

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. 84/Ind/2021
(Assessment Year:2010-11)

Santosh Agrawal MIG-11, MLA Quarters Jawahar Chowk Bhopal	Vs.	Pr. CIT-1 Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AHKPA 1449E		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	10.08.2023	
Date of Pronouncement	16 .08.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the revision order dated 30.01.2020 of Pr. Commissioner of Income Tax-1 Bhopal, passed u/s 263 of the Act for Assessment Year 2010-11. The assessee has raised following grounds of appeal:

“1. That the order u/s 263 passed by The Pr. Commissioner of Income Tax (1)-Bhopal is unlawful.

2. On the fact and in the circumstances of the case, the Ld. Principal Commissioner of Income Tax (I)-Bhopal has erred in holding the assessment order passed by the Learned A.O. on 28.09.2017 as erroneous and prejudicial to the interest of revenue. The assessment order is neither erroneous nor prejudicial to the interest of revenue as the A.O. has raised specific query regarding this and was allowed by

the A.O. after application of mind. Thus the order u/s 263 passed by The Pr. Commissioner of Income Tax (I)-Bhopal is against the provisions of law.

3. The assessee reserves the right to add, amend or alter any grounds of appeal at any time of hearing.”

2. The reassessment was framed u/s 147 r.w. section 143(3) on 28.09.2017 accepting the return of income at Rs.6,50,640/-. Thereafter on perusal of the assessment record the Pr. CIT noted that the assessee has sold the property held jointly with Smt. Sheela Devi Agarwal and Shri Satyanarayan Agrawal on 18.01.2020 for a sum of Rs.1,03,00,000/-. The assessee while calculating long term capital gain took indexed cost of improvement at Rs.19,19,583/- + expenditure Rs.70,000/-. Pr. CIT further noted that the assessee is having 1/3rd Share in the property and was eligible for index cost of improvement at Rs.6,39,861/- as against claim of Rs.19,19,583/-. Accordingly the Pr. CIT issued show cause notice u/s 263 on 13.01.2020. But there was no response on behalf of the the assessee to the show cause notice issued by the Pr. CIT. Consequently the Pr. CIT passed the impugned order and held the assessment order passed by the AO as erroneous so far as prejudicial to the interest of the revenue for want of necessary inquiry on computation of long term capital gain and particularly the index improvement cost. The assessment order was set aside with the directions to AO to make denovo after proper inquiry and verification as well as giving reasonable opportunity to the assessee being heard. Aggrieved by the impugned order the assessee has filed the present appeal.

3. Before the Tribunal Ld. AR of the assessee has submitted that the AO has conducted the inquiry on this issue by issuing notice u/s 142(1) and in response to the said notice the assessee filed all the relevant details and documents including copy of bank account statement, copy of invoices in respect of the expenditure incurred for construction/improvement of the property. The Ld. AR has submitted that once the AO has conducted an inquiry and was satisfied with the reply

and evidence produced by the assessee then the Pr. CIT has no jurisdiction to invoke the provisions of section 263 of the Act. He has further submitted that the entire expenditure of improvement had been incurred by the assessee and therefore, the assessee is entitled to claim deduction of the improvement cost.

4. He has further submitted that as per the provisions of section 48 there is no bar for claiming entire improvement cost or restricting the claim only to the share of the assessee in the property. Thus, the Ld. AR has submitted that the impugned order passed by the Pr. CIT is not sustainable and liable to be quashed. He has relied upon the decision of this bench dated 11.07.2023 in case of Maa narmada Agrotech and Infrastructures Ltd. vs. PCIT in ITANo.117/Ind/2022 as well as decision of Rajkot Bench of this Tribunal in case of M/s Rishi Kiran Logistics Pvt. Ltd. vs. Pr. CIT dated 10.08.2022 in ITANo. 136/Rjt/2022.

5. On the other hand, Ld. DR has submitted that this is a case of non-application of mind on behalf of AO while passing the assessment order. There is complete lack of inquiry on the point that the assessee is entitled only 1/3rd of the cost of improvement of the property jointly owned by the assessee along with two other family members. He has further submitted when the assessee has offered capital gain only equivalent to 1/3rd of total amount then the expenditure cannot be claimed more than the share of the assessee. He has relied upon the order of the Pr. CIT.

6. We have considered the rival submissions as well as relevant material on record. The assessing officer has passed assessment order u/s 147 r.w.s. 143(3) on 28th September 2017 as under:

"In this case notice u/s 148 was issued to the assessee on 30/03/2017 after recording reasons and after obtaining prior approval of the Pr. Commissioner of Income Tax-1, Bhopal. This notice was duly served to the assessee. A reminder letter was issued on 23/06/2017 to the assessee. In response to the notice u/s 148 the assessee filed return of income vide acknowledgement no. 31120171204051 dated 24/08/2017 for the A.Y. 2010-11 declaring

total income of Rs. 6,50,640/- in compliance the notice u/s 148. Accordingly, notice u/s 143(2) and 142 (1) along with questionnaire was issued on 24/08/2017, which was duly served to the assessee.

2. In response to the above notice, Shri Amit Jain, C.A. being the A.R. of the assessee attended the hearings from time to time and has furnished written as submission and replied subsequent queries raised during the course of assessment proceedings. The assessee is an individual and derives income from Capital Gain and Interest Income during the F.Y. 2009-10. Replies filed during the course of assessment proceedings were kept on record after perusal. Case was discussed with the AR of the assessee.

3. It is noticed that the assessee has declared total income of Rs. 6,50,640/- from Capital Gain, interest income during the FY 2009-10. It is also noticed that the assessee had not filed his return of income u/s 139(1) of the IT Act, which is on due on 31/07/2010. Assessee has filed his return of income in response to the notice u/s 148 of the I.T. Act, on 30/08/2017 vide acknowledgement no. 31120171204051 dated 24/08/2017 for the A.Y. 2010-11 declaring total income of Rs. 6,50,640/-. Since the assessee has concealed the particulars of his income and furnished inaccurate particulars of income for the A. Y. 2010-11 within the meaning of provisions of section 274 of the Income tax Act, penalty proceedings under section 271 (1)(c) is being initiated separately.

4. After considering the documents filed and explanation offered by the assessee the returned income of the assessee is accepted.

5. Subject to the above remarks the assessed income of the assessee is recomputed as under:-

Returned Income Rs. 6,50,640/-

Assessed Income Rs. 6,50,640/-

Assessed accordingly on a total income of Rs. 6,50,640/- Tax and interest are payable as per ITNS 150, which is part of this order. Interest u/s 234A, 234B & 234C is being charged as per law. Issue penalty notice u/s 271(1)(c).”

7. The assessment order is completely silent on the issue of claim of improvement of cost though the notice u/s 142(1) was issued by the AO wherein the assessee was asked to furnish the information as per para 7 of the notice u/s 142(1) as under:

“7. As per information available with Income tax Department you had sold out the immovable property for F.Y. 2013-14 at Rs. 90,00,000/-. Please furnish the following information in this regard:-

- a. Copy of the registered sale deed.*
- b. Details of payment received against sale of property.*
- c. Copy of registry relating to purchase of the said property.*
- d. Furnish the details of any improvement (alongwith Bills and vouchers) made by you after purchase the said property.*
- e. Computation of Short/Long Term Capital Gain on sale of above property.*
- f. Furnish the proof of re-investment, if any.”*

8. The AO asked the assessee to furnish the details of any improvement of cost along with bills and vouchers made by her after purchase of the said property. In response the assessee has filed the reply to para 7 as under:

“7. Information required is submitted as under:-

- a. Copy of registered sale deed is enclosed as per Annexure 2.*
- b. Details of payment received is as per sale deed enclosed as per Annexure 2.*
- c. Copy of purchase (Sale deed) is being submitted shortly.*
- d. Bills and vouchers of improvement is being produced shortly.*
- e. Copy of computation of capital gain is enclosed as per Annexure 3.*
- f. No Re-investment has been done by the assessee.”*

9. The assessee produced the registered sale deed, details of payment received as per sale deed, copy of purchase deed. The bills and vouchers of improvement of cost were to be produced shortly. Ld. AR has submitted that the assessee produced bills and vouchers subsequently however, there is nothing on record to suggest that these bills and vouchers were produced or not. Even if we accept this contention of the assessee that the assessee produced the bills and vouchers for the improvement cost, the AO

has still not taken up the issue of entitlement of the assessee to claim 1/3rd share or the total improvement of cost it is manifest from the record that the AO has not even taken up the issue of claim of full improvement cost or only 1/3rd of the total improvement cost to be allowed to the assessee while computing the long term capital gain on sale of jointly held property by three members of the family. Therefore, there is a complete lack of inquiry on the part of the AO while passing assessment order which renders the assessment order as erroneous so far as the prejudicial to the interest of revenue. The decision relied upon the Ld. AR of the assessee are only on the point that once the AO in the course of assessment proceedings as conducted due inquiry and considered the reply of the assessee and then accepted the claim cannot be said to be a lack of inquiry on the part of the assessing officer. In the case in hand from the reply of the assessee itself clear that the assessee has not explained as why the assessee is entitled for the entire cost of improvement as against only 1/3rd share in the property sold. Thus the question of accepting reply of the assessee does not arise. Accordingly in the facts and circumstances of the case we are of the considered view that the order of the AO is erroneous for lack of due inquiry on this point and the Pr. CIT is justified in invoking provisions of section 263 of the Act. Further the assessee did not respond to show cause notice issued by the Pr. CIT despite the proper opportunity. Hence we do not find any error or illegality in the impugned order of the Ld. CIT(A) and same is upheld.

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

Order pronounced in the open court on 16.08.2023.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 16.08.2023

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*