

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.296/Ahd/2022  
Assessment Year: 2015-16**

Vijay Manubhai Hirpara, 22, Sardar Patel Coop Hsg Soc, Bh Sardar Patel Mall Thakarbapa Nagar, Ahmedabad – 382 350 <b>[PAN – AEBPH 5292 J]</b>	Vs.	Principal Commissioner of Income Tax, Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Hardik Vora, AR	
Revenue by	Shri A.P. Singh, CIT (DR)	
Date of Hearing	18.04.2024	
Date of Pronouncement	30.05.2024	

**ORDER**

**PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:**

This appeal is filed by the assessee against order dated 26.03.2021 passed by the PCIT, Ahmedabad-3 for the Assessment Year 2015-16.

2. The Assessee has raised the following grounds of appeal:-

- “1. *On the facts and circumstances of the case as well as law on the subject, the revision order passed by the learned Principal Commissioner of Income Tax, Ahmedabad-3 under Section 263 of the Act fir assessment year 2015-16 without giving proper opportunity of being heard is erroneous, contrary to law, equity, facts and circumstances of the present case and the material available on record.*
2. *On the facts and circumstances of the case as well as law on the subject, the Principal Commissioner of Income Tax, Ahmedabad-3 erred in passing order under section 263 of the Act when order passed by Assessing Officer is neither erroneous nor prejudicial to the interest of Revenue.*

3. *On the facts and circumstances of the case as well as law on the subject, the Principal Commissioner of Income Tax, Ahmedabad-3 erred in passing order under Section 263 of the Act only on the basis of suspicion and not on any substantial material suggesting escapement of income.*
4. *On the facts and circumstances of the case as well as law on the subject, the Principal Commissioner of Income Tax, Ahmedabad-3 erred in passing order under Section 263 of the Act ignoring inquiry and replies made during original assessment proceedings on the issue.*
5. *It is prayed that order passed by Learned Principal Commissioner may please be quashed.”*

3. The brief facts of the case are that the assessee filed return of income for the impugned Assessment Year, declaring total income of Rs.9,59,590/-. The assessment was finalized under Section 143(3) of the Income Tax Act, 1961 at an income of Rs.11,32,760/- after making disallowance under Section 14A of the Act of Rs.1,73,172/-.

4. Thereafter, the PCIT observed on scrutiny of assessment records that the assessee has purchased immovable property at Daskroi, Ahmedabad for Rs.2,75,00,000/- alongwith other purchasers. The assessee's share in the said property @ 20% works out to Rs.55,00,000/-. The PCIT observed that on verification of payment schedule it is found that the assessee had made payment of Rs.21,68,848/- by way of cheque and the assessee had made payment of Rs.14,73,052/- in cash. On further verification, the PCIT observed that the payment made by the assessee for the property is less than due share of the assessee. As per information called from the Sub-registrar, Daskroi, the value of aforesaid property has been determined at Rs.3,51,20,600/- as against documented price of Rs.2,75,00,000/-. The PCIT was of the view that as per the provisions of Section 56(2)(vi) of the Act, the stamp duty value of the property has to be taken and the balance amount is chargeable to tax in the hands of the purchasers. Accordingly, the share of assessee as per the value determined by Stamp valuation authority is taken at Rs.70,24,120/- and the difference amount of Rs.14,24,120/-

(Rs.70,24,120/- - Rs.55,00,000/-) is chargeable to tax as deemed income of the assessee for the year under consideration. Further, the PCIT also observed that the assessee had purchased three separate agricultural pieces of land for a total consideration of Rs.37,70,200/-. However, during the course of assessment proceedings, the assessee had only submitted the purchase deed in connection with the above agricultural properties and no other details and documentary evidences in respect of source of such investment was submitted by the assessee during the course of assessment proceedings. Therefore, the PCIT was of the view that since the Assessing Officer had failed to verify the investment made by the assessee for purchase of various properties and source thereof and also had failed to analyze the applicability of the provisions of Section 56(2)(vii) of the Act, it is apparent and that the Assessment Order is erroneous in so far as it is prejudicial to the interest of the Revenue. Accordingly, the PCIT directed the Assessing Officer to carry out *denovo* assessment after giving due opportunity of hearing to the assessee.

5. The assessee is in appeal before us against the aforesaid order passed by the PCIT.

6. Before us, at the outset, the Counsel for the assessee submitted that there is a delay of 428 days in filing the present appeal. However, it was submitted that most of the period was covered in the Corona period barring the last two months. Further, the assessee submitted that the assessee was not aware about the passing of order by Ld. PCIT since the assessee had not received any email notifying him about the passing of order under Section 263 of the Act and further, hard copy of the order was also not served on the assessee. Further, the assessee submitted that notably 263 order and the consequential order was passed against the assessee ex-parte and, therefore, it is quite apparent that the assessee was not aware about passing of 263 order and also did not know about the consequential order passed by the Assessing Officer under Section 263 read with Section 144 of the Act. It was

only later when the assessee received a message asking him to pay outstanding tax demand, the assessee approached his Tax Consultant and, thereafter, on the advice the assessee immediately filed appeal before the ITAT on 27.07.2022. Accordingly, it was submitted that the delay was genuine and for bonafide reason and in the interest of justice the delay may kindly be condoned. On going through the facts on records, we are of the considered view that the assessee has made out a reasonable case for the delay in filing of the present appeal. Looking into the facts of the instant case and the circumstances highlighted by the assessee in his application for condonation of delay, we hereby condone the delay in filing of the present appeal, in the interest of justice.

7. **On merits**, regarding stamp valuation bench mark taken by the PCIT, the Counsel for the assessee submitted that from the contents of the purchase deed, it is evident that substantial part of the money was paid by the assessee in the year 2010 and, therefore, the PCIT in the instant facts erred in facts and in law in taking Jantri Value of the property for the year 2014-15. The Counsel for the assessee drew our attention to page nos.84 to 91 of the Paper Book (from Sl. Nos.1 to 23) and submitted that it is evident from the Sale Deed that substantial amount of payment was made by purchasers in the year 2010 by way of account payee cheques and, therefore, clearly in the instant facts, the PCIT has initiated 263 proceedings on an incorrect presumption/ understanding of facts, since, as per the sale deed, substantial payments had been made in the year 2010 itself by way of account payee cheques by purchasers, the PCIT erred in facts and in law in taking the Jantri value for Financial Year 2014-15. Accordingly, the very basis of initiating proceedings under Section 263 of the Act are on an incorrect understanding of facts of the assessee's case. Further, the aforesaid agreement was placed on record during the course of original assessment proceedings and, therefore, neither it is a case where inadequate enquiry was made by the Assessing Officer nor is it a case where there has been incorrect application of law by the Assessing Officer. Regarding source of investments, the Counsel for the assessee drew

our attention to page no.8 of the Paper Book and submitted that the assessee vide submission dated 24.11.2017 had submitted the particulars of property purchased during the year under consideration. The Counsel for the assessee drew our attention to Balance sheet for the year under consideration and submitted that all the properties under consideration are forming part of the books of account of the assessee (under the head "fixed assets" in the Balance Sheet for the impugned year under consideration). Accordingly, the Counsel for the assessee submitted that there was no undisclosed investment which was made by the assessee in any of the properties as referred to above and all the properties were forming part of the books of account of the assessee under the head "fixed assets" and the details of these properties were submitted by the assessee during the course of assessment proceedings itself. The Counsel for the assessee drew our attention to pages 9 to 13 of the Paper Book in which details of investments and fixed assets were submitted before the Assessing Officer for his kind consideration. Further, the Counsel for the assessee submitted that even in the PCIT order at page no.3, the PCIT has observed that the purchase deeds in connection with the aforesaid properties were submitted before the Assessing Officer for his consideration. Further, regarding the argument of the PCIT in connection with the cash component with regard to the purchase of the aforesaid property, the Counsel for the assessee drew our attention to page nos.92 & 93 of the Paper Book (Entry No.27, 28, 29, 30, 31 & 32) and submitted that cash component with respect to the purchase of the aforesaid property finds specific mention in the agreement of sale itself, therefore, it is evident that looking into the instant facts which have been highlighted above, the PCIT has initiated Section 263 proceedings on an incorrect presumption of facts, the PCIT has failed to observe that substantial payment for payment of properties was made in the year 2010 and, therefore, Jantri Value of Financial Year 2014-15 could not be applied in the instant facts. The cash component with respect to purchaser of property finds specific mention in the agreement for sale itself, all properties referred to by the Ld. PCIT in the Section 263 order were forming part of books of account of the assessee, which had been submitted before the Assessing

Officer for his kind consideration. Evidently, the purchase deeds in respect of the aforesaid properties had been furnished to the Assessing Officer for his consideration during the course of assessment proceedings and, therefore, in the instant facts, neither there is lack of enquiry on the part of the Assessing Officer and nor any view has been taken which is contrary to law. Accordingly, the Counsel for the assessee submitted that this is not a fit case for initiation of proceedings under Section 263 of the Act.

8. In response, the Ld. DR submitted that on perusal of the agreement of sale itself, it is evident that approximately Rs.50,00,000/- of payment for purchase of property have been made in cash by the co-purchasers of the property. Accordingly, there was evident for lack of enquiry by the Assessing Officer, thereby making the original assessment order erroneous and prejudicial to the interest of Revenue.

9. We have heard the rival contentions and perused the material on record. On going through the instant facts, we are of the considered view that this is not a fit case for initiation of proceedings under Section 263 of the Act. Firstly, we observe that the details regarding the property were made available to the Assessing Officer during the course of assessment proceedings, all the aforesaid properties were duly reflected in the books of accounts maintained by the assessee and the same were submitted before the Assessing Officer during the assessment proceedings for his kind consideration, the PCIT has also not taken into consideration the fact that substantial payment in respect of the above properties were made in the year 2010 and, therefore, it was not analyzed whether the Jantri Value of Financial Year 2014-15 should be taken for the purpose of invoking Section 263 of the Act and further so far as cash component in respect of above property is concerned, evidently it is forming part of the purchase deed itself which was submitted before the Assessing Officer during the course of assessment proceedings.

10. In case of PCIT vs. Ram Chandra, 155 Taxmann.com 431 (Guj) the Hon'ble High Court held that :-

*“Where assessee in response to inquiries made by Assessing Officer about purchases and commission paid to parties had furnished bank statement, tax invoices and ledger accounts of contra parties and Principal Commissioner had not disputed existence of parties and purchases made or commission paid and no contrary evidence was placed on record to substantiate that purchases made or commission paid was bogus, assessment order could not have been set aside under section 263.”*

In case of PCIT vs. Yogesh Kumar, 145 taxmann.com 612 (Guj), the Hon'ble High Court held that:-

*“Where Revisional Authority having found that assessee had purchased a land for Rs. 15 lacs, whereas as per stamp duty valuation value of land was Rs. 70 lacs and Assessing Officer had failed to examine same revised assessment order, in view of judicial precedent on subject that no presumption could be drawn on this aspect that purchaser of property must have paid more than what was actually recorded in account books, Tribunal was right in quashing revisional order.”*

In the case of Gayatri Enterprise vs. ITO, 116 taxmann.com 359 (Guj), the Hon'ble High Court held that

*Where Commissioner invoked revision jurisdiction for reason that against consideration of Rs. 45.61 lakh paid by assessee, for purchase of land, stamp duty of Rs. 22.90 lakh was paid and it was to be presumed that value of property would be higher and there was an undisclosed investment made by assessee since no addition could be made under said section merely on basis of presumption, impugned revision was unjustified.*

11. Accordingly, in view of the facts of the assessee's case and the judicial precedents referred to above, we are of the considered view that the Assessment Order is not erroneous in so far as prejudicial to the interest of the Revenue. Accordingly, Order passed under Section 263 of the Act is liable to be set aside.

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

Order pronounced in the open Court on this 30<sup>th</sup> May, 2024.

*Sd/-*  
**(ANNAPURNA GUPTA)**  
Accountant Member

*Sd/-*  
**(SIDDHARTHA NAUTIYAL)**  
Judicial Member

**Ahmedabad, the 30<sup>th</sup> day of May, 2024**

***PBN/\****

*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*  
*Ahmedabad benches, Ahmedabad*