/s 54B or applicability of the provision of section 50C of the Act. Neither in the show cause notice issued u/s 142(1) nor in the assessment order the AO has taken up these issues of correctness of the claim of deduction u/s 54B and applicability of provision of section 50C of the Act. The assessment order is silent on these points. The provisions of section 50C are otherwise mandatory to be applied by the AO and only if the assessee raised the objection regarding the adopting of deemed full consideration as per section 50C(1) of the Act. The AO has either to accept explanation of the assessee or referred the valuation to the DVO for determination of the fair market value of the property. As per the first proviso to section 50C(1) if there is a prior registered agreement for the transfer of the capital asset the value adopted or assessment by the stamp value authority on the date of agreement may be taken for the purpose of computation full value of consideration of such transfer. However the stamp duty value as on the date of registered agreement would be for the same capital asset which is finally sold vide subsequent sale deed and not something which was different capital asset at the time of agreement then at the time of sale deed. For instance if the assessee entered into an agreement to sale a plot of land with a house to be constructed before the sale deed to be executed then the stamp duty value of both land and building as on the date of agreement would be the deemed full value consideration u/s 50C of the Act. In the case in hand the assessee entered into two agreements both dated 29.10.2011 to sell the land in question to M/s. Jems Real Estate Pvt. Ltd. under one agreement and to Shri Suresh Kumar Jain under another agreement. All other terms and conditions of both agreements are identical and common. The relevant clause 1 to 4 of first agreement are reproduced as under:

1.उपरोक्त वर्णित भूमि इंदौर विकास प्राधिकरण की योजना क्रमांक 169-बी में समाविष्ट है । प्राधिकरण द्वारा योजना में समाविष्ट भूमियों को प्राप्त करने हेतु भूमि स्वामियों से आपसी सहमति से अनुबन्ध निष्पादित कर योजना से प्राप्त विक्रय योग्य भूखण्ड का 50% प्रतिशत के बराबर भूमिस्वामी अथवा उनके निर्देशित व्यक्ति अथवा संस्था को पंजीकृत विक्रय पत्र के माध्यम से दिया जावेगा ।

(2) यह कि, उक्त वर्णित कृषि भूमि एवं भूमि के बदले में प्राप्त होने वाले विक्रय योग्य भूखण्ड के समस्त अधिकार मुझे विक्रेतापक्ष ने आप क्रेतापक्ष को रु. 69,00,000-00 (उनसतर लाख) में विक्रय कर दिया होकर इस व्यवहार बाबद रु. 68,34,600-00(अडसठ लाख चौतीस हजार छः सौ रूपये) चेक क्रमांक 373046 दिनांक 15.09.2011 स्टेट बैंक ऑफ बिकानेर एंड जयपुर के द्वारा प्राप्त कर लिये होकर अब इस विक्रय व्यवहार बाबद शेष राशि 15 दिवस में प्राप्त कर उक्त भूमि के आवश्यक दस्तावेज, विक्रय पत्र का पंजीयन एवं निष्पादन आपके या आपके चाहे गये नाम से करवा देंगे । तथा उक्त भूमि के बदले इंदौर विकास प्राधिकरण से प्राप्त होने वाले विक्रय योग्य भूखण्ड प्राप्त करने एवं उसके संबंध में समस्त कार्य एवं कार्यवाहियां करने हेतु आप क्रेता के हित में एक पंजीकृत आम मुख्तयार पत्र का निष्पादन एवं पंजीयन करवाया जा रहा है ।

(3) यह कि, प्राधिकारी से उक्त भूमि के बदले विकसित भूखंड प्राप्त करने के अनुबंध के परिणामस्वरूप यदि भूमि का विक्रय-पत्र सीधे विक्रेता के द्वारा प्राधिकारी के पक्ष में पंजीकृत करवाना आवश्यक हुआ तो वे प्राधिकारी को क्रेता के साथ हुए इस अनुबंध के आधार पर त्रिपक्षीय विक्रय-पत्र का निष्पादन कर देंगे जिसके फलस्वरूप प्राप्त होने वाले भूखंड पर आप क्रेता का ही अधिकार होगा एवं प्राधिकारी द्वारा भूखंड का पंजीयन आप क्रेता के पक्ष में सीधा किया जा सकेगा इसमें हम विक्रेता को कोई प्रकार की आपत्ति नहीं होगी ।

(4) यह कि, यदि क्रेता योजना क्रमांक 169-बी में समाविष्ट अन्य भूस्वामियों से भी इस प्रकार प्राधिकारी से अनुबंधित भूमि के आधार पर 50% प्रतिशत विकसित भूखंड प्राप्त करता है तो विक्रेता यह घोषित करते हैं कि इस अनुबंध निष्पादन के बाद किसी भी समय प्राधिकारी को अन्य भूमियों के साथ शामिल कर मुख्य मार्ग पर भूखंड आवंटन हेतु अथवा एक बड़ा भूखंड प्राप्त करने हेतु आवेदन प्रस्तुत करने या पुनः संयुक्त अनुबंध करने के लिये सहर्ष बगैर किसी उजर अथवा आपत्ति के तैयार रहेंगे ।

10. Similarly the agreement to sale of land to Shri Suresh Kumar Jain contains identical terms and conditions are as under:

1.उपरोक्त वर्णित भूमि इंदौर विकास प्राधिकरण की योजना क्रमांक 169-बी में समाविष्ट है । प्राधिकरण द्वारा योजना में समाविष्ट भूमियों को प्राप्त करने हेतु भूमि स्वामियों से आपसी सहमति से अनुबन्ध निष्पादित कर योजना से प्राप्त विक्रय योग्य भूखण्ड का

50% प्रतिशत के बराबर भूमिस्वामी अथवा उनके निर्देशित व्यक्ति अथवा संस्था को पंजीकृत विक्रय पत्र के माध्यम से दिया जावेगा ।

(2) यह कि, उक्त वर्णित कृषि भूमि एवं भूमि के बदले में प्राप्त होने वाले विक्रय योग्य भूखण्ड के समस्त अधिकार मुझे विक्रेतापक्ष ने आप क्रेतापक्ष को रु. 91,00,000-00 (इनक्यान्वे लाख) में विक्रय कर दिया होकर रुपये 90,00,000-00 (नब्बे लाख) निम्नानुसार प्राप्त कर लिए हैं अब इस विक्रय व्यवहार बाबद शेष राशि आज दिनांक से 15 दिवस में प्राप्त कर उक्त भूमि के विक्रय-पत्र अथवा आवश्यक दस्तावेजों का निष्पादन एवं पंजीयन आपके या आपके चाहे गये नाम से करते समय प्राप्त कर लूंगी । तथा उक्त भूमि के बदले में इंदौर विकास प्राधिकरण से प्राप्त होने वाले विक्रय योग्य भूखण्ड प्राप्त करने एवं उसके संबंध में समस्त कार्य एवं कार्यवाहियां करने हेतु आप क्रेता के निर्देशित व्यक्ति श्री अनुराग पित श्री सुरेशजी जैन के हित में एक पंजीकृत आम मुख्तयार पत्र का निष्पादन एवं पंजीयन करवाया जा रहा है ।

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(3) यह कि, प्राधिकारी से उक्त भूमि के बदले विकसित भूखंड प्राप्त करने के अनुबंध के परिणामस्वरूप यदि भूमि का विक्रय-पत्र सीधे विक्रेता के द्वारा प्राधिकारी के पक्ष में पंजीकृत करवाना आवश्यक हुआ तो वे प्राधिकारी को क्रेता के साथ हुए इस अनुबंध के आधार पर त्रिपक्षीय अनुबंध/विक्रय-पत्र का निष्पादन कर देंगे जिसके फलस्वरूप प्राप्त होने वाले भूखंड पर आप क्रेता का ही अधिकार होगा एवं प्राधिकारी द्वारा भूखंड का पंजीयन आप क्रेता के पक्ष में सीधा किया जा सकेगा इसमें हम विक्रेता को कोई प्रकार की आपत्ति नहीं होगी ।

(4) यह कि, यदि क्रेता योजना क्रमांक 169-बी में समाविष्ट अन्य भूस्वामियों से भी इस प्रकार प्राधिकारी से अनुबंधित भूमि के आधार पर 50% प्रतिशत विकसित भूखंड प्राप्त करता है तो विक्रेता यह घोषित करते हैं कि इस अनुबंध निष्पादन के बाद किसी भी समय प्राधिकारी को अन्य भूमियों के साथ शामिल कर मुख्य मार्ग पर भूखंड आवंटन हेतु अथवा एक बड़ा भूखंड प्राप्त करने हेतु आवेदन प्रस्तुत करने या पुनः संयुक्त अनुबंध करने के लिये सहर्ष बगैर किसी उजर अथवा आपत्ति के तैयार रहेंगे ।

11. As it is evident from the agreement to sale that the assessee agreed to sell the land in question after it is controverted into non-agricultural land and therefore, what was sold by the assessee vide sale deed dated 10.01.2013 & 28.01.2013 was non-agricultural land. Therefore, the high stamp duty value of non-agricultural land is given in the sale deed but there were prior agreements to sale dated 29.10.2011 hence, the stamp

duty value of non-agricultural land as on 29.10.2011 would be applicable and deemed to be full value consideration as per section 50C of the Act and not the stamp duty value of agricultural land as claimed by the assessee. The assessment order is completely silent about the issue of applicability of section 50C as well as correctness of the claim u/s 54B. Further there was no inquiry conducted by the AO on these issues rather the AO did not look into crucial fact that at the time of sale deed the land in question were not agricultural land. Assessment order does not exhibit any thought process of the AO and therefore, it is a case of non-application of mind on the part of the AO as well as absolute lack of inquiry which renders the assessment order as erroneous so far as prejudicial to the interest of revenue. Accordingly in the facts and circumstances of the case as well as in view of the above discussions we do not find any error or illegality in the impugned order of the Pr. CIT. The appeal filed by the assessee is devoid of any merits or substance.

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

Order pronounced in the open court on 02.08.2023.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 02 .08.2023**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*