

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2747/Del/2022
(Assessment Year : 2011-12)**

Ashok Aneja House No. 30, Sukhdev Nagar, Panipat Haryana-132103 PAN : AAQPA2793Q (APPELLANT)	Vs.	Pr. CIT, Rohtak, Haryana (RESPONDENT)
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Assessee by	Sh. Gurjeet Singh, CA & Sh. Shantanu Jain, Adv.
Revenue by	Sh. P. Praveen Sidharth, CIT DR

Date of hearing:	21.08.2023
Date of Pronouncement:	18.10.2023

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal order dated 11.03.2021 passed u/s 263 of the Income Tax Act, 1961 passed by Ld. PCIT, Rohtak (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) for the assessment year 2011-12, arising out of assessment order dated 30.12.2018 passed by ITO, Ward-1, Panipat u/s 143(3)/147 of the Act, 1961(hereinafter referred in short as “Ld. AO”).

2. Heard and perused the record.

2.1 At the outset, Ld. AR has pointed out that the appeal has been filed with the delay of 144 days and the grounds mentioned for the delay in the affidavit are that the period between 15.03.2020 to 28.02.2022 is covered by direction of Hon'ble supreme Court for exclusion of the limitation period being part of Covid Pandemic and delay of 13 more days thereafter. Having considered aforesaid explanation the Bench considers it justified to give assessee an opportunity of being heard on merits. The delay is condoned.

2. The facts in brief are that Ld. PCIT observed from the assessment order that assessee had transferred immovable property for Rs. 61 lakhs while the registration authority has adopted its value at Rs. 1,72,00,000/- for Stamp Duty purposes therefore, as per provisions of Section 50C of the Act, Ld. AO was under obligation to adopt the sale consideration Rs. 1,72,00,000/- for calculating long term capital gain, however without making any inquiries with regard to certain documents filed by assessee, being agreement to sale dated 30.10.2001 and a settlement of dispute document dated 30.11.2009, AO allowed the valuation of Rs. 61 lacs. However, assessee had not responded to the notice u/s 263 and the Ld. PCIT decided to proceed and with the following relevant findings in para 3, considered the assessment order to be erroneous and prejudicial to the interest and setting aside the same directed AO to pass a fresh order in accordance with law;

“3. I have carefully examined the entire facts of the case from the assessment records. Perusal of assessment record shows that the replies filed during the assessment proceedings were just placed on record and the A.O. has failed to make assessment proceedings were just placed on record and the A.O.

has failed to make any enquiries to verify the contention of the assessee regarding the purported agreement for sale and accepted the concocted story made up by the assessee just to avoid the tax liability in the light of the provisions of section 50C of the Income Tax Act, 1961. The Registered deed was executed on 13.07.2010 at Stamp value of Rs. 1.72 cr. and therefore it is crystal clear that there was violation of Section 50C.

In view of the facts discussed above it is clear that the assessment order passed by the AO is hasty and is erroneous and prejudicial to the interest of revenue. The A.O. should conduct detailed enquiries on the above issues by conducting detailed enquiries and examining the documentary evidence. If required the purchaser should also be examined and the provisions of Section 50C should be invoked.”

4. The assessee is in appeal raising following grounds ;

“1. Because the action is under challenge on facts and law qua the assumption and application of revision jurisdiction u/s 263 since there is ‘material facts’ containing ‘material particulars’ showing the application of mind by the A.O.

2. Because the action is under challenge on facts and law, that issue raised in the show cause notice were specifically dealt with by the Assessing Officer and order u/s 143(3) was passed after detailed consideration and application of mind and as such proceedings u/s 263 are illegal, invalid and without jurisdiction.

3. Because the action is under challenge on facts and law, that proceedings u/s

263 are merely on the basis of change of opinion and in total disregard to facts on record and detailed submission by the assessee during proceedings u/s 263.

4. Because the action is under challenge on facts and law, that it is not the case of the CIT that the Assessing Officer had not conducted enquiry in relation to issue raised in the show case notice and only allegation is that there was lack of enquiry and jurisdiction was assumed merely on the basis of change of opinion and in total disregard to object and scope of section 263 of the Income tax Act, 1961.

5. For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”

5. On facts it was submitted on behalf of the assessee that as there was a dispute between the assessee and the prospective vendee regarding certain aspects which were settled on 30.11.2009, the sale consideration continued to be Rs. 61,00,000/- as determined in the agreement dated 30.10.2001 and when the property was sold on 13.07.2010, Registration Authority had taken the present value. It was submitted that these aspects have been duly examined by the Id. AO and Ld. PCIT without making any inquiry of his own, to show that Ld. AO has fallen in error in making any specific inquiry, held the order to be erroneous. Ld. AR relied judgments of Hon'ble Delhi High Court in ***DIT vs. Jyoti Foundation in ITA no. 267/2013 order dated 09.07.2013*** to contend that in case the revisional power is exercised for lack of inquiry, the Ld. PrCIT should supplement the same with his own inquiry and in the absence of same proceedings u/s 263 cannot be concluded. In this context, he also relied judgment of Hon'ble Delhi High Court ***CIT vs. Anil Kumar Sharma in ITA no. 820/2009 vide order dated 24.02.2010 and Delhivery Pvt. Ltd. in ITA no. 1036/Del./2021 vide order dated 16.03.2023***, Hon'ble Bombay High Court in ***Pr. CIT vs. Shivshahi Punarvasan Prakalp Ltd. in ITA no. 397/2018 vide order dated***

05.08.2022 , ITAT Delhi Bench “A” in the case of *Amire Enterprises Ltd. ITA no. 3206/Del/2017.*

5.1 Ld. DR however supported the findings of Ld. PrCIT submitting that the assessment order shows that Ld. AO has reproduced the submission of AR and accepted them without any enquiry about genuineness of the documents.

6. The Bench has given thoughtful consideration to the matter on record and submissions and is of firm view that Ld. PCIT has fallen in error in making an observation of the lack of inquiry in regard to the certain documents and piece of evidences which were furnished before Ld. AO in the reassessment proceedings. Ld. AO has although not discussed the same however the presumption of official acts being done in due course need to be rebutted by some sort of evidence or facts countering the presumption. However, ld. PCIT without adding anything more to the records of the case by way of any enquiry has merely drawn his inferences about the documents of assessee and setting aside the assessment order directed re-inquiry into the issue. The same is irregular exercise of the jurisdiction u/s 263 of the Act as only after some incidental and supplemental enquires by the Revisional authority, the assessment order can be said to be erroneous and prejudicial to interest of the Revenue. Which is absent in the present case. Accordingly, the grounds raised are sustained. **The appeal of assessee is allowed. Impugned order is quashed.**

Order pronounced in the open court on 18th October, 2023.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- .08.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

AR, ITAT
New Delhi