

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING AT
INCOME TAX APPELLATE TRIBUNAL : PUNE BENCHES : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.90/NAG./2020
Assessment Year 2015-2016

Lalita Sanjivreddy Bodkurwar, 11, Near Dr Munje Hospital, Deshmukhwadi, Wani. PIN – 445 304. Maharashtra. PAN ALJPB4602K	vs.	The Principal Commissioner of Income Tax-2, 2 nd Floor, Saraf Chambers, Mount Road, Sadar, Nagpur – 440 001 Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Abhay Agrawal, Advocate
For Revenue :	Shri Kailash Kanojiya, Sr. DR.

Date of Hearing :	20.09.2023
Date of Pronouncement :	12.10.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2015-2016, arise against the Pr.CIT-2, Nagpur's order dated 24.03.2020 passed u/sec.263 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. The assessee pleads the following substantive ground in the instant appeal :

1. *“Whether on the facts and circumstances, the learned CIT has erred in coming to the conclusion that assessment order passed by learned AO u/s 143(3) dated 27.12.2017 is erroneous and prejudicial to the interests of the revenue and in setting aside the assessment order with a direction to the learned AO to conduct proper enquiry and verification.*
2. *Whether on the facts and circumstances, the learned CIT erred in not appreciating the fact that, the learned AO had examined the issue of sale of capital assets and resultant capital gains shown by the assessee in the return of income, and had accepted the claim of the assessee; thus the order cannot be termed as erroneous.*
3. *Whether on the facts and circumstances, the learned CIT erred in not appreciating that, the AO has accepted assessee's claim which was one of the possible views supported by judicial precedents and hence, order cannot be termed as erroneous.*
4. *Whether on the facts and circumstances, the learned CIT erred in holding that the learned AO should have conducted enquiry in a particular manner as desired by learned CIT thereby, substituting his judgment over learned AO's judgment which is not possible under the scheme of revision u/s 263.*

5. *Whether on the facts and circumstances, the learned CIT erred in invoking revision jurisdiction on a "prima facie" view, without making necessary enquiry himself nor considering the merits of the issue as canvassed by the assessee in its written submission.*
6. *Whether on the facts and circumstances, the learned CIT erred in observing that "complete material is not available on record" which is incorrect and without specifying as to which material is not available, thereby invoking the revisional jurisdiction based on an incorrect finding.*
7. *Whether on the facts and circumstances, the learned CIT erred in not appreciating that, explanation 2 to section 263 cannot be invoked in a routine manner but only in case when the view taken by the AO is wholly unsustainable in law.*
8. *Whether on the facts and circumstances, the learned CIT erred in not appreciating that, Explanation 2 to section 263 cannot be said to have overridden the law as interpreted by the Hon'ble Courts, according to which the CIT has to conduct an enquiry and verification to establish and show that the assessment order is wholly unsustainable in law.*
9. *Whether on the facts and circumstances, the learned CIT erred in not making any enquiry on his own but simply directed the learned AO to make proper enquiry and*

further verification thereby, rendering the order passed u/s 263 bad in law which deserves to be set aside.

10. The appellant craves leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds on or before the appeal is disposed off.”

3. We now advert to the relevant facts. There is hardly any dispute between the parties that the learned PCIT's impugned revision directions holding the Assessing Officer's corresponding regular assessment dated 27.12.2017 is an erroneous one causing prejudice to the interest of the Revenue on account of his failure in carrying out the necessary enquiry(ies) during the course of scrutiny.

4. Learned counsel representing assessee invited our attention to the PCIT's revision directions under challenge as follows :

“XI. The assessee stated that AO has relied on the view which was a possible view, the record does not show that the assessing officer had chosen a particular view. In fact he has not raised any question about any alternative view, he has merely accepted what was presented before him without going into the facts or applicable law. Therefore, it cannot be stated that the assessee has taken a possible view. As I have mentioned above, he has not

verified the nature of the agricultural land to take a view that the same was exempted nor he had looked into the provisions of Section 50B which could have been prima facie applicable to the case which was in the nature of a slump sale. Therefore, invoking of Section 263 is justified and the contention of the assessee is without merit.

6. *Thus the Assessing Officer has failed to verify the facts of the case, the details of which are mentioned in the show cause notice issued to the assessee. Here it is pertinent to mention that the Assessing Officer has twin functions i.e. he is an investigator as well as an adjudicator. He cannot remain passive to the reply, when it calls for further inquiry. As an adjudicator he has to collect the facts and after analyzing them as per law and judicial precedents has to pass a speaking order. The argument of the assessee is correct, that if a possible opinion has been taken, then just because a different opinion is possible, jurisdiction under section 263 cannot be taken. However in the present case, the AO has not made any informed opinion. He has not collected the entire facts, nor weighed them against any judicial precedents. The Assessing Officer has acted merely as an approver and ignored both his core functions of investigation and adjudication.*

7. *As discussed above, the order is both erroneous and prejudicial to the interest of the revenue, and the same is set aside. Although the AR has also made submission on the merits of the case, the case cannot be decided on merits under these proceedings since complete material is not available on records. The Assessing Officer is directed to conduct a proper inquiry and verification of the facts and pass a speaking order. The assessee should be given a proper opportunity of being heard, before finalization of the assessment.”*

4.1. Learned counsel vehemently submitted during the course of hearing that the PCIT has erred in law and on facts, more particularly, in directing the Assessing Officer to have overlooked the provisions of capital gains arising from the alleged slump sale u/sec.50B of the Act. Mr. Agrawal invited our attention to the assessee’s paper book that it was not an instance of a “slump sale” at all since involving item-wise sale consideration and therefore, we ought to reverse the PCIT’s impugned action.

5. The Revenue has drawn strong support from the learned PCIT’s foregoing revision directions.

6. We have given our thoughtful consideration to the foregoing vehement rival stands and find no merit in

assessee's arguments. This is for the precise reason that the learned PCIT appears to have raised twin issues of the nature of the assessee's land/capital asset sold in the relevant previous year as well as other aspect of applicability of slump sale provisions u/sec.50B. We sought to verify from the assessee side as to whether the Assessing Officer had issued any notice u/sec.142(1) and or u/sec.143(2) of the Act, as the case may be, raising specific queries of the nature of the land transferred in the relevant previous year, even if the later aspect of slump sale provision is held to be not applicable. The reply received from the assessee's side is in negative only as there is no material in the case file pinpointing specific enquiries by the Assessing Officer during the course of scrutiny. Faced with this clinching factual position, we conclude that the PCIT has rightly invoked his sec.263 revisional jurisdiction in the given circumstances of the case after placing reliance on Malabar Industrial Company Ltd., vs. CIT [2000] 243 ITR 83 (SC); Rampyari Devi Saraogi vs. CIT [1968] 67 ITR 84 (SC); Taradevi Aggarwal vs. CIT 1973 AIR 254 (SC); Gee Vee Enterprises vs. Addl. CIT [1975] 99 ITR 375 (Del.) and recently reiterated in CIT vs. Paville Projects Pvt. Ltd., [2023] 453 ITR 447 (SC). The assessee fails in its instant appeal therefore.

7. We make it clear before parting that the assessee shall be very much at liberty to raise all his factual and legal arguments on all issues in deciding non-applicability of sec.50B slump sale provision proceedings before the Assessing Officer as per law.

8. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 12.10.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 12th October, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Jt. CIT-Wardha Range, Wardha.
4.	D.R. ITAT, Nagpur Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.