

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.273/DEL/2023
Assessment Year 2017-18

Anju Ahuja, 3704/17, Hardhian Singh Road Karol Bagh, New Delhi	Vs.	Principal Commissioner of Income Tax, Circle-49(1), New Delhi
TAN/PAN: ATWPK1908N		
(Appellant)		(Respondent)

Appellant by:	Shri Nitin Kanwar, Adv. Shri Rajeev Kumar, Adv. Shri Rohit Kumar Gupta, Adv.		
Respondent by:	Mr. Zafarul Haque Tanweer, CIT-DR		
Date of hearing:	26	09	2023
Date of pronouncement:	20	12	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal by the assessee is directed against the revisional order passed by the Principal Commissioner of Income Tax, Delhi-10 ('Pr.CIT' in short) dated 06.01.2022 for the Assessment Year 2017-18 passed under Section 263 of the Income Tax Act (hereinafter referred to as 'Act').

2. As per the grounds of appeal, the assessee has essentially challenged the jurisdiction assumed by the Pr.CIT under Section 263 of the Act and has also assailed the directions given in the revisional order.

3. Briefly stated, the assessee filed return of income declaring total income at Rs.1,07,53,160/- for the Assessment Year 2017-18 in

question. The return filed by the assessee was subjected to scrutiny assessment to verify 'Large Deduction / Exemption claimed under different provisions of the Act. The AO passed assessment order under Section 143(3) dated 15.11.2019 on being satisfied with the claim so made.

4. The case records pertaining to the aforesaid assessment was reviewed. On examination of records, the Pr.CIT found that the claims made towards deduction under Section 54F is not in accordance with law.

5. The Pr.CIT accordingly issued show cause notice dated 23.07.2021 reproduced as under:

NOTICE FOR THE HEARING

Mrs/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s. 263 of the THE INCOME TAX ACT, 1961 - Assessment Year 2017-18.

In this regard, a hearing in the matter is fixed on 09/08/2021 at 11:00 AM. You are requested to attend in person or through an authorized representative to submit your representation, if any along with supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

2. Review of assessment was conducted in this case by the office of undersigned. In the review, it is found that the assessment order passed u/s 143(3) of the Act by the Assessing Officer for the A.Y. 2017-18, dated 15.11.2019 is erroneous in so far as it is prejudicial to the interest of revenue.

On examination of the records, it is noticed that the case was selected under CASS for complete scrutiny with issue "Large Deduction/exemption claimed...". Further, the assessment proceedings in this case was completed u/s 143(3) of the I.T. Act, 1961 on 15.11.2019 and assessed at returned income of Rs. 10753160/- declared by the assessee in its IT filed for AY 2017-18.

3. On perusal of the assessment records and on going through the information filed by the assessee, it is noticed that the assessed has sold residential plot of land L-3, Kirti Nagar, New Delhi for a

consideration of Rs. 5,00,00,000/- during the year under consideration. Further, the assessee has shown net Capital Gain (LTCG) of Rs.4,71,81,433/-.

The assessee had claimed deduction u/s 54F of the IT Act, 1961 of Rs. 3,71,36,759/- for investment made in the purchase of residential property. Further, the assessee has deposited a sum of Rs. 25,00,000/- in the Capital Gain Account Scheme on 31/07/2017 and claimed deduction on this additional amount also.

During the course of the assessment proceedings, the assessee has submitted that the additional amount was deposited in the Capital Gain Account Scheme for the purpose of improvement of the newly purchased property. It is noticed that the newly purchased property at H-53A, Kirti Nagar, New Delhi is already a built up property and the deduction u/s 54F cannot be claimed for the improvement of the property. The AO has neither asked for the justification nor the assessee has filed any justification regarding the deduction of Rs. 25,00,000/-. The AO had failed to verify the facts. The above facts show that the AO has failed to make any meaningful logical enquiry in this case. As such this assessment order is erroneous in so far & it is prejudicial to revenue.

4. In view of the above facts, you are requested to show cause as to why the assessment order u/s 143(3) may not be set aside as being erroneous and prejudicial to the interest of revenue. You are hereby once again given the final opportunity of being heard and show cause as to why the impugned order be not enhanced/modified or set-aside for fresh assessment u/s 263 of the I.T Act 1961.”

6. The assessee contested the show cause notice before the Pr.CIT. The Pr.CIT however did not concur with the justifications advanced by the assessee to drop the proceedings initiated under Section 263 of the Act. The Pr.CIT broadly observed that the Assessing Officer has wrongly accepted the methodology of computation of capital gains and consequent deduction under Section 54F of the Act. The Pr.CIT noted that the assessee had sold one property located at L-13 Kirti Nagar, New Delhi as a plot after demolishing the existing built up structure and claimed relief under Section 54F by making corresponding purchases of two adjoining property located at Kirti Nagar by virtue of two different sale deeds executed with two different parties viz. (i) Smt. Arvinder Sethi and (ii) Smt. Narinderjit Awal & ors. at Rs.2,25,00,000/- and

Rs.1,26,00,000/- respectively on 11.04.2017. Both the properties were stated to be portion of plot no.H-53A Kirti Nagar, New Delhi. The Pr.CIT observed that the Assessee was wrongly allowed deductions for investment in two properties.

6.1 The Pr.CIT further observed that assessee had also deposited a sum of Rs.25 lakhs in Capital Gain Account Scheme on 31.07.2017 and claimed deduction on this additional amount also. The Pr.CIT observed that the additional amount deposited in the Capital Gain Account Scheme was stated to be for the purpose of improvement of newly purchased property at Kirti Nagar and such cost of improvement of already built up property purchased cannot be taken for the purposes of deduction under Section 54F of the Act. It was also observed by the Pr.CIT that in the course of assessment proceedings, the assessee herself had admitted that additional amount of Rs.25 lakhs was deposited in the Capital Gain Account Scheme is not allowable as deduction under Section 54F of the Act and accordingly same should be disallowed.

6.2 As further observed, the assessee has also failed to provide documentary evidences to prove whether the property so purchased was a single property or comprising of two adjoining units. The documents available on record clearly established that the assessee had claimed relief under Section 54F after making purchases of two adjoining but separate properties located at same place by virtue of two different sale deeds executed with two different parties. The Pr.CIT took note of these sale deeds and came to the conclusion that the assessee has invested in two different properties. The deduction under Section 54F for two different properties was thus incorrectly allowed by AO contrary to provisions of Section 54F of the Act. The Pr.CIT ultimately set aside the assessment order under revision with a direction to the Assessing Officer to redo the assessment after

making thorough inquiries and investigations into taxability of capital gains as per the provisions of Section 45 and Section 54F of the Act after keeping in view the rate of property, allowable cost of improvement and allowable deduction.

7. Aggrieved by the setting aside of the assessment order and consequent directions so made, the assessee preferred appeal before the Tribunal.

8. When the matter was called for hearing, the ld. counsel for the assessee submitted at the outset that the property sold at Kirti Nagar was utilized for making purchase of only one conjoint property at plot no. H-53A, Kirti Nagar, admeasuring 193.33 sq. yards. Two registries were carried out for acquisition of respective share in one common and conjoint property held by two different persons. The relevant background facts was narrated to submit that this property was initially acquired by one Shri Joginder Singh on 06.08.1960 who got it constructed from its own sources in 1961. On 28.06.2005, Shri Joginder Singh gifted 87 sq. yards in this property to her daughter Smt. Arvinder Sethi. Remaining area admeasuring 106.67 sq. yards was bequeathed in the hands of Smt. Narinderjit Awal and others, through will which was enforced after the demise of Shri Joginder Singh on 03.09.2012. The ld. counsel referred to a copy of Map / layout plan which demarcates the share of two relative groups and it was pointed out that the demarcation results in kitchen falling in one part and consequently without kitchen, the other part cannot be treated as independent residential property. The property was artificially divided only for demarcation purposes but both were part and parcel of one undivided property which has been used as one residential house. It was contended that the property was built 45 years ago and new kitchen has neither been constructed nor cannot be constructed without remodification and reconstruction of whole

unit.

8.1 The ld. counsel essentially contended that although two agreements have been entered to get hold of the property as a whole, the assessee has essentially purchased only one residential property by two different agreement executed on the same day for which the stamp paper was also purchased at the same time. The ld. counsel thus submitted that there is no violation of provisions of Section 54F of the Act. As regards the cost of improvement of Rs.25 lakhs, the ld. counsel submitted that the property acquired was very old and required immediate expenses by way of cost of improvement to make it habitable and therefore, such cost is also integral part of the cost of purchase.

8.2 The ld. counsel thus submitted that the view taken by the Assessing Officer was just and proper and cannot be dislodged under the revisional proceedings by assumption of jurisdiction under Section 263 of the Act without showing the impugned assessment order rendered was 'erroneous' *per se*.

8.3 The ld. counsel thereafter also point out that show cause notice was issued only on the question of allowability of Rs.25 lakhs towards cost of improvement and the question raised in the revisional order that assessee has invested the sale consideration on sale of plot in two different properties and thus ineligible for deduction under Section 54F, was not subject matter of allegation in the show cause. After the issuance of show cause notice dated 23.07.2021, another notice was issued on 09.11.2021 in which it was merely stated that the earlier notice may be treated as notice from change of incumbent but no additional issue was raised. The assessee has given reply only on the issue known to her as per the show cause notice and was having no occasion to respond to the

other aspect directly raised in the revisional order.

8.4 The Id. counsel thus submitted that the allegation on utilization of sale proceeds in two different properties and consequent denial of deduction under Section 54F would not lie in revisional proceedings in the absence of specific opportunity either by show cause notice or thereafter by any other mode. The Pr.CIT has not issued any such notice or informed on such issue in the revisional proceedings as incumbent under Section 263 of the Act. The scope of show cause notice has been expanded in the revisional order without opportunity and therefore, the directions on the point is without authority of law.

8.5 The Id. counsel further contended that when a point in issue arises in the revisional proceedings, it was incumbent upon the Pr.CIT to make some minimal inquiry himself to ascertain the veracity of concern arising in the revisional proceedings, before embarking upon giving any directions to the AO for such verification. The Pr.CIT has not done anything of this sort and passed the revisional order without making any such inquiry. The revisional action of the Pr.CIT is this bad in law on this count also.

9. The Id. CIT-DR broadly reiterated the observations made in the revisional order and pointed that the cost of improvement of newly acquired property can be treated as cost of improvement at the time of sale of that property but cannot be merged with the sale consideration. The deduction under Section 54F is not eligible on so called cost of improvement which is neither supported by corroborative evidence nor such additional cost is eligible for integration with purchase consideration.

9.1 The Id. CIT-DR also submitted that the larger question for consideration in the revisional proceedings were correctness of the

claim of deduction under Section 54F as made by the assessee and the investment in two adjoining plot / property is integral to such issue and every facet of an issue is not required to be put forth in show cause notice.

9.2 The Id. CIT-DR thus submitted that no interference with the revisional order of the Pr.CIT is called for.

10. We have carefully considered the rival submissions and perused the revisional order, assessment order under revision and other material referred to and relied upon.

11. Section 263 of the Act confers power upon the Pr.CIT/CIT to call for and examine the records of a proceeding under the Act and revise any order if he considers the same to be erroneous and prejudicial to the interests of the Revenue. The Pr.CIT can take recourse to revision under Section 263 of the Act where the assessment order is erroneous as well as prejudicial to the interest of Revenue. The twin conditions are required to be satisfied simultaneously. The Pr.CIT in the present case has purported to act in exercise of power under s.263 of the Act and thereby has sought to cancel the assessment order of the AO passed under s.143(3) of the Act. The Pr.CIT in essence, observed that the AO has wrongly allowed deduction under s.54F of the Act in contravention of the provision of the Act. The ground for impugned action under s.263 of the Act is that the AO has failed to make requisite inquiry into the claim of deduction of the assessee under s.54F of the Act and in the absence of proper inquiry on the eligibility of deduction involved, the order of the AO is erroneous in so far as prejudicial to the interest of the Revenue.

11.1 As pointed out on behalf of the assessee, two pre-requisites must coexist before the designated authority could exercise the

revisional jurisdiction conferred on him namely; the order should be (i) erroneous & (ii) the error must be such that it is prejudicial to the interests of the Revenue. However, an erroneous order does not necessarily mean an order with which the Pr.CIT is unable to agree. The AO while passing an order of assessment, performs judicial functions. An order of assessment passed by the AO cannot be interfered only because some other view is also possible on the issue as held in CIT vs. Greenworld Corporation (2009) 181 Taxman 111 (SC). If in given facts and circumstances of the case, two views are possible and one view as legally plausible has been adopted by the AO then existence of other possible view alone would not be sufficient to exercise powers under s.263 of the Act by the Pr.CIT /CIT concerned. Hence, there can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO. It is only when an order is erroneous and causing prejudice, that the Section will be attracted. An incorrect assumption of facts or incorrect application of law will satisfy the requirements of the order being erroneous.

11.2 In the instant case, it is sought to be demonstrated on behalf of the assessee that necessary inquiries were made towards computation of Long Term Capital Gains and deduction claimed under Section 54F of the Act. It was further pointed out that although two separate agreements have been executed due to demarcation of share in single property to different persons due to gift or bequeath by will, the property remains only one and therefore eligible for deduction under Section 54F of the Act. The assessee has advanced justification for cost of improvement of Rs.25 lakhs claimed under Section 54F of the Act.

12. We find merit in the plea of assessee in so far as the eligibility of deduction towards two units under two different agreements

sought to be questioned by the Pr.CIT. Reasons are not far to seek. Both the agreements have been claimed to have been entered at the same time and in respect of same property. The kitchen continues to be only one and therefore, two different agreements will not give rise to different residential property. The electricity bill is also common as demonstrated. The background facts for division of property has also been narrated. These facts could have been easily appreciated by the Pr.CIT with some minimal inquiry. The Pr.CIT has simply shifted the burden on the AO and eventually on the assessee without discharging his judicial duties expected in law. Besides, such allegation does not appear in the show cause notice issued at the first instance. While it is true that the directions are not necessarily required to be restricted to the show cause notice alone but however in the same vein, opportunity must be given to the assessee in some form to meet the point in issue in the course of revisional proceedings. In the absence of notice to the assessee that the purchase of residential property is being considered as two different residential units, the assessee had no occasion to rebut the ground raised directly in the revisional order. The directions at this point given to the Assessing Officer without opportunity to assessee in the course of revisional proceedings thus requires to be set aside on this score too.

13. However, we hardly see any merit in the plea of the assessee that amount of Rs.25 lakh set apart and kept in the Capital Gain Account Scheme towards cost of improvement of residential property acquired is eligible for deduction under Section 54F of the Act. Such cost of improvement can, at best, be treated as cost of improvement deductible at the time of sale of such property as and when happens. The direction of Pr.CIT on the point thus cannot be assailed.

14. Consequently, revisional order is modified in terms of observations noted above.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 20/12/2023

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: **20/12/2023**

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**