

**IN THE INCOME TAX APPELLATE TRIBUNAL “RANCHI” BENCH  
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 29/Ran/2020  
Assessment Year: 2015-16**

Dr. Sanjay Kumar (PAN: ADLPK 6690 G)	Vs.	Pr. CIT-Ranchi
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.07.2023
For the Appellant/ निर्धारिती की ओर से	Shri Manjeet Verma, CA
For the Respondent/ राजस्व की ओर से	Smt. Rinku Singh, CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income Tax-Ranchi (hereinafter referred to as the Ld. PCIT”) dated 25.03.2020 passed u/s 263 of the Income Tax act, 1961 (hereinafter referred to as the Act) for the AY 2015-16.

2. Issue raised in ground no. 1 is against the invalid exercise of jurisdiction by PCIT to revise the assessment dated 12.10.2017 passed u/s 143(3) of the act on the issue which was not subject matter of limited scrutiny before the AO.

3. Facts in brief are that the assessee is a doctor and derives income from profession and house property. The return of income was filed on 23.12.2015 declaring total income of Rs. 6,41,280/-. The case was selected for scrutiny under CASS for limited scrutiny and the assessment u/s 143(3) of the Act was completed on 12.10.2017 accepting the returned income. Pertinent to state that the assessee's case was selected for limited scrutiny to verify the new flat and assessee also submitted all the proofs to establish the source of purchase of new flat. However in the show cause notice issued u/s 263 of the Act the PCIT was of the opinion that the order passed by the AO is erroneous and prejudice to the interest of the revenue. For the reason that the assessee has sold 2679 sq. ft of vacant piece of land situated at Survey, Mauza: Salempur Dumra, now commonly known as Indrapuri Colony, P.S.-Shartri Nagar, District-Patna through sale deed executed on 18.12.2014 for a total consideration of Rs. 61,52,000/-. However going through the computation of income and return of income for the year, it was found that the assessee has claimed Rs. 60,40,228/- u/s 54 of the Act under the head long term capital gain from sale of piece of vacant land. According to PCIT since the property under reference and sold by the assessee is a vacant piece of land and was not used for residential purpose, deduction u/s 54 of the Act was not allowable as the said section is applicable only in the case of profit on sale of property used for residence and not for profit on sale of piece of land. Finally the Ld. PCIT revised the order by setting aside the assessment framed u/s 143(3) of the Act vide order dated 12.10.2017 with the direction to frame the assessment de novo after making fresh enquiries regarding genuineness of demand claimed from long term capital gain after affording a reasonable opportunity.

4. The Ld. A.R. vehemently submitted before the Bench that the revisionary order passed by the Id. PCIT is void and nullity in the eyes of law on the ground that the Id. PCIT has exceeded the jurisdiction setting aside and cancelling the assessment order which was passed by the AO in the limited scrutiny in terms of the notice issued u/s 143(2) of the Act. The Ld. Counsel also drew our attention to the notice issued u/s 143(2) of the Act to corroborate the fact that the case was selected for limited scrutiny

in order to verify the source for purchase of flat at Delhi. The Id AR submitted that the assessment was accordingly without converting the limited scrutiny into complete scrutiny. The Ld. A.R referred to the instruction NO. 5/2016 of CBDT dated 14.07.2016 taking the bench through the procedure to be followed for conversion into complete scrutiny in a case which was originally earmarked for limited scrutiny. The Id. A.R has also referred to para 3 of the instruction which says that while forming the reasonable view the AO would ensure that there exists credible material or information available on record for forming such view and this reasonable view should not be based on mere suspicion, conjecture or unreliable source and there must be a direct nexus between the available material and formation of such view. The Ld. A.R. therefore prayed that the order passed by the AO without converting into complete scrutiny when the AO realized that there is no need for complete scrutiny. The Id AR submitted that the revisionary jurisdiction invoked by the AO is bad in law as to how an order passed under limited scrutiny could be erroneous and prejudicial to the interest of revenue when the issues raised by the Id PCIT were not subject matter of limited scrutiny. The Id AR contended that there is no mistake in the order passed u/s 143(3) of the Act dated 12.10.2017 as the case was selected under CASS for limited scrutiny to examine the source of purchase of flat in Delhi which was examined by the AO and observation to that effect has been given in the assessment order that assessee has submitted copies of bank account, ITR, TRACES Certificates and other documents regarding sale deed and loan statement which were verified . the Id AR submitted that the said order can not be said to erroneous so far prejudicial to the interest of the revenue. The Ld. A.R. vehemently submitted that the assumption of jurisdiction u/s 263 of the Act by Ld. PCIT is invalid and is against the provisions of the Act and also the various judicial precedents. The Ld. A.R submitted that before assumption of jurisdiction u/s 263 of the Act , the Ld. PCIT has to satisfy the twin conditions as laid down in Section 263(1) of the Act which provide that the order of AO which is sought to be revised has to be erroneous as well as prejudicial to the interest of the revenue. The Ld. A.R. submitted that if one of the two conditions is absent i.e after the order of AO is erroneous but not prejudicial to the interest of the

revenue or vice versa , the revisionary jurisdiction u/s 263 of the Act cannot be invoked. The Id AR contended that the Id PCIT ,without giving any reason, came to the conclusion that the AO has not made any enquiry/verification which is wrong and against the spirit of the law. The action of the Ld. PCIT is whimsical and arbitrary which is contrary to the facts on records and against the provisions of the Act. In defense of its arguments the Ld. A.R. relied on the following decisions:

- Malabar Industrial Co. Ltd vs CIT [2000] 109 Taxman 66 (SC)
- CIT Vs Sunbeam Auto Ltd [2010] 189 Taxman 436 (Delhi HC)
- CIT Vs Anil Kumar Sharma [2010] 194 Taxman 504 (Delhi HC)

The Id AR also vehemently submitted before the bench that there were two house properties of the assessee shown by the assessee in the return

The Id AR therefore prayed before the bench that for the foregoing reasons the revisionary order may kindly be quashed.

5. Per Contra, the Id DR vehemently opposed the arguments of the Id AR by submitting that the Id AO has not examined the issue of claim of deduction from long term capital gain and thus strongly defended the revisionary order passed u/s 263 of the Act.

6. We have heard the rival submissions and perused the material on record including the impugned order and various case laws relied by the parties. We observe that the case was selected for limited scrutiny to verify the source of purchase of flat by the assessee and assessment. Besides before exercising jurisdiction u/s 263 of the Act the Ld. PCIT has to satisfy the twin conditions as stipulated in Section 263 of the Act and even if one of the two conditions is satisfied even then the jurisdiction u/s 263 of the Act is not available. In the present case the Ld. PCIT has failed to demonstrate as to how the order is erroneous and prejudicial to the interest of the revenue more particularly when the issue proposed in the order u/s 263 of the Act is not the subject matter of the limited scrutiny and AO has examined all the evidences furnished by the

assesse qua of sale of property and source of purchase of flat. The case of the assessee finds support from the decision of Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. vs. CIT reported in [2000] 243 ITR 83 (SC) wherein the Apex court has held that satisfaction of twin conditions as provided in section 263 of the Act is pre-requisite for assumption of jurisdiction u/s 263 of the Act. Considering the facts of the case in the light of the various judicial precedents laid down by the Apex Court and various other judicial forms on the various propositions as discussed hereinabove , we hold that the revisionary jurisdiction has not been validly exercised by the Id PCIT. Accordingly we quash the revisionary proceedings initiated u/s 263 of the Act and the consequent order passed u/s 263 of the Act. The appeal of the assessee is allowed.

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

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

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

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

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

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Dr. Sanjay Kumar, Bhojpur Niwas Band Gari, Deepa Toli Booty, Jharkhand-834009
2. Respondent – Pr. CIT- Ranchi
3. DR, Ranchi Bench, Ranchi

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata