

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 41/Jab/2023  
(ASSESSMENT YEAR- 2013- 2014)**

Shri Naresh Kumar Golchha, C/o-Samapat Lal and Sons, Raghunath Ganj, Katnia, Madhya Pradesh-483501.	vs	ITO, Ward-1, Katni (M.P)
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No.AFHPG3398F</b>		

<b>Assessee By</b>	Shri H.S.Modh, Adv.
<b>Revenue By</b>	Shri Shiv Kumar, Sr.DR
<b>Date of hearing</b>	18/09/2023
<b>Date of Pronouncement</b>	22/09/2023

**ORDER**

**PER OM PRAKASH KANT, A.M.:**

This appeal by the assessee is directed against order dated 08.03.2023 passed by Ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short "Ld.CIT(A)"] for assessment year 2013-14, raising following grounds:

1. *"That the Ld NFAC, Delhi, has grossly erred in facts of the case to confirm the addition of Rs. 39,29,800/- even the revision order U/s 263 of IT Act, 1961, was cancelled by the Hon'ble ITAT, Jabalpur Bench, Jabalpur, in appeal ITA No. 90/Jab/2018 vide order dated 03/04/2019.*

2. *That the addition of Rs. 39,29,800/- confirm treating that the Hon'ble ITAT has set-aside and cancelled the order U/s 263 of IT Act, 1961, does not mean that the Assessment order passed U/s 263 r.w.s. 143(3) of IT Act, 1961, is also invalid and non-est in the eyes of law.*
3. *That the Ld NFAC, Delhi,. Confirmed the order passed by the Assessing Officer on the basis of direction U/s 263 of IT Act, 1961, is erroneous and bad in law and unjustified.*
4. *That the Assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order in appeal is bad.”*

2. Briefly stated facts of the case are that consequent to the order u/s 263 of the Income Tax Act, 1961 (in short “the Act”) dated 23.04.2018 passed by Ld. Principal Commissioner of Income-tax ( PCIT) , the Assessing Officer (in short “AO”) completed the assessment u/s 143(3) r.w.s 263 of the Act and made the disallowance as directed by Ld. PCIT. On further appeal, the assessee brought to the knowledge of Ld.CIT(A) that the Tribunal has quashed the order passed u/s 263 of the Act and therefore, consequent order of the AO does not survive. However, Ld.CIT(A) upheld the order by observing as under:-

5. *“During the appellate proceedings the appellant in his written submission on 09.12.2021 submitted that:*

*Written submission*

*With reference to your notice of hearing u/s. 250 IT Act, 1961 DIN-ITBA/NFAC/F/APL-1/2021-22/1037448032(1) dated 02/12/2021 in appeal No. CIT(A) Jabalpur- 2/10041/2018-19 for the Asst Year 2013-14 fixing the case for hearing on 09/12/2021, it submitted as under*

- 1. That the Assessing Officer has completed the original Assessment u/s 143(3) vide order dated 13/07/2015 at an income of Rs. 4,80,060/- copy of original assessment order is enclosed here with for your perusal and record.*
- 2. That the Ld Pr. Commissioner of income Tax-2, Jabalpur, has issued notice u/s263(1) of IT Act, dated 22/02/2018.*
- 3. That after considering the reply filed by the assessee, Ld Pr. Commissioner of income Tax-2, Jabalpur, has issued the order u/s 263 of IT Act, 1961 dated- 21.03.2018 observing directing as under (see para 6 of the order u/s 263 at page 7 last para).*

*The decision of the Hon'ble ITAT, Jaipur, in the case of Prakash Karnawat based on which the Assessing Officer accepted the claim of the assessee was also rendered following the decisions of the Jaipur Bench of the ITAT in the case of Gyan Chand Batra Vs. ITO (Supra) and the decision of the ITAT. Bengaluru, in the case of Gouli Mahadevappa, both were rendered in context of section 54F of the Act, in the circumstances where the decision of the Karnataka High Court dated 06/01/2012 in the case of Gouli Mahadevappa, (Supra) was available at the time of passing assessment order, the assessing officer was not*

*Correct in applying the decision of the lower judicial authority i.e. the Hon'ble ITAT Jaipur, therefore, the impugned the assessing officer is accordingly directed to assess the capital gain at Rs. 39,29,800/- as computed above. The income assessed by the Assessing officer is enhanced to that extent.*

*Para 8 of the order of ITAT at page -9*

*8. In view of the above, the assessing officer is directed to modify the income determined for the assessment year in accordance with the direction contained in paragraph 6 of this order.*

*4. That the Assessing Officer has completed the assessment by accepting the direction of Ld. Pr. Commissioner of income Tax, without issuing any notice for fixing the case and completed the assessment by passing order u/s 263 dated 23/04/2018 at an officer has no power to pass any order u/s 263 of It Act, 1961.*

*5. That the Assessing Officer has completed the assessment u/s 263 of IT Act, 1961, against the assessment complete u/s 143(3) r.w.s 263 of IT Act, 1961, hence the assessment order is erroneous and bad in law. Copy of assessment order dated 23/04/2018 along with demand notice is enclosed herewith for your perusal and record.*

*6. That by aggrieved the order of assessment, Assessee has preferred an appeal before the Ld.CIT(A), Jabalpur, on 03/05/2018.*

*7. That simultaneously, the assessee has also filed an appeal before the Hon'ble ITAT, Jabalpur Bench, Jabalpur, on 01/05/2018 against the order passed u/s 263 of IT Act, 1961.*

8. That the Hon'ble ITAT, Jabalpur Bench, Jabalpur, has registered the appeal under ITA No.90/JAB/2018 and the Hon'ble ITAT, Jabalpur Bench, Jabalpur, has decided the appeal vide order dated 02/04/2019 for which order was pronounced on 03/04/2019.

9. That the Hon'ble ITAT has held as under (para 8,9 and 10 of the ITAT order) Para 8. Accordingly, on both the count, in our considered opinion, the assessee is bound to succeed. He so succeeds.

Para 9. In view of the above, the order under appeal is found to be unsustainable and it is set aside and cancelled. The Assessment order is received.

Para 10. In the result, the appeal is allowed.

10. That in view of the order passed by the Hon'ble ITAT Jabalpur Bench, Jabalpur, in the case of the assessee in appeal ITA No.90/JAB/2018. Order passed by the Ld. Pr Commissioner of income tax -2, Jabalpur, has been set aside and cancelled and original order passed assessing officer has been received.

11. That in view of the order passed by the Hon'ble ITAT in the case Assessee. The order passed by the assessing officer dated: 23/04/2015 is became in fructuous and non-est.

It is therefore requested that the appeal filed by the assessee against the order passed by the Assessing Officer dated 23/04/2018 is not justified and the appeal may kindly be allowed in too in the interest of natural justice and obliged.

*Appellate Order:*

*I have considered the grounds of appeal, statement of facts, written submissions of the appellant and the Assessment Order u/s. 263 dated 21.03.2018.*

*On examination of the records, the Pr.Commissioner of Income-tax-2, Jabalpur found that the Assessing Officer allowed deduction of Rs.34,88,000/- u/s.54EC of the Act on the capital gain of Rs.34,88,000/- computed based on actual sale consideration of Rs.43,40,000/- recorded in the sale deed instead on the capital gain required to be computed under Section 48 of the Act by adopting the stamp duty value of Rs.91,21,800/- as per the provisions of Section 50C of the Act.*

*Hence, a show cause notice was issued to the appellant on 22.02.2018 as to why the capital gains should not be computed as per the provisions of Section 48 read with Section 50C of the Act.*

*The details of this notice are as under:*

*It is noticed from the order passed u/s. 143(3) dated 13.07.2015 by the ITO, Ward-1, Katni that while allowing deduction u/s.54EC of the Act he failed to compute the capital gain as per provisions of Section 48 read with section 50C of the Income tax Act and therefore the above order is erroneous, In so far as it is prejudicial to the interest of revenue in terms of sub Section (1) of Section 263 of the Income tax Act. 1961.*

*2. In view of the above, an opportunity of being heard as required u/s.263(1) of the Income tax Act is provided to show*

*cause as to why the capital gain should not be computed as per the provisions of Section 48 read with Section 50C of the Act.*

*3. You may represent the case personally or through your authorized representative on 13.03.2018 at 11.30 A.M at above address, written submission will be treated as sufficient compliance of the notice. In absence of compliance to this notice, it will be presumed that you do not have any objection to the revision u/s.263 as proposed above.*

*In response to above notice Shri Sandeep Patoriya, CA (Authorized representative) appeared on 13.03.2018 and filed a written submission dated 13.03.2018 before the Pr. Commissioner of Income-tax. The details of which in the Order u/s.263 are as below:*

*In the written submission, it is brought to the notice that during the assessment year assessee sold three plots of land for Rs.43,40,000/- as detailed below:*

*i) Plot at Sawarkar Ward sold as per sale deed for Rs.5,00,000/-, the value adopted by the registrar for stamp purpose at Rs. 17,57,000/-(50C value).*

*ii) Plot at Sawarkar Ward of sold as per sale deed for Rs.33,40,000/-, value adopted by the registrar for stamp purpose at Rs.60,75,000/-(50C Value). iii) Plot at Sawarkar Ward sold as per sale deed for Rs.5,00,000/-, value adopted by the registrar for stamp purpose at Rs. 12,89,800/-(50C Value).*

*It is admitted that in respect of the above plots, the sale consideration received is Rs.43,40,000/-, however, but the value adopted for the purpose of stamp duty was*

Rs.91,21,800/-. It is claimed that as the assessee has invested entire sale consideration of Rs 43,40,000/- in the bonds specified u/s 54 EC, no part of the capital gain arising out of sale of property is taxable. To support the contention, the assessee relied on the decision of the Hon'ble ITAT, Jaipur in the case of Prakash Karanwat VS ITO(2011) 16 taxmann.com 367[2012] 49 SOT 160(Jaipur-Trib).

It is also submitted that the Assessing Officer, after considering reply filed by assessee on 16.06.2015 has accepted that if the entire sale consideration received has been invested u/s.54 EC, provision of specified u/s.50C would not be applicable. In this regard the assessee drawn attention towards the paragraph 4 of the assessment order and contended that as the Assessing Officer has carried out necessary verification during the assessment proceedings, the case does not come under the purview of Explanation 2 sub section (1) of Section 263.

Without prejudice to the above, it is contended that where many views are possible and A.O. has adopted one of those views, re-opening of the assessment u/s.263 can not be done. To support this contention, the assessee relied on the following decisions:-

1. The decision of the Hon'ble ITAT, Ahmedabad in the case of Adani Wilmar Ltd.Vs. DCIT [2017] 81 taxmann.com 459 (Ahmedabad-Trib.)
2. The decision of the Hon'ble Bombay High Court in the case of CIT-Central III Vs. Nirav Modi[2016] 71 taxmann.com 272 (Bombay).

3. *The decision of the Hon'ble Bombay High Court in the case of MOIL Ltd. Vs. CIT, Nagpur [2017] 81 taxmann.com 420 (Bombay).*

*Further, while making the addition the Pr. Commissioner of Income tax, (A.O) has stated that:*

*In the present case also even though the net capital gain based on the registered sale value (after allowing the index cost of acquisition) is Rs.34,88,000/- but the investment in the Capital Gain Bond specified u/s.54EC is Rs.43,40,000/- and based on the full value of consideration computed as per Section 50C, the capital gain (after allowing the index Cost of acquisition) works out to Rs.82,69,800/-. The assessee is eligible for deduction u/s.54EC of Act of Rs.43,40,000/- which is more than the capital gain of Rs.34,88,000/- worked out based on the actual sale consideration.*

*The decision of the Hon'ble ITAT Jaipur [in the case of Prakash Karnawat based on which the Assessing Officer, accepted the claim of the assessee was also rendered following the decisions of the Jaipur Bench of the ITAT in the case of Gyan Chand Batra Vs. ITO (Supra) and the decisions of the ITAT, Bangalore in the case of Gouli Mahadevappa, both were rendered in context of Section 54F of the Act. In the circumstances, where the decision of the Karnataka High Court dated 06.01.2012 in the case of Gouli Mahadevappa (Supra) was available at the time of passing assessment order, the Assessing Officer was not correct in applying the decision of the lower judicial authority i.e. the Hon'ble ITAT, Jaipur, therefore, the impugned assessment order is erroneous in so far as it is prejudicial to the*

*interest of Revenue. The Assessing Officer, is accordingly directed to assess the capital gain at Rs.39,29,800/-, as computed above. The Income assessed by the Assessing Officer is enhanced to that extent.*

*The alternative contention of the assessee that where more than one view is possible, and one view is taken by the Assessing Officer, the provisions of section 263 are not applicable, is also not found acceptable as the language of the Act, is clear and also the decision of the Hon'ble ITAT in the case of Prakash Karnawat on which the reliance has been placed by the assessee, the Hon'ble ITAT in paragraph 8 decided the applicability of section 54F and not 54EC which is clear from the reading of said paragraph of the decision of the ITAT reproduced below:-*

*"We find similar facts are involved in the present case. The Assessee has received sale consideration of Rs.40,00,000/- which has been invested in the Bonds in view of provisions of s. 54EC. Therefore, assessee is entitled for deduction under section. 54F. The provisions of s. 50C are applicable for the purposes of s. 48 and for the purpose of s. 54F as held by the Tribunal in case of Gyan Chand Batra (supra). Findings of Tribunal have been reproduced somewhere above in this order which were taken in ITA No. 9/Jp/2010 for asst. yr. 2006-07. Similar view has been expressed by the Bangalore Bench of the Tribunal in case of Gouli Mahadevappa (supra). Since, entire amount of sale consideration has been invested in Bonds, therefore, in our view provisions of s. 50C are not applicable as held by Jaipur Bench and Bangalore Bench. Respectfully,*

*following the decisions of the Tribunal, we hold that AO and learned CIT (A) were not justified in invoking provisions of s. 50C and alternatively the capital gain shown by the assessee. Accordingly, the addition made and sustained by the lower authorities is deleted.*

*Further, in the above paragraph the Hon'ble ITAT also followed the decision of the Hon'ble ITAT Bangalore in the case of Gouli Mahadevappa, which in fact support the view of the Department, in that case the High Court has clearly held that the provisions of Section 50C are applicable, the decision have been discussed in earlier paragraph.*

*Further, the Assessing Officer applied the decision in the case of Prakash Karnawat, without verification as to whether the decisions, on which reliance has been placed by the Hon'ble Tribunal has been accepted by the Department on the merit. The Assessing Officer also failed to take into consideration the decision of the Karnataka High Court in the case of Gouli Mahadevappa. Thus, it is clear that the assessing officer has passed the order without making verifications which should have been made and therefore, the impugned order is erroneous in so far as it is prejudicial to the interest of revenue in term of clause (a) of sub section (1) of Section 263 of the Act.*

***In view of the above, and further, the Section 263 clearly states that if the Assessing Officer order is erroneous then the case may re-opened under this section.***

***Relying on the case laws discussed in detail by the Assessing Officer, the Order passed u/s.263 is confirmed.***

***And accordingly, the appeal filed for A.Y.:2013-14 is dismissed.”***

*(emphasis supplied externally)*

3. We have heard Ld. Authorized Representatives of the parties on issue in dispute and perused the relevant material available on record. We find that very basis of the assessment order is the order passed by Ld.PCIT u/s 263 of the Act, which has been quashed by the Tribunal. The Ld.CIT(A) has reproduced the relevant part of the order of the Tribunal. For ready-reference, the relevant paras is reproduced as under:-

6. *“We find the grievance of the assessee on both the above Counts to be justified. Apropos the first objection regarding existence of two views in the matter, the decision of the Jaipur Bench of the Tribunal (supra) and that of the Hon'ble Karnataka High Court (supra) itself shows that there are two divergent judicial views prevailing. Just because the earlier decision is that rendered by the Tribunal and the later one is that handed down by the Hon'ble High Court, that of the Hon'ble Karnataka High Court, which, incidentally, is also not jurisdictional qua the assessee, does not change the situation. Had the decision of the Hon'ble High Court been of the jurisdictional High Court, could it have been possible to say that there were no two opposite views existing. This, however, is not the case.*

7. *The assessee is also justified in his other grievance inasmuch as the impugned order does not state the assessment order to be both the erroneous as well as prejudicial to the interests of the Revenue. This, though, is the primary requirement of invoke ability of the provisions of section 263 of the Act. It is trite that in order to term an assessment order to be revisable under the provisions of section 263 of the Act, such assessment order must be shown by the C.I.T. to be both the erroneous as well as prejudicial to the interest of the Revenue. In the present case, however, at page 5 of the impugned order, the Pr. C.I.T. has specifically stated that 'the A.O. has committed an error in accepting the claim of the assessee.....' Towards the end of the order, the terminology employed is 'erroneous insofar as it is prejudicial to the interest of the revenue'. However, as to how the assessment order is prejudicial to the interest of the Revenue, does not stand made out.*

8. *Accordingly, on both the counts, in our considered opinion, the assessee is bound to succeed. He so succeeds.*

9. *In view of the above, the order under appeal is found to be unsustainable and it is set aside and cancelled. The assessment order is revived.”*

4. It was quite evident before Ld.CIT(A) that order passed by Ld.PCIT u/s 263 of the Act was cancelled or quashed therefore, consequent order passed u/s 143(3) r.w.s 263 of the Act cannot survive. However, Ld.CIT(A) ignoring the judicial discipline ,dismissed the appeal of the assessee and confirmed the order of

the AO. The order passed by Ld.CIT(A) being contrary to the judicial discipline and being not in accordance with law, we set aside the same and the assessment order consequent to order section 263 of the Act is quashed. The Grounds raised by the assessee are accordingly, allowed.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 22/09/2023.

**Sd/-**

**Sd/-**

**(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER**

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

*\*Amit Kumar\**

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar  
Jabalpur Bench