

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.346/Ind/2022**  
**Assessment Year: 2015-16**

Leeladhar Palasiyawala, Village Kalariya, Post Kalariya, Indore.	<b><u>बनाम/</u></b> Vs.	Pr.CIT-1, Indore
(Assessee / Appellant)		(Revenue / Respondent)
<b>PAN: BQDPPO511K</b>		
Assessee by	Shri Ashish Goyal, CA and Shri N. D. Patwa, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	11.10.2023	
Date of Pronouncement	19.12.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by revision-order dated 17.03.2021 passed by learned Pr. Commissioner of Income-Tax, Indore-2 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"], which in turn arises out of assessment-order dated 29.06.2017 passed by learned ITO-4(4), Indore ["AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The registry has informed that the present appeal was required to be filed by 21.05.2021 but it has been filed after a delay of 490 days beyond the last date and therefore time-barred. Ld. AR submitted that the assessee has filed an application for condonation of delay supported by an affidavit on stamp. On perusal of the application/affidavit, we observe that the assessee has explained total delay of 490 days in two parts. The first part of delay of 375 days from 21.05.2021 to 30.05.2022 was due to Covid-19 Pandemic and therefore covered by the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws was granted. The second part of the delay of 115 days from 30.05.2022 to 22.09.2022 was due to an improper advice given by assessee's counsel. To explain this part, Ld. AR submitted that the revision-order, which is impugned in present appeal, was passed by PCIT on 22.03.2021 and in pursuance thereof, the AO passed consequential assessment-order on 26.03.2022. The assessee's counsel mistakenly filed direct appeal to ITAT against consequential assessment-order (in ITA No. 130/Ind/2022) instead of filing appeal against impugned order. The assessee has already withdrawn the said ITA No. 130/Ind/2022 from ITAT and thereafter filed the present-appeal against impugned order. Thus, the delay of 115 days had occurred due to mis-understanding of law by counsel whereby he filed appeal against consequential assessment-order instead of impugned order. With this submission, Ld. AR prayed that the entire delay of 490 days is duly explained, the same is not because of any lethargy, negligence or mala fide intention of assessee and the assessee does not stand to derive any benefit because of delay. In the circumstances, Ld. AR prayed to condone the delay. Ld. DR did not show any objection, perhaps realizing it to be a fit case for condonation as claimed by assessee. Taking a judicious view of the facts, we condone the delay, allow this appeal and proceed for hearing.

4. Brief facts are such that the assessee filed return of income of relevant assessment-year which was subjected to scrutiny-assessment and the AO completed assessment u/s 143(3). Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, Ld. PCIT issued show-cause notice dated 09.07.2018 wherein he mentioned that the assessee, alongwith other co-owners, sold an 'agricultural land' situated at Bijalpur for Rs. 2,06,50,000/- vide registered-deed dated 24.11.2014 and earned share in long-term capital gain. While filing return, the assessee declared his share in long-term gain but claimed exemption u/s 54B on the basis of new investment made in two agricultural lands, namely (i) Rs. 48,00,000/- invested in 1<sup>st</sup> agricultural land, and (ii) Rs. 14,20,000/- (correct amount should be Rs. 14,16,360/-) invested in 2<sup>nd</sup> land. Ld. PCIT noted that the AO has passed assessment-order without enquiring into certain aspects of exemption so claimed by assessee. Therefore, the AO has passed assessment-order which is erroneous-cum-prejudicial to the interest of revenue. By the aforesaid show-cause notice, the assessee was asked to explain as to why the assessment-order may not be revised.

5. In response, the assessee filed a reply which is re-produced by PCIT in Para No. 2 of revision-order. The assessee tried to convince the PCIT but the PCIT was not satisfied. Ultimately, Ld. PCIT termed AO's order as erroneous-cum-prejudicial to the interest of revenue on three (3) issues as under:

- (i) That the assessee furnished copies of Khasra P-II and B-I as evidence to claim that there have been agricultural activities on the land sold by him. But mere submission of P-II and B-I is not sufficient documentary evidence to substantiate assessee's claim. The AO did not conduct necessary enquiries in this regard.
- (ii) The 1<sup>st</sup> agricultural land claimed to have been purchased for Rs. 48,00,000/- was not supported by any documentary evidence. The

assessee has submitted only copy of "Vikraya Anubandh Lekh" (i.e. sale-agreement) claiming it to have been executed on 14.03.2015 but no 'date of execution' is mentioned in the said agreement. The date '14.03.3015' mentioned therein is the date placed by stamp vendor on stamp-paper. The AO accepted date of 14.03.2015 without verifying genuineness and authenticity of such agreement. Further, the assessee did not produce copy of sale-deed of land. The AO did not examine this aspect too.

- (iii) In the case of 2<sup>nd</sup> land claimed to have been purchased for Rs. 14,16,360/-, the purchase-deed was executed on 22.02.2017 and the assessee paid Rs. 7,00,000/- on 13.02.2017 and Rs. 6,20,000/- on 15.02.2017. All these dates were beyond the prescribed period of 2 years from the date of transfer (24.11.2014). The AO did not examine this aspect.

6. Finally, Ld. PCIT set aside assessment-order with a direction to AO to re-frame assessment after examining the issues noted by him. Aggrieved by such revision-order, the assessee has filed this appeal.

7. Ld. AR for assessee *firstly* drew our attention to following proceedings done by AO during scrutiny-assessment to show that the AO has conducted sufficient enquiries on all three issues raised by PCIT:

- (a) Vide Para No. 1 of letter dated 08.05.2017, copy at Paper-Book Page-2, the assessee submitted following information to AO which shows that the AO has examined the Issue No. (i) raised by PCIT:

*"1. Copy of Khasra P-II showing the evidence that the said land was an agricultural land on which the agricultural activities were being performed. As the assessee jointly owned the said agricultural land with other family members having been engaged in agriculture activities for years, no such books of accounts have been maintained keeping vouchers and sale bill for the expense and sale proceeds of the agricultural produce, the copy of B-I and P-II are sufficient compliance for showing the agricultural activities on the said land. The land is an agriculture land and being held and used for agriculture purposes for years by the assessee and his family."*

- (b) Vide letter undated, copy at Paper-Book Page-3 to 4, the assessee

submitted following information to AO which shows that the AO has duly examined the Issue No. (ii) and (iii) raised by PCIT:

③

Date:  
Place: Indore

To,  
Income Tax Officer 4(4),  
Indore (M.P.)

Sir/Madam,  
Sub.-: Furnishing response in respect of letter dated 15.05.2017 u/s 142(1).  
Ref.-: Leeladhar Palasiyawala (PAN No. BQDPP0511K)

With reference to above, we hereby describe the matter with necessary details and documents as required in your letter as follows –

1. Regarding purchase of one agriculture land of Rs. 48Lakhs by the assessee on 14<sup>th</sup> March 2015 of survey No. 367/2/5 at village Bijalpur, the fact is that the assessee (Purchaser) and Seller as mentioned in the agreement of purchase enclosed were joint owner in one of the their paternal agricultural land consisting 0.116 hecter. As the seller were owned 0.032 hecter agricultural land in total joint ownership of agricultural land as mentioned above, which have been purchased by the assessee (Leeladhar Palasiyawala) from his other cousin family member. On purchase most of the payment has been made by cheque and on payment, the said land got mutated to the name of purchaser in revenue record. The duly mutation was completed by the revenue authority by mutual consent of all parties to the agreement & thus the assessee correctly purchased the agriculture land. As per characteristics of definition of transfer, the registered sale deed is not necessary as legal element to complete the transaction of transfer & on payment of an agreement & handing over the possession of the agreed transaction, the transfer is considered to be completed. As the said agriculture land has been purchased from his other family members by making payment by cheque & taking possession, no sale deed was executed.

As in the case, the assessee has completed all conditions of purchase including payment of agreed value & taking the possession of the property from the seller, he rightly entitled to the benefit of section 54B. The copy of possession letter and Rin Pustika in the name of purchaser which got mutated to him by revenue authority is enclosed herewith.

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2. Regarding considering the effective date for computation of exemption for a purchase of new agriculture land of Rs.1416360, we kindly request you that though the sale deed of agricultural land was executed on 24/11/2014 but last sale consideration was realized on 09/02/2015 as per the sale deed conditions, Assessee again has purchased the new agricultural land within two year of transfer of original assets 09/02/2015. Though the new purchased agriculture land has got registered on 22/02/2017 but the agreement had been made much more earlier then the date of registration & within two years of transfer of original assets. The registration of sale deed was just legal compliance for transferring the ownership and once the deed has got registered, the contents of purchase agreement fulfilled the condition of transfer. In case of CIT V/s Janardhan Das (Late) through legal heirs Shri Shyam Sundar (2008) it was held that the period of two years for purchase of examination under section 54B will commence from the date of receipt of compensation (Payment) and not from the date of acquisition of the agriculture land. The land has transferred to him by mutation by other of co owners of the property.

Thus the assessee rightly claimed the exemption u/s 54B by purchasing new agriculture land within due period as mentioned above.

3. The Copies of return filed by other co-owners enclosed also.

4. As the assessee is not person engaged in any business activities does not maintain any books of accounts. The copy of banks pass book and statement of all banks as he maintained enclosed herewith for your kind persual. All the transactions were only either for personal use or belong to these agriculture transactions. The transaction & its effect has duly been considered & in showing the total income & tax thereon. As there is no other transaction to show, there are sufficient compliances for the said transactions.

Considering the facts, please complete the assessment as above.

Thanking You

Your Truly,

For – Leeladhar Palasiyawala

(A.R.)

8. Therefore, Ld. AR strongly contended, the PCIT is grossly wrong in observing that the AO has not examined the issues raised by him whereas the fact is that the AO has conducted enquiries on all issues and after seeking explanation from assessee, allowed exemption.

9. Then, the Ld. AR went further to make a detailed submission *qua* all three issues raised by PCIT, one by one, as under:

9.1 Issue No. (i) – Whether agricultural activities were done or not over the land sold by assessee?

- (a) That Khasra Copy (P-II) is a revenue record of the State Govt. of Madhya Pradesh, copy at Page No. 28-31 of Paper-Book, which clearly mentions that the land was “irrigated”. Further, the “Bhu-rin Pustika (Land Pass-Book)” is again a record of State Govt. of Madhya Pradesh, copy at Page No. 38-39 of Paper-Book, which clearly contains the entries of Khasra No., Land Size, Lagan etc.
- (b) That, subsequently, the assessee has also filed an application dated 07.03.2022 to the office of Tehsildar requesting for supply of details of crop cultivated on the land for submission in Income-tax proceedings and in response the said request, the office of Tehsildar has issued a certificate No. 1300/Ri/2022 dated 17.03.2022 confirming that the land was cultivated in the year 2014-15 and earlier years.
- (c) That the copy of registered sale-deed of land sold by assessee is filed at Page No. 9-27 of Paper-Book. Ld. AR demonstrated that on Page No. 2 of sale-deed, it is clearly mentioned that the impugned land is ‘agricultural land’. Thereafter, on Page No. 3, it is categorically mentioned that the sellers had been doing agricultural activity over the land.

9.2 Issue No. (ii) – Investment in 1<sup>st</sup> land:

- (a) Copy of ‘Vikray Anubandh Lekh (sale-agreement)’ is filed at Page No.

40-44 of Paper-Book. The stamp on which said agreement is executed is dated 14.03.2015. In Para No. 3 of the agreement, the consideration of Rs. 48,00,000/- is mentioned; out of which payment of Rs. 41,00,000/- through cheques dated 26.03.2015 and payment of Rs. 7,00,000/- in cash having been made before 26.03.2015 are acknowledged by the sellers. The agreement is signed by sellers, assessee (purchaser) and witnesses. Ld. AR also drew our attention to the pass-book of assessee's A/c No. 2907 with Buldana Urban Co-operative Credit Society wherein three cheques of Rs. 14,00,000 + Rs. 13,00,000 + Rs. 14,00,000 aggregating to Rs. 41,00,000/- have been debited on 26.03.2015.

- (b) Ld. AR drew our attention to Paper-Book Page 39 where a copy of mutation document is filed. Referring to same, Ld. AR submitted that the assessee acquired land from his relative who was co-owner in the land and that the assessee's name is entered in mutation.
- (c) Lastly, it is submitted that the execution of sale-deed is not a condition for allowability of exemption u/s 54B. What is required is only investment in new land and once that is done which has been done in present case, the assessee becomes entitled to exemption.

### 9.3 Issue No. (iii) – Investment in 2<sup>nd</sup> land:

It is submitted that although the sale-deed of sold land was executed on 24.11.2014 but the assessee realized sale consideration from buyers in piecemeal and the lastly it was received on 05.02.2015. Therefore, the sale/transfer completed on 05.02.2015 (i.e. the date on which last of the sale consideration was received) and not on 24.11.2014 (i.e. the date of sale-deed); hence the period of 2 years for making new investment should be reckoned from 05.02.2015 and not from 24.11.2014 and once it is reckoned so, the assessee could very well make investment upto 04.02.2017 (05.02.2015 + 2 years). It is then submitted that the assessee purchased 2<sup>nd</sup>

land for Rs. 14,16,360/- on 04.01.2017 through sale-agreement, copy filed in Paper-Book Page-44 to 46, although the sale-deed was subsequently executed on 22.02.2017, copy in Paper-Book Page No. 47-63. Thus, the assessee has made investment on 04.01.2017 which is before expiry of 2 years period on 04.02.2017 and therefore the investment is made in prescribed period. Ld. AR submitted that the AO has, after due consideration, accepted that the 'date of transfer' should be taken on last receipt of sale-consideration (05.02.2015) and not on execution of sale-deed (24.11.2014) and rightly allowed exemption to assessee.

10. With aforesaid submissions, Ld. AR contended that the AO has made sufficient enquiries. Further, the three issues raised by PCIT do not hold good on merit also. Therefore, the revision-order passed by PCIT is very much bad and must be quashed.

11. Per contra, Ld. DR strongly supported revision-order with following contentions:

- (a) He submitted that mere raising queries before assessee and keeping response of assessee in the departmental file cannot be treated as conduct of enquiries by AO. According to Ld. DR, had the AO analysed the replies of assessee, he would have certainly made a detailed noting in the assessment-order but this is not so in present case. He submitted that the assessment-order is totally silent on the issues raised by Ld. PCIT, which clearly demonstrates that the AO has not made enquiries as required; therefore Ld. PCIT was constrained to conduct revision-proceeding. Ld. DR submitted that in Para No. 3 of show-cause notice, the PCIT has noted that the AO has not properly verified the claim made by assessee u/s 54B. Then, in Para No. 3 of revision-order also, the PCIT has noted that while completing scrutiny assessment proceedings, all the facts of the case have not been considered carefully.

- (b) With regard to investment in 1<sup>st</sup> land, Ld. DR submitted that it is well established by the landmark decision of Hon'ble Supreme Court in **Balbir Singh Maini Civil Appeal No. 15619 of 2017** that the title of immovable property passes only by a registered document but in present case, the agreement presented by assessee is unregistered and no sale-deed had been executed subsequently. Therefore, the assessee cannot claim ownership of land. Being so, the assessee does not deserve any exemption u/s 54B.
- (c) With regard to investment in 2<sup>nd</sup> land, Ld. DR submitted that the sale-deed of sold land was executed on 24.11.2014 and thus the transfer took place on that day itself. He submitted that it was assessee's own arrangement to defer the payment/receipt of consideration and on that basis, the assessee cannot claim that the sale/transfer took place on receipt of last consideration on 05.02.2015. He submitted that if such a contention is allowed, every assessee would defer receipt of say 1 rupee of consideration and thereby claim that the sale/transfer had not completed till receipt of 1 rupee. Ld. DR urged that such a bad contention of assessee must be rejected. Ld. DR submitted that the assessee has failed to make investment in 2 years period from 24.11.2014 and attempting to take a futile chance to show eligibility of exemption.
12. In rejoinder, Ld. AR made following further submissions:
- (a) He attempted to explain the difference between 'lack of enquiry' and 'inadequate enquiry'. He submitted that revisionary-jurisdiction u/s 263 can be invoked only in case of 'lack of enquiry' but not in case of 'inadequate enquiry'.
- (b) He relied upon **CIT Vs. Krishna Capbox 372 ITR 310 (All)**, **Nirav Modi 241 Taxman 255 (Bom)** and **CIT Vs. J.L. Morrison (India) Ltd. (2014) 46 taxmann.com 215 (Cal)** and contended that if the AO

has passed assessment-order after certain queries from assessee, mere non-discussion or non-mention thereof in assessment-order could not lead to assumption that AO did not apply his mind; invoking of revision proceeding u/s 263 on such ground is unjustified.

- (c) Relying upon the judgement in **Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)**, he submitted that if the AO has taken one of the possible views, the assessment-order cannot be said to be erroneous in so far it is prejudicial to the interest of revenue and consequently revision u/s 263 cannot be done.

13. We have considered rival submission of both sides and perused the orders of lower authorities as also the documents placed by assessee in Paper-Book to which our attention has been drawn. At the outset, we would like to refer the relevant para of decision of Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. (supra)**:

*"10. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue **unless the view taken by the Income-tax Officer is unsustainable in law.**"*

*[Emphasis supplied]*

Clearly, the apex court has held that if two views are possible and the AO has taken one view, then the AO's order cannot be treated as erroneous order prejudicial to the interest of revenue. But it is subject to a rider that the view taken by AO should not be unsustainable in law. That means, if the view taken by AO is unsustainable, the AO's order would be considered as

erroneous-cum-prejudicial to the interest of revenue and revisionary action would be justified.

14. Keeping in mind the above principle held by Hon'ble Apex Court, we proceed to adjudicate all three issues on the basis of which the PCIT has conducted revisionary proceeding:

(a) The Issue No. (i) is whether there were agricultural activities on the land sold by assessee? This issue is very important for allowability of exemption u/s 54B because the section 54B prescribes thus:

*"54B. (1) Subject to provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes, and ....."*

Therefore, the exemption u/s 54B is allowable only if the assessee (or his parent) had been using the sold land for agricultural purposes in two years immediately preceding the date of transfer. When the AO questioned assessee on this issue, the assessee has, vide reply dated 08.05.2017 re-produced in foregoing paragraph, clearly admitted that he has not maintained any bills/voucher of expenses and sale of crop etc. The assessee only relied upon documents P-II and B-I and claimed that those documents reveal that agricultural activities were done on the land and the AO accepted assessee's claim. We have perused copies of these documents filed in Paper-Book at Page No. 28 to 31 and 38 to 39 but nowhere find the details of any crop having been mentioned therein. Therefore, the assessee's claim that these documents show the agricultural activities actually done, is not established. Ld. AR refers an application dated 07.03.2022 filed by assessee to the office of Tehsildar seeking details of crop cultivated on the land and it is being claimed that in response to such application, the office of Tehsildar has issued a certificate No. 1300/Ri/2022 dated 17.03.2022 confirming that the land was being cultivated in the year

2014-15 and earlier years. These documents, being application dated 07.03.2022 filed by assessee to office of Tehsildar and certificate dated 17.03.2022 issued by office of Tehsildar are newer evidences/ documents which had come in existence after passing of the impugned revision-order on 17.03.2021. Therefore, these evidences/ documents cannot impinge the revision-proceeding conducted by Ld. PCIT. Moreover, these documents are 'additional evidences' as per ITAT Rules but the same have been filed by assessee with the help of Shradha Piplodiya, Advocate, not as per procedure prescribed in Rule 18(4) of Income-tax (Appellate Tribunal) Rules, 1963; therefore the same are not considerable and liable to be rejected. Another argument of Ld. AR that the sold land is clearly mentioned as 'agricultural land' in the sale-deed, in our considered view, cannot help the assessee since the sale-deed is a document drafted by assessee himself and any mention therein, by itself, cannot be conclusive. Moreover, even if the impugned land had been an agricultural land, section 54B requires that the land must be *de facto* used for agricultural purposes in two years immediately before the date of transfer. This requirement of section 54B is very strict and it has to be proved by assessee with clinching evidence. We find that the assessee has not been able to explain the factum of agricultural activities having been undertaken even before PCIT during revision-proceeding, therefore the PCIT is justified in making revision on this issue.

- (b) Next Issue No. (ii) is whether the 1<sup>st</sup> land claimed to have been purchased by assessee for Rs. 48,00,000/- through unregistered purchase-agreement without executing any registered deed is sufficient for giving exemption u/s 54B to assessee or not? It is an admitted fact that the assessee claims to have purchased the said land through an unregistered agreement. In this regard, the section 54B prescribes thus:

*"54B. (1) Subject to provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes, and the assessee has, within a period of two years after that date, **purchased** any other land for being used .....*"

**[Emphasis supplied]**

Thus, the section clearly requires that the assessee has to 'purchase' land. At this stage, we find from decision of Hon'ble Supreme Court in **Balbir Singh Maini** relied upon by Ld. DR that there cannot be a sale of immovable property without a registered document. When there cannot be any 'sale' by seller, how can there be a 'purchase' by buyer? Therefore, in view of the said decision, we find that the assessee cannot be said to have purchased the property and consequently not eligible for exemption. Ld. AR makes a further pleading that the assessee was a co-owner in the said land and the assessee's name is also available in the mutation document. We are afraid to accept his pleading because admittedly the assessee was co-owner in the said land and the mutation might be as a result of pre-existing co-ownership, therefore we cannot arrive at a definite conclusion in favour of assessee from this pleading. Thus, we find that the PCIT is justified in making revision on this issue also.

- (c) Last issue No. (iii) is whether the 2<sup>nd</sup> land claimed to have been purchased by assessee for Rs. 14,16,360/- through sale-agreement dated 04.01.2017 followed by sale-deed 22.02.2017, can be said to be within the permissible period of 2 years? The facts clearly indicate that the assessee sold original land vide sale-deed dated 24.11.2014. Therefore, the date of transfer would be 24.11.2014. But the assessee makes an interesting claim. He claims that the sale-consideration was received in piecemeal and the last of the consideration was received on 05.02.2015, therefore the date of transfer of sold land must be taken as 05.02.2015 and not 24.11.2014. We are unable to accept this argument for several reasons. The first and foremost reason is such

that once the assessee has executed a sale-deed, given possession and the buyer performs his obligations as agreed, the date of transfer would necessarily be the date on which sale-deed is executed and cannot defer to the receipt of last part of the consideration. Secondly, if the argument of assessee is accepted that date of transfer should be 05.02.2015, it would create an anomalous situation *qua* the intervening period of 24.11.2014 to 05.02.2015. On one hand, the assessee as seller claims that this period was the period for which he continued to own/hold the property, the buyer would in his own assessment claim that the same period was the period of ownership/holding by him. That means, the period of 24.11.2014 to 05.02.2015 would be claimed as ownership/holding period by both parties in the manner suitable to them. We cannot accept such anomalous situation. Thirdly, the Ld. DR for revenue is very much correct in submitting that if the date of transfer is accepted to be the date on which last part of consideration is received, any assessee or every assessee would be tempted to keep payment of 1 rupee deferred and thereby avoid the entire scheme of law/taxation. For these reasons, we are not convinced with the claim of assessee that the date of transfer would be 05.02.2015. We hold that the date of transfer was 24.11.2014 only and therefore the assessee's investment goes beyond the prescribed period of two years. Thus, we find that the PCIT is justified in making revision on this issue also.

15. The discussions in the foregoing para clearly demonstrate that the AO has taken a view unsustainable in law and given benefit of exemption to assessee. Therefore, irrespective of any enquiry made by AO and replies filed by assessee during assessment-proceedings, the present case is such in which the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue. Hence, we are inclined to uphold the revision-order passed by PCIT. We order accordingly. The assessee fails in this appeal.

16. Before parting, we would like to make it clear that our adjudication in this appeal represents a prima facie view *qua* the sustainability of revision-order passed by PCIT. Our observations should, however, not be taken as conclusive by AO in consequential order passed or to be passed as a result of revision-order. The AO shall be free to take his own judgement while passing consequential order.

**17. Resultantly, this appeal is dismissed.**

Order pronounced in the open court on 19.12.2023.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

*दिनांक* /Dated : 19.12.2023  
CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore