

**आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.333 & 341/SRT/2023**

(AYs 2018-19)

(Hearing in Physical Court)

Nayan Dhanjibhai Mangukiya 14, Rugved Bungalows, L P Savani Road, Adajan, Surat-395 009 <b>[PAN ALPPM 6978 B]</b>	Vs	Principal Commissioner of Income-tax-1, Surat, Aaykar Bhavan, Majura Gate, Surat- 395001
Rajesh Parsottambhai Mangukiya 15, Rugved Bungalows, L P Savani Road, Adajan, Surat-395009 <b>[PAN AHOPP 2114 P]</b>		
<b>अपीलार्थी/ Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Samir Shah, C.A
राजस्व की ओर से /Revenue by	Shri Ritesh Mishra, CIT-DR
अपील पंजीकरण/Appeal instituted on	09.05.2023 & 11.05.2023
सुनवाई की तारीख/Date of hearing	08.09.2023
उद्घोषणाकीतारीख/Date of pronouncement	27.09.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by different assessee are directed against the separate orders of Principal Commissioner of Income Tax, Surat-1 [for short to as "Ld.PCIT"] dated 13.03.2023 and 14.03.2023 for the same assessment year *i.e.*, 2018-19, in exercise of his jurisdiction under section 263 in setting aside assessment orders passed by National e-Assessment Centre Delhi / Assessing Officer under section 143(3) r.w.s 143(3A) 143(3B) of Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 11.02.2021 & 01.02.2021. In both the appeals, the assessee has raised certain common grounds

of appeal, facts in both the appeal are similar, therefore with the consent of both the parties, both the appeals were clubbed, heard together and are decided by common order to avoid conflicting decision. For appreciation of facts, facts in ITA No.333/SRT/2023 is treated as “**lead**” case. The assessee has raised the following grounds of appeal:-

- “1. That on facts and merits of the case and in law the learned PCIT-1, Surat has erred in passing an order u/s 263 of the Act by holding the order passed u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act to be erroneous in so far as it is prejudicial to the interest of the revenue.*
- 2. That on facts and merits of the case and in law the learned PCIT-1, Surat has erred in passing the impugned order merely on the basis of change in opinion on an issue which was already thoroughly scrutinized by the learned AO while conducting assessment u/s 143(3) of the Act.*
- 3. That on facts and merits of the case and in law the learned PCIT-1, Surat has erred in initiating provisions of section 263 and passing order u/s 263 without selecting any one of the clauses of Explanation-2 of section 263(1), in which the case of the appellant falls.*
- 4. That on facts and merits of the case and in law the learned PCIT-1, Surat has erred in misinterpreting the provisions of section 56(2)(x)(b)(B) of the Act and proviso thereto.*
- 5. The appellant craves leave to add, amend, alter, substitute, modify the above ground of appeal, if necessary on the basis of submissions to be made at the time of personal hearing.*

2. Facts in brief are that assessee is an individual, filed his return of income for the year under consideration assessment year 2018-19 on 31.10.2018 declaring total income at Rs.40,35,400/-. The return of income was selected for limited scrutiny on the issue “investment in immovable property”. The Assessing Officer after seeking required certain details on the issue of issue of selection of scrutiny, from

assessee and completed assessment under section 143(3) r.w.s. 143(3A) & 143(3B) of the Act on 11.02.2021, in accepting returned income filed by assessee. Thereafter, the assessment order was revised by Ld. PCIT by invoking his jurisdiction power under section 263 of the Act vide his order dated 13.03.2023.

3. Before revising the assessment order, the Ld. PCIT on perusal of record noted that assessee along with other persons purchased immovable property admeasuring 16646 square meter on 07.03.2018 for a consideration of Rs.7.63 crores. The Ld. PCIT further noted that assessee was having 7% share in the immovable property. The Stamp Valuation Authority valued the said immovable property at Rs.19.48 crores thereby attracting provision of Section 56(2)(x) of the Act. The Ld. PCIT further noted initially four person made agreement to sale with seller on 30.08.2010 and paid part payment of consideration by way of cheque. The assessee was neither party nor the assessee has made any payment on or before the date of agreement. The name of assessee was included later to confirm the ownership right and no way the obstacle for application of provisions of Section 56(2)(x) for availing such benefit. For availing such benefit, the assessee was required to make payment on or before date of agreement as no such payment was made by assessee, therefore, the assessee cannot claim benefit of payment made to co-owners by mere inclusion his name in the final registered deed. The Assessing Officer passed his assessment order without examining

the applicability of Section 56(2)(x) of the Act for non-examination of the said issue. Therefore, the income of assessee was under to the extent of Rs.19,99,515/- being 7% difference of Rs.2.85 crores (*Rs.10.48 crores – Rs.7.64 crores*). Thus, Rs.19,99,515/- was required to be added in the total income of assessee under section 56(2)(x) of the Act. On the basis of such observation, the Ld. PCIT took his view that order passed by the Assessing Officer is erroneous in so far as prejudicial to the interest of Revenue. The Ld. PCIT exercised his jurisdictional power and issued show cause notice under section 263 dated 07.02.2023 to the assessee.

4. The assessee filed his reply on 15.02.2023, 21.02.2023 & 23.02.23 respectively. The contents of various replies of assessee is extracted by Ld. PCIT in para-4.2 from pages 3 to 7 of his impugned order. The assessee in reply, regarding said show cause notice, submitted that assessee along with 9 other persons had purchased agricultural land ad measuring 16646 square meters at District Surat, Taluka Adajan Village, Moje Palanpor, vide sale deed dated 07.03.2018. As purchase was made on the basis of agreement dated 30.08.2010 and agricultural land was purchased by all the co-owners who are family members and relative, out of which some of the co-owners. Though all the family members were not the party in the agreement to sale in the year 2010, entered for purchase of agricultural land and sale deed was executed in financial year 2017-18. The assessee submitted that during assessment proceedings, assessee explained

such fact that when land was purchased by said nine co-owners, out of the purchased value of agricultural land cannot be one amount for some co-owners and other amount for some other co-owners. The assessee also explained the share of all the co-owners including four persons who were paid part of sale consideration by way of cheque at the time of entering into agreement to sale in the year 2010. The assessee further submitted that entire facts were examined by Assessing Officer at the time of assessment proceedings. The assessee also explained. Thus complete facts were examined by Assessing Officer and he chose not to make any addition to the returned income filed by the assessee. The assessment order was passed by Assessing Officer after examining the application of Section 56(2)(x) of the Act. The assessing officer, on verifying the details and understanding the fact that appreciated that there cannot be a difference, two value of one plot of agricultural land for two different set of co-owners. The Assessing Officer accepted returned income and chose not to make further any addition. The assessee vide reply dated 23.02.2023 submitted that 1<sup>st</sup> and 2<sup>nd</sup> proviso to Section 56(2)(x) of the Act is to ensure that if the transaction value of agricultural land is fixed by the buyer and the seller at any point of time before final sale deed and the same is partly transacted in any mode other than in cash than the benefit of stamp duty value as the date of earlier agreement should be given to buyer party in the transaction. The intention is to see that no

hardship is faced by either seller or the buyer when transaction was already made by way of account payee cheque. The assessee also stated that even if a single person amongst all co-owners has paid part purchase consideration by account payee cheque on or before the date of sale, then stamp duty value at that time will be applicable and not at the time of execution of final sale deed.

5. The reply of assessee was not accepted by Ld.PCIT. The Ld. PCIT held that he has raised a specific query in his show cause notice that assessee was not a party in the original agreement to sale which was executed in the year 2010. Thus, the explanation of assessee was not acceptable on the basis of facts of the case has not made any payment on or before 30.08.2010 by way of account payee cheque or transferred of said immovable property. Thus, benefit of 1<sup>st</sup> and 2<sup>nd</sup> proviso to Section 56(2)(x)(b) cannot be provided to the assessee. The Stamp Duty Valuation Authority valued the property at Rs.10.48 crores and deeming provision of Section 56(2)(x)(b) of the Act was attracted in the present case. The assessee's share of 7% of the property so proportionate addition of difference in the sale value and the value determined by stamp valuation authority, is to be made. The contention of assessee was that purchase cost of property cannot be different for four co-owners, who are a part of agreement and for remaining six co-owners who are not a party were without any merit. The person, who were part of agreement on 03.08.2010 are eligible for benefit of first and second proviso to section

56(2(x)(b) but the owners who are not the part of said agreement cannot get any benefit and the different in sale consideration to determine by Stamp Valuation Authority vis-à-vis declared in the sale deed is to be added in the taxable income under the head “other source in their case”. On such observation, the Ld.PCIT directed the Assessing Officer to pass fresh assessment order after taking into account the issue has already been considered together with the issue discussed by him by giving opportunity of being heard to assessee. Aggrieved by the order of Ld. PCIT passed on 13.03.2023 the assessee filed present appeal before the Tribunal.

6. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income Tax Departmental-Representative (Ld. CIT-DR) for the Revenue. The Ld. AR for the assessee submits that assessee along with nine other co-owners who are closed family members and relative purchased agricultural land ad measuring 16646 on 07.03.2018 for a total sale consideration of Rs.7.63 crores. The assessee is having 7% share in the said sale deed out of ten co-owners, four co-owners namely, Umeshbhai P Patel, Parshottambhai C Patel, Sanjaybhai Tulshibhai Mangukiya and Karamshibhai Khimjibhai Mangukiya who are jointly paid of aggregate amount of Rs.35 lakhs to the seller at the time of execution of agreement by way of account payee cheque. Such fact is not disputed by Ld. PCIT. The Ld.PCIT revised the assessment order only by taking view that since the assessee was not the party to the

original agreement and no payment / part payment at the time of execution of agreement was given therefore assessee is not eligible for the benefit of first and second proviso to Section 56(2)(x)(b) of the Act.

7. The Ld. AR for the assessee submits that this issue was examined deeply by Assessing Officer during the scrutiny assessment and assessee furnished complete details and explained that initially four of the group / owners paid payment of consideration in co-owners in ten at the time of agreement to sale copy of agreement and all other required details including the copy of statement of bank account, and other details were furnished. The Ld. AR for the assessee submits that assessee has filed a very detailed and exhaustive written submission before Assessing Officer vide reply dated 22.07.2010 copy of which filed at pages 75 and 76 of the paper book. The questionnery raised by Assessing Officer on the particular issue specifically on the applicability of Section 56(2)(x) was raised in Question No.4 of Annexure attached with show cause dated 13.02.2020 under section 142(1). The Assessing Officer on his satisfaction accepted the returned income without making any variation in the returned income. Thus, the assessment order passed after due consideration and application of mind which cannot be branded as erroneous and prejudicial to the interest of Revenue. The assessing officer while passing assessment order took reasonable and legally sustainable view.

8. The Ld. AR for the assessee submits that on almost on similar set of fact, Mumbai Tribunal in the case of Sulochana Saijan Modi Vs. ITO [2023] 152 taxmann.com 56 (Mum-Trib.) held that where assessee was joint holder of the property with her son and submitted allotment letter and copy of cheque during assessment proceedings which reflected that payment for payment was made before agreement to sale by one of the co-owner and held that when one of the joint holder of the property had made the payment to other holder is also eligible for the benefit of first and second proviso of Section 56(2)(x)(b). The Ld. AR for the assessee submits that present case is squarely covered by the said decision of Mumbai Tribunal. The Ld. AR for the assessee submits that impugned order passed by Ld. PCIT is based on wrong assumption of fact and may be quashed.
9. On the other hand, the Ld. CIT-DR for the Revenue supported the order of Ld. PCIT. The Ld. CIT-DR for the Revenue submits that while revising the assessment order clearly held that assessee was not a party to the agreement and no part of sale consideration was made by assessee prior to execute of sale deed. Therefore, assessee is not eligible for the benefit of first and second<sup>d</sup> proviso of Section 56(2)(x)(b) of the Act. The Ld. CIT-DR for the Revenue submits that Assessing Officer has not recorded anything in his assessment order and simply he recorded income of assessee that assessment of income is as per the computation sheet and there is no narration of examination of issue or application of mind that such issue in

assessment order is erroneous and in so far as prejudicial to the interest of Revenue.

10. We have considered the rival submission of both the parties and perused the records carefully. We have also deliberated on various case law relied by Ld. AR for the assessee. We find that there is a limited controversy in the present appeal, that if a person who was not a party to the agreement to sale and has not paid any consideration or part consideration by way of cheque other than cash at the time of execution of such agreement can still be eligible for the benefit of first and second proviso of Section 56(2)(x)(b) of the Act.
11. Before coming to the impugned order passed by Ld. PCIT, we may refer that during assessment, Assessing Officer examined the issue by issuing very detailed show cause notice to the assessee vide notice dated 13.02.2020 requiring detailed information with regard to purchase such property valuation thereof with documentary evidence and the applicability of Section 56(2)(x) of the Act as per Question Nos.4, 5, 10, 12 & 13 of Annexures attached with said notices, the assessee while his reply dated 22.07.2020 filed a very detailed reply explaining all facts as explained before us, so no doubt the Assessing Officer has not narrated such fact in the assessment order while accepting the returned income.
12. Now adverting to the objection of Ld. PCIT that when the assessee was not a party to the original agreement to sale assessee cannot

avail the benefit of first and second proviso of Section 56(2)(x)(b) thereby the assessment order is erroneous and in so far as prejudicial to the interest of Revenue. We find that Co-ordinate Benches of Mumbai Tribunal in the case of Sulochana Saijan Modi (supra) while considering almost similar set of facts, *wherein* part payment of transaction was made by son of the assessee, who was joint holder of the property, the Tribunal accepted the submission for granting benefit of first and second proviso to Section 56(2)(x)(b) of the Act. We further find that in the present case, the part sale consideration was paid by Shri Umeshbhai P Patel, Sanjaybhai Tulshibhai Mangukiya and Karamshibhai Khimjibhai Mangukiya. We find that one of the assessee in these appeal that is Rajesh Bhai is the son of Parshottambhai C Patel. And Nayan Bhai is the cousin of Rajesh Bhai. Admittedly part consideration of the transaction was either paid by family members or by close relatives. Therefore, respectfully following the decision of Co-ordinate Benches of Mumbai Tribunal in the case Sulochana Saijan Modi (supra), we are also of the considered view that while accepting returned income considered by Assessing Officer has not committed any error. Therefore, the assessment order cannot be branded as erroneous. Thus, twine condition, for invoking Section 263 of the Act are not met out in the present case. This ground of assessee's appeal is allowed.

13. In the result, assessee's appeal No.333/SRT/2023 is allowed.

14. In **ITA No.No.341/SRT/2023**, the assessee has raised identical grounds of appeal, facts of assessee's case is also similar except variation of amount, which we have already allowed in ITA No.333/SRT/2023, therefore, following the principles of consistency this appeal is also allowed in above stated consideration.

15. In the Result, assessee's appeal ITA No.341/SRT/2023 is also allowed. A copy of instant common order be placed in respective case files.

Order pronounced in the open court on 27/09/2023.

Sd/-

**(Dr ARJUN LAL SAINI)**

**[लेखासदस्य/ACCOUNTANT MEMBER] [न्यायिकसदस्य JUDICIAL MEMBER]**

Surat,

Dated: 27/09/2023

*Dkp. Out Sourcing Sr.P.S*

Sd/-

**(PAWAN SINGH)**

**[लेखासदस्य/ACCOUNTANT MEMBER] [न्यायिकसदस्य JUDICIAL MEMBER]**

Surat,

Dated: 27/09/2023

*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

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Sr. Private Secretary/Private  
Secretary/Assistant Registrar, ITAT, Surat