

**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.286/Ind/2020**  
**Assessment Year: 2015-16**

Shri Dilip Chandrasenrao Mahadik, 479, Kalani Nagar, Indore (Assessee / Appellant)	<b><u>बनाम/</u></b> Vs.	Pr.CIT-2, Indore.  (Revenue / Respondent)
<b>PAN: ABWPM3141M</b>		
Assessee by	S/Shri Rajnish Vohra, Chetan Khandelwal and Nitesh Dawira, Ld. ARs	
Revenue by	Shri P.K. Mishra, CIT DR	
Date of Hearing	24.05.2023	
Date of Pronouncement	17.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by revision-order dated 16.03.2020 passed by learned Pr. Commissioner of Income-Tax-2, Indore ["Ld. PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 20.11.2017 passed by ITO, 4(1), Indore ["Ld. AO"] u/s 143(3) for Assessment-Year ["AY"] 2015-16, the assessee has filed this appeal on the grounds as mentioned in Appeal-Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee filed return of income of relevant AY 2015-16 which was subjected to scrutiny-assessment and the AO completed assessment u/s 143(3). Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. The reason of framing such a view by Ld. PCIT is very precise and simple i.e. the assessee sold two lands for a total consideration of Rs. 65,30,000/- (Rs. 40,30,000 + Rs. 25,00,000) but the valuation done by stamps authority was Rs. 1,23,30,000/- (Rs. 40,30,000 + Rs. 83,00,000). The assessee has computed/declared capital gain on the basis of sale consideration of Rs. 65,30,000/- and not on the basis of the valuation of stamps authority at Rs. 1,23,30,000/- as required by section 50C. The AO has accepted the capital gain declared by assessee and thus committed an error while completing assessment.

4. Accordingly, Ld. PCIT issued a show-cause notice dated 04.09.2019 by which the assessee was asked to explain as to why the assessment-order may not be revised. In response thereto, the assessee filed submission which is re-produced by Ld. PCIT in Para No. 3 of his order as under:

*"3. Thereafter, on the change of incumbency, show cause notice dt. 10.01.2020 was issued fixing the case for hearing on 16.01.2020. In response to the notice, Shri Anup Khandelwal, CA attended the proceedings and filed written submission as under :-*

*"It is pertinent to mention that your honour has rightly pointed out the fact of following valuation of the property for calculating LTCG at 50C value of Rs. 83,00,000/- instead of calculating at the value of Rs. 25,00,000/-. However, certain facts also need to be mentioned for the kind consideration of your honour. Ipso facto the assessee has paid the stamp duty amounting to Rs. 8,78,515/- (2,87,140/- plus 5,91,375/-) in respect of property which has been sold by the assessee and hence*

the amount of LTCG would reduce by similar amount. Copy of the sale deed is enclosed herewith for your kind perusal and marked as ANNEXURE-2. Similarly, it may also be pointed out the assessee has purchased a property for an amount of Rs. 65,00,000/- to avail deduction u/s 54 and has also paid an amount of stamp duty to the tune of Rs. 19,21,000/- thereon (Refer ANNEXURE-1). Besides, assessee also spend an amount of Rs. 7,00,000/- (round off) on repairing the purchased house. If these expenses are taken in to account then the Long Term Capital Gain can be calculated as under:-

**Long Term Capital Gain**

1. **Building 31.03.2015**

<b>Value u/s 50C</b>	<b>1,23,00,000</b>
<b>Deemed Sales Consideration received</b>	<b>1,23,00,000</b>
<b>Sale consideration</b>	<b>1,23,00,000</b>
<b>Less :Transfer Expenses for sale</b>	<b><u>8,78,515</u></b>
	<b>1,14,21,485</b>
<b>Less: Indexed Cost</b>	
<b>F.Y. 1981-82 240000/100*1024</b>	<b><u>24,57,600</u></b>
	<b>89,63,885</b>
<b>Deduction u/s 54</b>	<b><u>89,63,885</u></b>
	<b>0</b>
<b>Investment in House property u/s 54 Rs. 84,21,000/- (65,00,000/- plus 19,21,000) 7,00,000/- (Round off) cost of Repair"</b>	

**[Emphasis added]**

5. However, the PCIT was not satisfied with the reply of assessee for the reasons mentioned by him in revision-order as under:

"4. I have carefully considered the facts of the case, the assessment records and the written submission given by the assessee. **On perusal of the submission of the assessee, it was found that the assessee had not claimed transfer expenses for sale of Rs. 8,78,515/- in his return of income.** Perusal of the case record reveals that during the period relevant to the assessment year 2015-16, the assessee has sold two properties. In the return of income the assessee disclosed sale consideration amount of Rs. 65,30,000/- and Long Term Capital Gain worked out of Rs. 40,72,400/-. During the assessment proceedings the assessee submitted that the sale proceeds were invested in capital Gain Account of Rs. 62,00,000/- on

27.08.2015. It was evident from the sale deed that the Stamp Valuation Authority had considered value of these properties under reference at Rs. 1,23,30,000/-. In view of the provisions u/s 50C of the Income-tax Act, 1961, the assessee was required to take sale consideration of Rs. 1,23,30,000/- (40,30,000 + 83,00,000) of both the properties in place of Rs. 65,30,000 as discussed by the assessee. Thus, the Long Term Capital Gain should be Rs. 98,72,400/- instead of Rs. 40,72,400/-. This fact was to be taken into account while completing the scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 and an addition of Rs. 36,72,400/- (98,72,400 – 62,00,000) was to be made in the total income of the assessee for the purpose of computation of Long Term Capital Gain thereupon. The AO did not examine the apparent mismatch between the sale consideration of the property shown in the ITR and Sale consideration as per Stamp Valuation Authority which was clearly mentioned in the sale deed itself. The AO has, therefore, committed an error while completing the assessment.”

[Emphasis added]

6. Then, Ld. PCIT also invoked Explanation to section 263 which prescribes thus:

*“Explanation 2 – “For the purpose of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Commissioner or Commissioner -*

- (a) The order is passed without making inquiries or verification which should have been made;*
- (b) The order is passed allowing any relief without inquiring into the claim;*
- (c) ....*

7. Finally, Ld. PCIT passed revision-order whereby the assessment-order was set aside to the file of AO with a direction to re-examine the issue and pass order as per law after conducting necessary enquiries.

8. Aggrieved by such revision-order, the assessee has filed this appeal.

9. By means of various grounds raised in the Appeal Memo which are not being reproduced for the sake of brevity, the appellant-assessee requires

us to adjudicate whether or not the revision-order passed by Ld. PCIT u/s 263 is valid in the eyes of law?

10. Before us, Ld. AR for the assessee made following submissions:

- (i) Initially our attention is drawn to Page No. 10 to 21 of Paper-Book where a copy of the return of income filed by assessee in Form No. ITR-2 is placed. Referring to Page No. 17, Ld. AR pointed out that the assessee has clearly disclosed 'full value of consideration' at Rs. 65,30,000/-, 'value of property as per stamp valuation authority' at Rs. 1,23,30,000/- and thereafter in the next row, the assessee has taken 'full value of consideration as per section 50C' at Rs. 65,30,000/-. Therefore, the assessee has made a correct declaration in the return of income.
- (ii) Then, Ld. AR submitted that it is wrong to say that during assessment-proceeding, the AO has not conducted enquiries on the issue raised by Ld. PCIT. In fact, the AO raised query on the same issue through notice u/s 142(1) and in response the assessee filed replies also. Vide reply-letter dated 17.11.2017 (copy placed at Page No. 34 to 36) and another undated reply-letter (copy placed at Page No. 37 to 40 of Paper-Book), the assessee submitted to AO that two properties were sold, one for Rs. 40,30,000/- and other for Rs. 25,00,000/-. In 1<sup>st</sup> property, both of the sale consideration and stamps authority valuation were same at Rs. 40,30,000/- and hence there was no difference. In 2<sup>nd</sup> property, the sale consideration was Rs. 25,00,000/- but the stamps authority valuation was Rs. 83,00,000/-; thus there was difference. This property was ancestral and carried a long battle for about 50 years. Thereafter, in the year 2007 the case was formally instituted by one of disgruntled party in a court of law. Subsequently, after final court order, the property was sold at the best available price to end the litigation completely. The copies of court

orders were also furnished to AO. Alternatively, it was also submitted to AO that even if the higher value of Rs. 1,23,30,000/- is considered, the tax effect would remain same because the assessee had invested much higher amount in new property for claiming exemption u/s 54.

- (iii) Lastly, Ld. AR carried us to assessment-order where the AO has himself recorded thus:

*“During the period under consideration assessee has sold share in two ancestral immovable properties after court order. One property was sold in 2014 for value of Rs. 40,30,000/-; the stamp duty authorities also adopted the same value. 2<sup>nd</sup> property was sold in January, 2015 for Rs. 25,00,000/-; the stamp duty authorities adopted the market value of the property as Rs. 83,00,000/-. In the return of income assessee shown sale consideration of property at Rs. 65,30,000/- and worked LTCG at Rs. 40,72,400/-. However, assessee deposited Rs. 62,00,000/- in capital gain account scheme in the bank. **Subsequently assessee purchased a new residential house for Rs. 2,02,15,584/- on 19.08.2016, thus assessee has invested in new residential property more than the sale consideration adopted by the stamp duty valuation authorities, hence LTCG if worked out as per the provisions of section 50C the entire LTCG will be available to the assessee as exempt; therefore, there is no need to work out LGCG as per section 50C. The assessee has filed all the relevant documents including copy of bank account and proof of purchase of new residential property etc; those have been perused and placed on record.”***

*[Emphasis added]*

11. With these submissions, Ld. AR contended that the AO has examined the issue with care and caution and thereafter made assessment. The observations given by PCIT are contrary to the record of assessment-proceeding or even assessment-order. Therefore, Ld. AR contended, the revision done by PCIT is not valid and must be quashed and assessment-order must be re-stored.

12. At that stage, the Bench posed a query to Ld. AR as to how the AO has noted a finding in assessment-order "***Subsequently assessee purchased a new residential house for Rs. 2,02,15,584/- on 19.08.2016, thus assessee has invested in new residential property more than the sale consideration adopted by the stamp duty valuation authorities, hence LTCG if worked out as per the provisions of section 50C the entire LTCG will be available to the assessee as exempt; therefore, there is no need to work out LGCG as per section 50C.***" i.e. on what basis the AO has mentioned new investment at Rs. 2,02,15,584/-. Ld. AR instantly asserted standing at the Bar that this is a wrong finding given by AO. But still Ld. AR insisted that the assessment-order is not prejudicial to the interest of revenue because the assessee has computed taxable capital gain at Rs. Nil in the 'computation of total income' filed to AO and the 'revised computation of total income' filed to PCIT during revision-proceeding also reveals taxable gain at Rs. Nil. These two sets of computation-sheets are filed in the Paper-Book at Page No. 11-12 and 65-66 respectively to which our attention is also drawn (these computations are re-produced in subsequent para).

13. Per contra, Ld. DR for revenue strongly opposed the submission of Ld. AR. He submitted that nowhere in assessment-order, the AO has made any discussion as to how the litigation history of the land sold by assessee impacted the sale consideration of property and how it was relevant for not invoking section 50C? He submitted that the AO has closed the issue of capital gain just by stating that the new investment made by assessee was more than the sale consideration adopted by stamps authority. While arriving at this conclusion, the AO has wrongly and baselessly adopted the new investment at Rs. 2,02,15,584/-. Therefore, Ld. DR strongly contended, the assessment-order passed by AO is very much wrong and suffers from a serious discrepancy. The PCIT cannot be said to be wrong in applying section 263. Ld. DR strongly prayed that the PCIT's revision-order is most justified in the situation and must be upheld.

14. We have considered rival submission of both sides and perused the orders of lower authorities as also the documents placed by assessee in a Paper-Book. After a careful consideration, we firstly find that the actual sale consideration of 2<sup>nd</sup> property declared by assessee was just Rs. 25,00,000/- as against the stamps valuation of Rs. 83,00,000/-. Thus, the stamps valuation is almost more than 3 times of actual sale consideration declared by assessee. The difference is not marginal so as to get a convincing explanation from litigation history of property. Further, it is also a fact that the assessee sold impugned property after resolution of family dispute by court order and not at the time when the dispute was going on. In any case, the explanation of litigation history, although filed by assessee to AO during assessment-proceeding, is nowhere discussed or analysed by AO in assessment-order. If we look into the provision of section 50C, we find that the section 50C is a deeming provision and even if the assessee claims before AO that the value assessed by stamps authority exceeds the fair market value, the only recourse available to AO is to refer the matter to departmental valuation officer u/s 50C(2); the AO cannot himself accept the sale consideration declared by assessee and ignore the valuation of stamps authority more particularly when the difference in two figures is so huge. Perhaps being aware of this legal position, the AO has not discussed this point in assessment-order and maintained silence. Be that as it may, the fact remains that the assessee is also aware of this legal hurdle and therefore took alternative stands to justify taxable gain at Rs. Nil. But even while taking such alternative stands, the assessee had been changing the facts and figures at different stages which is very much clear from following submissions made by assessee to lower authorities from time to time:

(i) **Original Computation of capital gain filed by assessee to AO  
 (copy placed at Page No. 11-12 of Paper-Book):**

Income from Capital Gain (Chapter IV E)

Long Term Capital Gain :

1. Land 16.01.2015

Value u/s	83,00,000	
Sales Consideration Received	25,00,000	25,00,000
Less: Transfer Expenses		<u>0</u>
		25,00,000
Less: Indexed Cost Building		<u>12,28,800</u>
<u>F.Y. 1981-82 120000/100*1024</u>		12,71,200
Deduction u/s 54		<u>12,71,200</u>
Amount deposited in Capital Gains Accounts Scheme u/s 54		.. Rs. 25,00,000

2. Building 15/01/2015:

Value u/s 50C	40,30,000	
Sales consideration received	40,30,000	
Sales Consideration		40,30,000
Less: Transfer Expenses		<u>0</u>
		40,30,000
Less: Indexed Cost Building (F.Y. 1981-82 120000/100*1024)		<u>12,28,800</u>
Deduction u/s 54		<u>28,01,200</u>
		0
Amount deposited in Capital Gains Accounts scheme u/s 54		Rs. 37,00,000

(ii) **Computation filed before PCIT –  
 (copy placed at Page No. 63 of Paper-Book and also re-produced by  
 PCIT in revision-order):**

*Long Term Capital Gain*

1. Building 31.03.2015

Value u/s 50C	1,23,00,000
Deemed Sales Consideration received	1,23,00,000
Sale consideration	1,23,00,000
<b>Less :Transfer Expenses for sale</b>	<b><u>8,78,515</u></b>
	1,14,21,485
Less: Indexed Cost	
F.Y. 1981-82 240000/100*1024	<u>24,57,600</u>
	89,63,885
Deduction u/s 54	<u>89,63,885</u>
	0
Investment in House property u/s 54 Rs. 84,21,000/- (65,00,000/- plus 19,21,000) 7,00,000/- (Round off) cost of Repair"	

**(iii) Revised Computation filed before PCIT –  
(copy placed at Page No. 65-66 of Paper-Book and accepted by Ld.  
AR during hearing):**

Income from Capital Gain (Chapter IV E) Nil

Long Term Capital Gain

1. Building 31.03.2015

Value u/s 50C	1,23,00,000
Sales Consideration Received	1,23,00,000
Sales Consideration	1,23,00,000
Less : Transfer Expenses	<u>0</u>
	1,23,00,000
Less: Indexed Cost	<u>24,57,600</u>
F.Y.1981-82 240000/100*1024	<u>24,57,600</u>
	98,42,400
Deduction u/s 54	<u>98,42,400</u>
	0
Investment in House Property u/s 54	Rs. 36,50,051/-
Amount deposited in Capital Gains Accounts Scheme u/s 54	Rs. 62,00,000/-

On comparison of these three workings given by assessee, we find substantial mis-matches and variations. To illustrate, in (ii) above, the assessee has claimed 'transfer expenses" of Rs. 8,78,515/- which is not claimed in other workings. Even the Ld. PCIT has also mentioned in his order *"On perusal of the submission of the assessee, it was found that the assessee had not claimed transfer expenses for sale of Rs. 8,78,515/- in his return of income."* Then, in (i), the assessee mentioned new investment at Rs. 62,00,000 (Rs. 25,00,000 + Rs. 37,00,000); then in (ii), the assessee mentioned new investment at Rs. 84,21,000/-; and in (iii), the assessee has mentioned new investment at Rs. 98,50,051/- (Rs. 36,50,051 + Rs. 62,00,000). Interestingly, the AO mentioned new investment at Rs. 2,02,15,584/- as a basis to give clean-chit to assessee from the rigour of section 50C but the same is also absolutely wrong and the Ld. AR has also asserted this wrong noting of AO. Thus, the Ld. DR is very much right in arguing that the assessment-order suffers from serious discrepancies. Faced with this situation, we are not convinced by Ld. AR's pleading that the assessment-order is neither erroneous nor prejudicial to the interest of revenue. In fact, there is a serious necessity for the AO to re-examine the issue of capital gain and come to a correct conclusion. Therefore, we are of the considered view that the revision-order passed by Ld. PCIT is valid in the circumstance and needs no interference from us. Consequently, we uphold the revision-order. There is no merit in present appeal of assessee and the assessee fails.

15. Before parting, we would also like to mention that the Ld. AR for assessee has also filed copies of certain judicial rulings in favour of assessee but those rulings are not applicable to the facts of present case before us. Therefore, it would be unnecessary to discuss those decisions.

**16. Resultantly, this appeal is dismissed.**

*Order pronounced in the open court on 17.08.2023*

sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 17.08.2023

CPU/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*