

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" C " BENCH, AHMEDABAD**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER  
And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 380/AHD/2020

निर्धारण वर्ष/Asstt. Year: 2015-2016

Vaishali Babubhai Patel, B-201, Gala Gardenia Apartments, Nr. Safal Parisar, South Bopal, Ahmedabad-380058.  <b>PAN: ABDPP0233G</b>	Vs.	The Principal Commissioner of Income Tax-3, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Tushar Hemani, Sr.Advocate with Shri Parimalsinh B Parmar, AR
Revenue by :	Shri Durga Dutt, CIT. DR

सुनवाई की तारीख/**Date of Hearing** : **28/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **10/04/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax, Ahmedabad, arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The Ld. AR at the outset brought to our notice that there is a delay in filing the appeal by the Revenue for 40 days, which is falling during the covid-19 period, therefore, the same should be condoned. On the other hand, the Ld. DR did not raise any objection to the condonation of delay in filing the appeal by the assessee. Accordingly, we condone the delay in filing the appeal by the assessee in pursuance to the judgment of Hon'ble SC in the case of **Cognizance for Extension of Limitation, In** reported in 125 taxmann.com 151 where it was held as under:

*2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.*

2.1 In view of the above, we condone the delay in filing the appeal by the assessee and proceed to adjudicate the issue on merit.

3. The only issue raised by the assessee is that the Ld. PCIT under section 263 of the Act erred in holding the assessment framed u/s 143(3) of the Act, as erroneous in so far prejudicial to the interest of the revenue.

4. The assessee in the year under consideration has sold a property along with the Co-owner. The share of the assessee in the property was 17.60% and sale consideration relating to the assessee stands at Rs. 2,11,38,000/- only. The assessee has also claimed exemption u/s 54F of the Act amounting to Rs. 1,83,56,834/- only. As such, the assessee has declared Nil capital gain in the income tax return. However, the Ld. PCIT on examination of the assessment records observed certain facts as detailed below:

1. The part of the cost of improvement was incurred prior to the acquisition of property.

2. The assessee has claimed the deduction on the cost of improvement of Rs. 12,00,000/- out of Rs. 28,37,650/- which is more than his share in the sale consideration i.e. 17.60%.

3. There was no inquiry conducted by the AO while granting exemption u/s 54F of the Act.

4.1 In view of the above, the Ld. PCIT opined that the crucial facts have not been verified during the assessment proceedings and accordingly sought an explanation from the assessee.

5. The assessee vide letter dated 17/03/2020 contended that all the details along with the cost incurred on the improvement and the amount of exemption claimed u/s 54F of the Act, have been furnished during the assessment proceedings. Likewise, the assessee has also submitted that the consideration was allocated on the sale of property among the co-owners based on their investment in the property. As such it might be possible that one party might have paid more amount towards cost of land development while other party has paid more than the amount towards land development cost. As such the assessee has incurred the cost of Rs. 12,00,000/- and accordingly claimed the same while calculating the income under the head capital gain. Without prejudice to the above, the assessee also submitted that even the cost incurred by the assessee on improvement has to be excluded then also the assessee is not chargeable to any capital gain. Therefore, there is no loss to the revenue. However, Ld. PCIT did not agree with the contention of the assessee and held the assessment order as erroneous in so far prejudicial to the interest of the revenue by observing as under:

*5.1 The assessee has submitted that the land under consideration was purchased by him jointly with 9 other parties with an intention of development of residential housing society for a total consideration of Rs.45,80,000. It is further submitted that before entering into the final sale agreement, the assessee with 9 others spent Rs.28,00,000/- towards improvement cost, and expenses have been incurred through regular banking channels. Accordingly, the total cost of the impugned land was arrived at Rs.73,80,000/-. The amount invested towards improvement by the assessee was Rs.13,00,000, therefore his share in the sales consideration came to 17.60% based on which the capital gain was correctly computed.*

5.2 The contentions raised by the assessee has been considered but not found acceptable. The assessee herself has admitted that the improvement expenses were Incurred before purchase of land and before execution of purchase deed. Further as per condition No.3 of the purchased deed No.892/2004, it has been specifically mentioned that 'the full and free possession of the non-agricultural land has been handed over to the buyer by the seller on the date of registration of the deed' i.e. on 1.3.2004. Thus it is an undisputed fact that before 1.3.2004 the assessee was not the legal/beneficial owner of the impugned land, hence the expenses incurred before 1.3.2004 cannot be considered as the cost of improvements in the hands of the assessee. Moreover, the assessee further submitted that out of the total expenses pertaining to cost of improvement of Rs.28,00,000, the expenses relating to the period before the date of acquisition comes to Rs.16,70,000. Accordingly, the balance amount of Rs.11,30,000 ought to have been allowed as cost of improvement since the same has been incurred after the date of purchase of the impugned land. The assessee's share in the same is worked out to Rs. 484,000/- (11,30,000 x 12, 0/28, 0) . However, it is not shown, how such expenses is paid by the assessee after sale deed. The share of assessee has to be computed as per total investment in land by each co-owners. Thus it is apparent that the assessment was made without making proper inquiries regarding the admissibility of cost of improvement incurred before the acquisition of capital assets.

5.3 With regard to exemption u/s 54F of Rs.183,56,834/-, the assessee has submitted that vide his reply dated 29th June 2017 furnished the copy of the CGAS account passbook and the copy of bonds purchased u / s 54EC before the Assessing Officer.

5.4 It is apparent from record that during the course of assessment proceedings the Assessing Officer has neither conducted any enquiry nor brought on record any evidence to show that the exemption u / s \* 54F was properly allowed, and apart from new residential property acquired by the assessee whether the assessee owns more than one residential property on the date of transfer of original asset i.e. 05.01.2015, and also whether other conditions as specified in section 54F of the I.T. Act, 1961 are satisfied. In view of the above, the AO has failed to make adequate factual examination of the relevant and related issues before reaching to a conclusion as discussed above which resulted into making the assessment order dated 19.09.2017 as erroneous in so far as to prejudicial to the interest of revenue. Moreover, the law has been amended w.e.f. 01.06.2015 and Explanation 2 has been inserted below sub Section (1) of Section 263 and clause (a) thereof, makes an order passed without making proper inquiry and verification is erroneous and prejudicial to the interest of Revenue.

6. This is a case where assessment has been made without making any enquiries into the correctness and allowability of claim. Reliance is also placed on the decision of Hon'ble Supreme Court in the case of Rajmandir Estate Pvt Ltd Vs Commissioner of Income tax Kolkata-III, reported in 245 taxman 127(SC) (2017): In this case Hon'ble Apex Court has dismissed the Special Leave Petition filed by assessee upholding the order passed by the commissioner passed order u / s. 263 and held that on facts this could be a case of money laundering which went undetected due to lack of requisite inquiry into increase of share capital and non application of mind by the AO.

7. In view of the above, I am of the view that the assessment order passed by the A.O. u/s. 143(3) of the Act on 19/9 / 2017 is erroneous in so far as it is prejudicial to the interest of the revenue and is squarely covered under the Explanation 2(a)& 2(b) of Section 263(1) of the Act as already discussed. Accordingly, by virtue of the powers vested in me u / s 263 of the Income Tax Act, I hereby set-aside the order u / s 143(3) of the Act and direct the Assessing Officer to pass a fresh assessment order after properly ascertaining the genuineness of claims keeping in view the discussions above and also

*after gathering and examining other suitable evidence / making field enquiries and verification as necessary on facts of the case and make the assessment denovo.*

5. Being aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 83 and submitted that all the details relating to the impugned transactions were furnished during the assessment proceedings and therefore it cannot be said that the assessment has been framed without verification.

7. On the other hand, the Ld. DR relied on the order passed by the Ld. PCIT.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the AO has framed the assessment after considering the necessary facts about the cost of improvement incurred by the assessee as well as the exemption claimed u/s 54F of the Act. However, the questions pointed out by the Ld. PCIT in his order, there has not been conducted any enquiry by the AO during the assessment proceedings which are detailed as under:

1. The cost of improvement was incurred prior to the acquisition of property in dispute. Indeed, the quantum of the expenses were not doubted by the AO, but it becomes necessary to verify the cost of improvement relating to the assessee based on the documentary evidence. But it has not been done by the AO.

2. We further note that the AO has not also conducted inquiries whether the assessee owns more than one residential house property as on date of transfer of the property.

8.1 From the above facts, we note that the enquiries to this extent discussed above have not been done by the AO, thus, we are of the view that the assessment order is erroneous in so far prejudicial to the interest of the revenue

on account of non-verification. Thus, we do not find any reason to interfere in the findings of the Ld. PCIT. Hence, the ground of appeal of the assessee is hereby dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced in the Court on 10/04/2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
10/04/2024