

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'DB', NEW DELHI**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.31/AGR/2021
(Assessment Year : 2015-16)

Gurdeep Singh 33, Laxmi Nagar, Sikandra, Agra, Uttar Pradesh-282007 PAN No. AFLPS 7500 K (APPELLANT)	Vs.	The Pr. CIT-1 Agra (RESPONDENT)
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Assessee by	Shri Anil Verma, Adv.
Revenue by	Shri Surendra Pal, CIT(DR)

Date of hearing:	11.10.2023
Date of Pronouncement:	25.10.2023

PER SHAMIM YAHYA, AM :

This appeal filed by the assessee directed against the order of Learned Pr. Commissioner of Income Tax (PCIT)-1, Agra dated 31.03.2021 pertaining to Assessment Year 2015-16.

2. The grounds of appeal filed by assessee, which reads as under:

- “1. That the Pr. CIT-1, Agra has erred in law and on facts in passing order u/s 263 of the Income tax Act, 1961 dated 31.03.2021 without bringing on record any specific fact leading to prove the basis ingredient of the Asstt. Order being erroneous and prejudicial to the interest of revenue.
2. That the Pr. CIT-1, Agra has arbitrarily passed the impugned order u/s 263 of the Income tax Act, 1961 without appreciating the relevant facts brought on record by the learned AO while passing the order of assessment u/s 143(3) dated 18.12.2017.

3. *That the PCIT-1, Agra has passed the impugned order u/s 263 without considering the material facts brought on record by the Assessee in response to the notice issued u/s 263 of the Income Tax Act, 1961.*
4. *That the PCIT-1, Agra has over ruled the case laws relied upon by the assessee without appreciating the facts discussed in those case laws and as such the order passed u/s 263 is bad in law and on facts.”*

3. In this case, subsequent to the Assessing Officer's order, Learned Pr.CIT invoked the jurisdiction under section 263 of the Act. After issuing of notice to the assessee and receipt of reply, the Learned Pr.CIT summarised the facts of his order as under:

8. *The facts of the case are that that the assessee had purchased two residential plots for Rs.98,53,000/- through two separate purchase deeds both dated 04.07.2013 and constructed building on them spending Rs.6,13,436/-. Thereafter, the assessee sold 03 residential plots on dated 16.05.2014 which were purchased through 03 separate registered deeds (one deed dated 28.12.2002 and two deeds dated 06.03.2003) and earned LTCG of Rs.1,02,20,670/-. The assessee had claimed exemption u/s 54F of the I.T. Act. 1961 on the strength of the investments made in purchasing the two plots and construction of building thereupon.*

As per the provisions of section 54F of the Act, if capital gain arises to an eligible assessee on transfer of any long term capital asset (not being a residential house), and the assessee has within a period of one year before or two years after the date of transfer, purchased, or has within a period of three years after the date of transfer, constructed, one residential house in India, the capital gain shall not be charged u/s 45 of the Act to the extent invested in such purchase / construction. But the above exemption shall not be available where the assessee owns more than one residential house, other than the newly purchased constructed one, on the date of transfer and the income from such residential house, other than the one residential house owned on the date of transfer, is chargeable under the head income from house property.

9. *The reply of the assessee in respect of purchases of two plots through two separate purchase deeds is contradictory in itself as the*

assessee's submissions at one place shows the details of properties through a table which indicates that the property at 8 and 9 Shreejeepuram, Sikandara, Agra are two different properties one is under construction and other is occupied by a tenant while in the description at point no. 5, it is stated that these two plots are being used for construction of residential house and therefore, the issue needs a fresh inquiry as requisite verification was not done during the assessment proceedings.”

4. Further, Learned Pr.CIT held that Explanation 2 of Section 263 of the Finance Act, 2015 has permitted the Learned Pr.CIT to direct for further investigation. Hence, he rejected assessee's submissions that enquiry has been done by the Assessing Officer. Learned Pr.CIT concluded as under:

“11. After careful consideration of material available on record, it is held that the order passed by the then ITO, Ward-1(1)(1), Agra is not only erroneous but also prejudicial to the interest of the revenue on the issues mentioned above. As requisite verification was not done by the Assessing Officer, the case is therefore squarely covered under explanation 2 of section 263 of the I.T. Act. Accordingly, the assessment order passed u/s 143(3) of the I.T. Act dated 18.12.2017 is hereby cancelled with the directions to the Assessing Officer to pass a fresh order after examining the issues as discussed above and after affording reasonable opportunity of being heard to the assessee.”

5. Against the above order, assessee is in appeal before us.

6. Learned Counsel for the assessee contended that Assessing Officer has made sufficient enquiry in this case on all the issues of the capital gains and after due enquiry he has allowed assessee's claim. He further submitted that Learned Pr.CIT relied upon the Explanation 2 of Section 263 of the Finance Act, 2015 is misplaced as the said Explanation is applicable from A.Y. 2016-17 and is not applicable to the assessment year under consideration.

7. Per contra, Learned DR relied upon the orders of the Pr.CIT.
8. Upon careful consideration, we note that Assessing Officer has duly discussed the issue in dispute. The order sheet entries submitted in the paper book by the assessee for A.Y. 2015-16 bring out clearly the enquiry done by the Assessing Officer on this account. Furthermore, the assessee has also submitted an Office note at page no.18, in which the deduction claimed under the Capital Gain is dealt with by the Assessing Officer, which reproduced as under:

Office Note

“The case was selected for Limited Scrutiny under CASS on the reasons given as under:

- i). Large deduction u/s 54B, 54C, 54D, 54G and 54GA*
- ii). Mismatch in sales turnover reported in Audit Report and ITR Jii). Substantial increase in capital in a year.*

To the above reasons the assessee stated vide his letter dated 20.2.2017 as given below:

Sales Turnover Mismatch: *there is no mismatch in the professional receipt as shown in Japnam Kritkar Hospital Rs.74,58,744/- (Japnam Rs.39,48,680/- + Getwell Hospital Rs.35,10,064/-). this figure duly find place in the Audit Report section 44AB at column No.40*

Increase in capital: *The assessee apart from professional income has earned Gain on sale of Akbara ZLand for Rs.1,045,27,370/- (Rs.1,05,87,500/- Rs. 1,60,130/-) rental income which has been credited in consolidated capital account and hence has increased capital. The assessee drawas your kind attention towards capital gain shown in computation of income.*

Deduction claimed under the Capital Gain: *The assessee has shown in computation of income a Capital Gain of Rs.1,02,20,670/- which has*

*been utilized in purchase of plots and construction (Residential House).
The evidence of purchase of land and investment thereon are enclosed.*

*The above were got verified with the papers, documents and specific
books of accounts, respective sale/purchase deed, and bank statement.
No adverse inference in the case could be taken.”*

9. Furthermore, the assessee has also attached Inspector note in Page No.17 where physical verification has been conducted by the Inspector and thereafter, after all investigation, Assessing Officer has allowed the assessee's claim. In this view of the matter, assumption of jurisdiction by the Pr.CIT is not correct. Learned Pr.CIT reliance upon the Explanation 2 of Section 263 of the Finance Act, 2015 is misplace as the same is not applicable to the current assessment year. Hence, we set aside the order of Learned Pr.CIT and decide the issue in favour of the assessee.

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

Order pronounced in the open court on 25.10.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 25.10.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI