

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH :H: DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 800/Del/2021  
Assessment Year: 2015-16**

Shree Mayor, B-261, Greater Kailash, Part-1, New Delhi (PAN:AOTPK9366A)	Vs.	Principal CIT, Delhi-15, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee by : Shri R.S. Ahuja, CA  
Department by : Ms. Sapna Bhatia, CIT-DR

Date of Hearing : 09.10.2023  
Date of Pronouncement : 16.10.2023

**ORDER**

**PER SAKTIJIT DEY, VICE PRESIDENT:**

This is an appeal by the assessee against order dated 30.03.2021 passed by the learned Commissioner of Income-Tax (Appeals) under Section 263 of the Income-Tax Act,1961 for the assessment year 2017-18.

2. Briefly, the facts are, assessee is a resident individual. For the assessment year under dispute, the assessee filed her return of income on 28.08.2015 declaring income of Rs.8,12,620. Assessee's case was

selected for limited scrutiny and assessment was completed under Section 143(3) of the Act vide order dated 06.04.2017 accepting the income returned by the assessee. After completion of assessment as aforesaid, learned PCIT, in exercise of powers conferred under Section 263 of the Act, called for and examined the assessment records of the assessee and while doing so, he was of the view that the assessment order is erroneous and prejudicial to the interest of the revenue for the following reasons:

- i) The Assessing Officer has not examined assessee's claim of expenditure incurred in construction of Rs.46,31,547 in construction of property on sale of which the assessee derives capital gain;
- ii) The Assessing Officer has not examined the claim of expenses of Rs.1,80,140 as transfer expenses for sale of the property.
- iii) The Assessing Officer has not examined the validity of the assessee's claim of deduction under Section 54 of the Act.

3. Accordingly, he issued a show cause notice purportedly under Section 263 of the Act directing the assessee to explain as to why the assessment order being erroneous and prejudicial to the interest of the Revenue or should not be set aside. In response to the show cause

notice, the assessee furnished a detailed reply objecting to the proposed action under Section 263 of the Act. However, the submission made by the assessee did not find favour with the revisionary authority. Primary reasons provided by learned PCIT for holding the assessment order to be erroneous and prejudicial to the interest of the Revenue are as under:

- a) No proper inquiry was conducted by the Assessing Officer while calling for documentary evidences with regard to cost of construction claimed as deduction;
- b) No inquiry was conducted with regard to the assessee's claim of deduction under Section 54 of the Act as investment in agricultural land does not qualify for deduction under Section 54 of the Act.
- c) Either no inquiry was made nor evidence was called for regarding conversion of agricultural land for residential purposes and whether in the interim period till the conversion of agricultural land to the residential, the capital gain was deposited in Capital Gain Accounts Scheme.

4. Thus, based on the aforesaid reasons, learned PCIT concluded that the assessment order is erroneous and prejudicial to the interest of the Revenue as in terms of Explanation 2 to section 263 of the Act, the Assessing Officer has not conducted proper inquiry which he should have made. Accordingly, he set aside the assessment order with a

direction to the Assessing Officer to make assessment de novo after conducting necessary inquiry.

5. Before us, learned Authorized Representative of the assessee submitted that the revisionary authority has wrongly assumed jurisdiction under Section 263 of the Act as the assessment order cannot be considered to be either erroneous or prejudicial to the interest of the Revenue. He submitted assessee's case was selected for limited scrutiny for the purpose for examining the issue of capital gain arising on sale of a house. He submitted, in course of assessment proceedings, the Assessing Officer has specifically inquired the issue by calling for necessary information and details. He submitted, in response to the notice issued by the Assessing Officer, the assessee has furnished all documentary evidences not only with regard to the sale of the property giving rise to the capital gain but also the investment made in a property for claiming deduction under Section 54 of the Act. He submitted, after carefully verifying the evidences/details brought on record and conducting proper inquiry on the capital gain, the Assessing Officer has completed the assessment. Thus, he submitted, the allegations of the revisionary authority that the Assessing Officer has failed to make

proper inquiry is contrary to the facts and material on record. He submitted, the other allegations of learned PCIT that investment in agricultural land will not qualify for deduction under Section 54 of the Act is totally wrong as the land in question has already been converted to residential purpose through Government Notification. He submitted, there is no valid ground for invoking the powers under Section 263 of the Act. Thus, he submitted, the order passed under Section 263 of the Act should be quashed.

6. Learned Departmental Representative relied upon the observations of learned PCIT.

7. We have considered rival submissions and perused the material on record.

8. At the outset, we deem it proper to examine the issue on merits. It is evident that assessee's case was selected for limited scrutiny to examine the following:

- i) Sale of property mismatch;
- ii) Purchase of property;

- iii) Mismatch in income/capital gain on sale of land or building; &
- iv) Deduction claimed under the head “capital gain”.

9. It is observed, on the issues on which assessee's case was selected for limited scrutiny, the Assessing Officer initiated inquiry through notice dated 19.09.2016 issued under Section 143(2) of the Act by calling for necessary details. In response to the queries raised by the Assessing Officer, in letter dated 16.01.2017, assessee offered her response to each of the issues raised in the notice with supporting evidences. On examination of material placed in the paper book, it is observed that in respect of each of the issues raised in the limited scrutiny, the assessee has furnished reply with supporting evidence. After verifying the submissions of the assessee vis-à-vis evidences brought on record, the Assessing Officer completed the assessment accepting the income returned. Therefore, we are unable to agree with the revisionary authority that the Assessing Officer has completed the assessment without proper inquiry.

10. On the contrary, the material on record clearly establish that the Assessing Officer indeed has inquired into all the issues relating to

limited scrutiny. It appears on record that the mismatch referred to in the limited scrutiny is due to lesser amount of capital gain offered by the assessee compared to the sale consideration received on sale of property. However, it is a fact that the property sold was jointly held by the assessee and her husband and assessee's share in the sale consideration is 50%, which has been shown by the assessee. Thus, in reality, there is no mismatch. Even, the cost of construction incurred on the original property has been explained. Therefore, the allegation of the revisionary authority appears to be unsubstantiated. Even, with regard to the allegations that deduction under Section 54 is unavailable as assessee has made investment in agricultural land, is wholly unfounded as the nature and character of the land purchased on which the assessee has constructed the house has converted from agricultural to residential from 17.06.2010, which is evident from the reply received by the assessee from Delhi Development Authority, pursuant to application made under the RTI Act, a copy of which is placed at page 87 of the paper book. In the agreement with the developer, the nature and character of land is clearly shown as low density residential area.

11. Thus, the facts on record clearly reveal that the reasons based on which the revisionary authority invoked jurisdiction under Section 263 of the Act are either non-existent or unsubstantiated, hence, unacceptable. Thus, in our view, in the given facts and circumstances, the assessment order cannot be considered to be erroneous and prejudicial to the interest of the Revenue so as to clothe the revisionary authority with the powers to revise it under Section 263 of the Act. Accordingly, we reverse the impugned order of learned PCIT and restore the assessment order.

12. In the result, the appeal is allowed as indicated above.

*Order pronounced in the open court on 16 .10.2023.*

**Sd/-**

**( DR. BRR KUMAR )  
ACCOUNTANT MEMBER**

**Sd/-**

**(SAKTIJIT DEY)  
VICE-PRESIDENT**

**Dated: 16<sup>th</sup> October, 2023  
Mohan Lal**

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi