

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.238/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2018-19)

(Virtual Court Hearing)

Preetiben Chhatrasingh Chauhan S.No.127/1, Preeti Industrial, Estate, 66 KVA Road, Amlī, Silvassa-396 230	Vs.	Principal Commissioner of Income Tax-Valsad, 301, 3 rd Floor, Income Tax Office, Palak Arcade, Shanti Nagar, Tithal Road, Valsad-395002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABNPC 6043 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Hardik Vora, Advocate
राजस्व की ओर से/Respondent by	Shri Airiju Jaikaran, CIT-DR
सुनवाई की तारीख/Date of Hearing	25.09.2023
घोषणा की तारीख/Date of Pronouncement	16.10.2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 30.03.2023 passed by the Learned Principal Commissioner of Income-Tax-Valsad (in short "Ld PCIT") under section 263 of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2018-19. Grievances raised by the assessee, are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the revision order passed by the learned Principal Commissioner of Income Tax, Valsad u/s 263 of the Act for assessment year 2018-19 without considering our detailed submission made in reply to the show cause notice issued.

2. On the facts and circumstances of the case as well as law on the subject, the Principal Commissioner of Income Tax, Valsad erred in passing order u/s 263 of the Act when order passed by assessing officer is neither erroneous nor prejudicial to the interest of revenue.

3. On the facts and circumstances of the case as well as law on the subject, the Principal Commissioner of Income Tax, Valsad erred in passing order u/s 263 of

the act without considering the fact that the profit on sale of shop has already been shown as business income.

4. On the facts and circumstances of the case as well as law on the subject, the Principal Commissioner of Income Tax, Valsad erred in invoking power u/s 263 of the Act on the issues which were never part of the show cause notice given.

5. It is prayed that order passed by Learned Principal Commissioner may please be quashed.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Succinctly, the factual panorama of the case is that assessee before us is an Individual. The assessee has earned income from house property, business, agriculture income and income from other sources during the year for assessment year 2018-19. The assessee filed her return of income on 12.03.2019, declaring total income at Rs.1,39,88,280/-. The case was selected for limited scrutiny assessment, on the issue that assessee has introduced capital during the year, which is very high as compared to the profit after tax of the assessee. The assessment was completed u/s 143(3) on 13.01.2021 accepting the returned income as such.

3. Later on, Ld PCIT has exercised his jurisdiction u/s 263 of the Act. On perusal of assessment records, it was noticed by ld PCIT that assessee has introduced capital in M/s Sai Nath Petroleum from various sources after claiming capital gains and business income on sale of land and a number of shops. The computation of such transaction which led to build of capital in Sai Nath Petroleum was also perused and it was noted by ld PCIT that there is huge discrepancy which needs to be explained by the assessee, considering these facts a notice was issued to the assessee on 10.03.2023 stating that why assessment framed for assessment year (A.Y) 2018-19 should not be revised u/s 263. The copy of notice issued to the assessee is reproduced below:

“In this case assessment u/s 143(3) was completed on 13.01.2021 accepting the returned income i.e. Rs.1,39,88,280/-. On verification of record, it is noticed that in the computation of income filed by the assessee the long term capital gain of Rs.36,75,845/- has been disclosed after claiming indexed cost of acquisition and indexed cost of improvement. The long term capital gains of Rs.36,75,854/- has been determined in the following manner:

<i>#1 Total sale consideration</i>	<i>Rs.63,58,500/-</i>
<i>Less indexed loss of acquisition</i>	<i>Rs. 8,69,455/-</i>
<i>Less indexed loss of improvement</i>	<i>Rs.18,13,200/-</i>
<i>Long term capital gain</i>	<i>Rs.36,75,845/-</i>

On verification of submissions made by the assessee it is observed that assessee has sold shop No. 201 to 210 at Zhanda Chowk, Silvassa for Rs.2,11,00,000/- to Shri Jayant Gopinath. No other property was sold during the year. As pe sale deed, the assessee was the only owner of shops however while computing the long- term capital gain, the assessee has shown sale consideration of Rs.63,58,500/- only as against total sale consideration of Rs.2,11,00,000/-. It is further observed that assessee has explained that Rs.1,79,00,00/- was introduced as capital in Si Nath Petroleum whose source of income was sale of property. However, in the long term capital gain computation only Rs.63,58,500/- has been shown. The difference amount i.e. Rs.1,79,00,000/- - Rs.63,58,500/- = Rs.1,15,41,500/ has not been explained by the assessee. Furthermore, if total sale consideration is taken at Rs.2,11,00,000/- then capital gain comes to Rs.1,84,17,345/-.

<i>#2 Total sale consideration</i>	<i>Rs.2,11,00,000/-</i>
<i>Less indexed loss of acquisition</i>	<i>Rs. 8,69,455/-</i>
<i>Less indexed loss of improvement</i>	<i>Rs. 18,13,200/-</i>
<i>Long term capital gain</i>	<i>Rs.1,84,17,345/-</i>

From the above, it can be seen that instead of showing long term capital gain at Rs.1,84,17,345/- the assessee has offered only Rs.36,75,845/-.

In view of the above, it is proposed to revise the assessment u/s 263 of the Act. You are hereby required to furnish an explanation within [10] days from the receipt of this notice, as to why your assessment for assessment year 2018-19 should not be revised. If no response is received within the specified time, it will be presumed that you have no explanation to offer and the assessment will be revised based on the available information.”

4. In response to notice issued by Ld.PCIT, the assessee submitted her reply, which is reproduced below:

“Vide above mentioned notice your honour stated that “on verification of submission made by the assessee it is observed that the assessee has sold shop no 21 to 210 at Zanda Chowk, Silvassa for Rs.2.11,00,000/- to Shri Jayant Gopinath. No other property sold during the year. As pe sale deed, the assessee was the only owner of shops, however, while computing the long-term capital gain, the assessee has shown sale consideration of Rs.63,58,500/- only as against total sale consideration of Rs.2,11,00,000.”From reading of your

honour's above said notice, it seems that the objection of your honour is that sales consideration of Rs.2,11,00,00/- for sales of shops (numbering from 201 to 210 sold to Gopinath) was not shown in capital gain head.

In this regard, we submit as under:

We submit that assessee is engaged in the business of builder and developer and in real estate in name of Preetiben Chauhan and trading in diesel and petrol in name of Sai Nath petroleum and the books of account of the assessee was also audited u/s 44AB of the Act.

We submit that assessee's return was selected for limited scrutiny through CASS (in faceless mode) on issue of substantial increase in capital. Copy of Notice u/s 143(2) is enclosed herewith for your honour's perusal.

Later, to verify the sources of substantial increase in capital, the Ld. AO had issued detailed questionnaire u/s 142(1) of the IT Act and asked explanation and justification of sources of substantial increase in capital with evidences.

Copy of notice u/s 142(1) of the IT Act is enclosed herewith for your honour's perusal.

Against the said notice u/s 142(1) of the IT Act, the assessee had submitted here detailed reply and explanation along with all required relevant evidences (including audited balance sheets, profit & loss a/c etc., bank statements, sale deeds etc.) in support of her contention and also explained sources (which includes amount of Rs.1,79,00,000/- introduced out of sale amount received on sale of shops (from 201 to 210 to Gopinath classes) for substantial increase in capital of assessee before Ld. AO.

Copy of said submission made against notice u/s 142(1) of the IT Act is enclosed herewith for your honour's perusal.

We further submit that during the year under consideration, the assessee had sold the stock of shops (numbering from shops 201 to 210) to Gopinath Classes for Rs.2,11,00,00/-. Further these shops were constructed by the assessee under the project name of Shoppers Shop in Silvassa in year of 2003.

Copy of sale deed of said shops along with ledger of said party with relevant banks statement extract is enclosed herewith giving the brief idea about construction history of this shops

Further as said shops were held as stock of the business of the assessee, sale of said shops was shown by the assessee as business turnover in her audited profit & loss a/c as well as in her filed ITR-3.

Relevant reconciliation of business turnover of the assessee disclosed in audited profit and loss a/c with disclosed in ITR-3 are under:

Particulars	As per audited profit & loss a/c (amount in Rs.)	Consolidated turnover shown in P & L in ITR-3 in Income Tax Return (Amount in Rs)
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<i>Sale of shops from 201 to 210 (shown in profit & loss a/c of M/s Preetiben Chauhan)</i>	<i>2,11,00,000</i>	<i>25,32,22,622</i>
<i>Sales of diesel & petrol (shown in P&L a/c of M/s Sainath Petroleum)</i>	<i>23,21,22,622</i>	
<i>Total</i>	<i>25,32,22,622</i>	<i>25,32,22,622</i>

Copy of audited balance sheet, profit & loss a/c along with ITR-3 of the assessee of A.Y 2018-19 is enclosed herewith for your honour's perusal.

Copy of Income Tax return with computation of income of the assessee for A.Y 2018-19 is enclosed herewith.

Further, we submit that the assessee had already disclosed said sale transaction of shops in her auditee books of account as well as in her income tax return as business income under business head and accordingly she had discharged her tax liability for A.Y 2018-19.

Further, during the year under consideration the assessee had also sold the non-agriculture land s no.383/1/1,383/2 to other person for Rs.63,58,500/- and accordingly, the same was shown under head of capital gain n income tax return and accordingly, the assessee also paid the tax on it.

Copy of sale deed of above land is enclosed herewith for your honour's perusal.

So, both transaction sale of shops for Rs.2,11,00,000 and sale of NA Land for Rs.63,58,500 are separate transactions and both the transactions are properly disclosed in income tax return of the assessee and accordingly, the assessee also paid the tax.

Hence, we submit that as the case was selected for limited scrutiny purpose to verify the sources of substantial increase in capital, the Ld AO had rightly raised query regarding sources of substantial increase in capital vide notice u/s 142(1) of the IT Act and the assessee had also submitted her detailed reply and explanation with supporting evidences against notice u/s 142(1) of the IT Act before Ld. AO, and after proper examining and verifying the details and submission along with evidence of the assessee and after satisfying with sources of substantial increase in capital of assessee, the Ld. AO completed the assessment and passed the ordered u/s 143(3) of the IT Act.

We further submit that an assessment or re-assessment could only be revised u/s 263 in case it satisfies the twin conditions of erroneous as well as causing prejudice to the interest of revenue, in case of assessee order passed u/s 143(3) of the IT Act by the Ld. AO is neither erroneous nor prejudice to the revenue, as it was passed after detailed examination and proper verification of all documents of subjected matter of limited scrutiny."

5. However, Id PCIT rejected the contention of the assessee and held that the assessee has shown sale of shops and consequently business income out of such sale transactions. On the sale of shops, the assessee has claimed business income however, in the immediately preceding year there was no stock of shops in the closing stocks. On verification it was further noted by Id PCIT that the assessee was having a piece of land on which construction permission was given by the Silvassa Administration of Union Territory of Dadar and Nagar Haveli in 1997. On this piece of land, the assessee has constructed various shops and sold them and has shown business profits during the year under consideration. However, in the profit and loss account there is no opening value of land, which the assessee was holding from 1997. Thus, Id PCIT observed that these vital facts have neither been examined by the Assessing Officer nor any remark have been made by the auditor and capital formation has been accepted as such without making any addition or rejection of the books of accounts. In fact, the audit report in the case of the assessee, is a highly qualified one and it would have alerted the assessing officer, however the Assessing Officer failed to examine the issue. Therefore, Id PCIT held that Assessing Officer has passed the assessment order without making inquiries or verification on the issue which ought to have been made in the assessee's case therefore the assessment order u/s 143(3) of the Act in the case of Preetiben Chhatrasingh Chauhan for A.Y 2018-19 passed on 13.01.2021 by the Assessing Officer is erroneous in so far it is prejudicial to the interest of revenue. Therefore, Id PCIT directed the Assessing Officer to frame the assessment *de-novo* after making proper enquiries.

6. Aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

7. At the outset, Shri Hardik Vora, Learned Counsel for the assessee, begins by pointing out that during revision proceedings, the issue raised by Ld. PCIT, was different than the issue involved in limited scrutiny. The Council pointed out that the scrutiny assessment was completed based on a selected issue, namely” “share capital / other capital”. Therefore, before assessing officer, in the limited scrutiny, the issue raised by the ld PCIT was not the subject matter of limited scrutiny, hence the ld PCIT has gone beyond the scope of the ‘limited scrutiny’ where the Assessing Officer does not have power to verify the issue except the issue mentioned in the ‘*limited scrutiny*’, and hence the order passed by the ld PCIT is not valid and it may be quashed.

8. On the other hand, Ld. CIT-DR for the Revenue relied on the findings of Ld. PCIT and stated the Assessing Officer has not converted ‘*limited scrutiny*’ into ‘*complete scrutiny*’ thus Assessing Officer has not applied his mind, therefore order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of revenue, hence order passed by the ld PCIT, may be upheld.

9. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We note that ld Counsel for the assessee submitted before the Bench, the following documents and evidences, viz:(i) Income Tax Return & computation of income for A.Y 2018-19 (vide pages 28 to 32 of paper book) (ii) Audited Profit & Loss account and balance sheet of assessee and Sai Nath Petroleum for A.Y. 2018-19 (vide pages 33-36 of paper book) (iii) Capital account and current assets, for A.Y 2018-19 (vide pages 37-38 of paper book). After considering the above facts and evidences, we have gone through the assessment order, passed by the Assessing Officer and noted

that assessment order was passed by the Assessing Officer in the '*limited scrutiny*' only to examine the items of '*share capital and other capital*'. The scrutiny assessment was for limited purpose to examine the issue of "*share capital and other capital*". The Assessing Officer has examined the '*share capital and other capital*' in the scrutiny assessment and framed the assessment order u/s 143(3) of the Act, dated 13.01.2021. However, Ld. PCIT has raised the issue, stating that there were sale of shop numbers 201 to 210 at Zanda Chowk, Silvssa and computation of long-term capital gain, their on which was not the subject matter of '*limited scrutiny*'. Therefore, the issue raised by the L PCIT is outside the scope of limited scrutiny.

10. We note that assessee's case was selected for "**limited scrutiny purpose**" for the purpose of verification of "Share capital/other capital". Therefore, Assessing Officer need not to examine the issue relating to sale of shops and computation of long term capital gain, which was raised by the Ld. PCIT. Since in the limited scrutiny case, the Assessing Officer has to examine only those issues which are mentioned in the notice of limited scrutiny. If the Assessing Officer wants to examine other items, which are not mentioned in the limited scrutiny notice, then in that circumstances, he has to convert the '*limited scrutiny*' into '*unlimited scrutiny*' by taking permission from the higher authorities, which the Assessing Officer has not done in the assessee's case under consideration. Therefore, the issue relating to sale of shops and capital gain thereon and other few issues raised by ld PCIT, which were raised by the Ld. PCIT in his order u/s 263 of the Act, is outside the scope of the examination conducted by the Assessing Officer, hence order passed by ld PCIT in his revision order is not tenable and therefore, order of ld PCIT may be quashed.

11. We note that issue involved in this appeal is squarely covered by the judgment of the Co-ordinate Bench of ITAT Surat in the case of Green Park, in ITA No. 180/SRT/2022 (A.Y 2017-18), order dated 15/12/2022, wherein it was held as follows:

“12. We have considered the rival submissions of both the parties and have gone through the assessment order passed by the Assessing Officer as well the order passed by the ld. Pr.CIT under Section 263 of the Act which is impugned before us. We find that the case of assessee was selected for limited scrutiny. We further find that for limited scrutiny, the Assessing Officer issued necessary questionnaire about seeking details of bank accounts and other related information and evidences. The assessee in its reply, furnished such details of bank statement and other information. The Assessing Officer after taking such reply, completed the assessment on 18/12/2019 without any variation. The ld. Pr.CIT in its show cause notice, identified the issue which was not the subject matter of limited scrutiny. In the show cause notice, the ld. Pr.CIT raised the issue that survey action was conducted on the assessee firm in relevant financial year and that the assessee made declaration of Rs. 1.24 crore on account of undisclosed expenses. We find that such issue was not the subject matter of scrutiny, hence, the Assessing Officer was not entitled to raise such question. However, we find that the assessee in his reply dated 09/09/2019 submitted before Assessing Officer submitted that they have duly offered the disclosed income in their return of income.

13. We find that the Coordinate Bench of Delhi High Court in Balvinder Kumar Vs Pr.CIT (supra) has held that “in case of limited scrutiny, Assessing Officer could not go beyond reason for which matter was selected for limited scrutiny thus, it would not be open to Principal Commissioner to pass revisionary order under section 263 on other aspects and remit matter to Assessing Officer for fresh assessment.” We further find that similar view was taken by Coordinate bench of Tribunal in series of decisions as has been relied by ld AR for the assessee.

14. The Supreme Court in celebrated/ leading case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 832 (SC), held that the prerequisite for the exercise of jurisdiction by the Commissioner suo-motu is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1) of the Act. It can be exercised only when an order is erroneous, the section 263 will be attracted. In view of aforesaid factual and legal discussions, in our considered view, the twin condition as required to revise the assessment order is not met out in the present case, therefore, the order passed by the ld. Pr.CIT is set aside and the grounds of appeal raised by the assessee are allowed.

15. In the result, this appeal of assessee is allowed.”

12. Based on the above facts and circumstances, we note that as the case of assessee was selected for ‘limited scrutiny’ purpose to verify the sources of substantial increase in capital, and the Assessing Officer had rightly raised query regarding sources of substantial increase in capital, vide notice u/s 142(1) of the Act and the assessee had also submitted her detailed reply and explanation with supporting evidences, against notice u/s 142(1) of the Act before Assessing Officer. The Assessing Officer, after proper examining and verifying the details and submission along with evidences of the assessee and after satisfying with sources of substantial increase in capital of assessee, had completed the assessment and passed the order u/s 143(3) of the Act. We also note that that an assessment or re-assessment could only be revised u/s 263 of the Act in case it satisfies the twin conditions, viz: order is erroneous as well as prejudicial to the interest of revenue. In the case of assessee, order passed u/s 143(3) of the Act is neither erroneous nor prejudicial to the revenue, as it was passed after detailed examination and proper verification of all documents of subject matter of limited scrutiny. Therefore, respectfully following the judgment of the Co-ordinate Bench of ITAT Surat in the case of Green Park (supra), we quash the order of ld PCIT.

13. In the result, appeal of the assessee is allowed.

Order is pronounced on 16/10/2023 by placing record on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत/Surat

दिनांक/ Date: 16/10/2023

Dkp Out sourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat