

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 597/Chny/2020**

निर्धारणवर्ष / Assessment Year: 2015-16

Patchirajan Lakshmanan,
No. 102F,/16Z/3,
Dhanasekaran Nagar,
Polepettai (West) – 628 002.

The Principal Commissioner of
v. Income Tax,
Maduari -1,
Madurai – 625 002.

[PAN:AAZPL-1396-H]

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri. V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing : 01.05.2024

घोषणा की तारीख/Date of Pronouncement : 28.06.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal instituted by the assessee is against the order of the Principal Commissioner of Income Tax-1, Madurai for the assessment year 2015-16, vide order dated 24.03.2020.

2. The assessee has raised the following grounds of appeal:

"1 . The order of The Principal Commissioner of Income Tax - 1, Madurai, vide DIN & Order No **:ITBA/REV/F/REV5/201920/ 1026884347(1)** dated 24.03.2020 u/s 263 of the Act for the above assessment year is contrary to law, facts, and in the circumstances of the case.

2. The CIT erred in setting aside the order of the Assessing Officer u/s 143(3) dated 31.10.2017 as erroneous and prejudicial to the interest of Revenue without assigning proper reasons and justification.

3. The CIT ought to have appreciated that the deduction u/s 54F of the Act, claimed by the Appellant was thoroughly investigated / verified by the Assessing Officer at the time of passing the Order U /s 143(3) of the Act, thus the directions given by the CIT to revisit the claim of deduction u/ s 54F of the Act would not remove the error from the Assessing Officer's order nor cure any prejudice or loss to the Revenue.

4. The CIT erred in assuming the jurisdiction u/ s 263 of the Act even after appreciating the fact that the Assessing Officer passed the order u/s 143(3) dated 31.10.2017 after a thorough deliberation of the facts submitted along with the documents and other explanations given to him at the time of scrutiny assessment, thus making the entire proceeding u/ s 263 of the Act not tenable under the provisions of the Act.

5. The CIT failed to appreciate that the order of revision under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

6. The CIT ought to have appreciated the fact that the documents and other details provided by the Appellant would fortify the claim or the Appellant that, the Appellant did hold any Residential house property other than the New Asset on which investment is made thus making the Appellant eligible for the deduction u/ s 54 F of the Act.

7. The CIT erred in relying only the property tax arrears calculation made by the corporation authorities to conclude the existence of building, while doing so he went wrong in completely brushing aside the various supporting documents provided by him to prove the genuineness of his claim made u/ s 54F of the Act.

8. The CIT failed to appreciate that in the absence of fulfillment of the twin condition being erroneous and prejudicial to the interest of the Revenue, the revisionary proceeding initiated is wrong and unsustainable in law and ought to have appreciated that the consequential

revision order u/ s 263 of the Act should be reckoned as nullity in law.

9. The CIT failed to appreciate that the possible view taken by the Assessing Officer after going through the facts of the case cannot be set aside by invoking the provisions of Section 263 of the Act and ought to have appreciated that the judicial trend in this regard would vitiate the related findings in the impugned order.

10. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.

11. The Appellant craves leave to file additional grounds/arguments at the time of hearing.”

3. The brief facts are that, the assessee is engaged in the business of manufacture and sale of plaster of paris in the name and style of 'Sri Rajeswari Plasters' and import and sale of cornices in the name and style of 'Abarajitha Imports & Exports' at Tuticorin. The assessee filed its return of income for the assessment year 2015-16 on 30.10.2015, admitting a total income of Rs.7,15,790/-. The return was processed by CPC, Bengaluru on 01.12.2015 u/s. 143(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Subsequently, the case was selected for limited scrutiny under CASS for the following reasons :

(i) interest expenses

(ii) sales turnover mismatch

(iii) sundry creditors

(iv) increase in capital

(v) deduction claimed under the head capital gains

and a notice u/s. 143(2) of the Act was issued on 19.09.2016. In response to notice, the Id.AR of the assessee furnished details called for viz., copy of ITR-4, financial statements, bank account statements, 26AS statement, VAT/CST monthly returns copy with consolidated statement, ledger copy of interest paid, computation of capital gains, ledger copy of new house construction account, copies of sale deeds along with the books of accounts.

4. After considering the submissions made by the assessee during the assessment proceedings, The AO passed the order on 31.10.2017 u/s. 143(3) of the Act as below:

(i) House property income – Nil (as admitted)

(ii) Income from business –

interest disallowance Rs.1,97,787/-

withdrawal of depreciation Rs.1,59,027/-

(iii) Long term capital gains – Nil (as admitted)

(iv) Income from other sources

Payment to HDFC credit cards – Rs.2,41,808/-

Credit in current account – Rs.65,000/-

Interest on FD HDFC bank – Rs.10,000/-

Total disallowances/additions made by the AO was Rs.6,72,620/- and determined the assessed income at Rs.13,88,410/-.

5. By exercising the revisional jurisdiction the Id.PCIT, considered the order u/s. 143(3) of the Act dated 31.10.2017 passed by the AO as erroneous and prejudicial to the interests of revenue with the following reasons:

"2. It is seen from assessment records that during the financial year 2014-15, you had obtained 26 numbers of plots comprising of 285.944 cents situated in Sankaraperry Village through a gift settlement executed by your father in favour of you vide document no.1906/2014 Joint-1 SRO, Tuticorin dated 1.8.2014. Out of 26 plots, you have sold 8 plots measuring 26.80 cents for a sale consideration of Rs.1,57,04,962/-. The Long Term Capital Gain works out to Rs.1,49,44,838/- and claimed the same as exemption u/s 54F of the IT Act, 1961 and declared L TCG as Nil on the pretext of investing the L TCG on construction of house property.

To claim exemption u/s 54F, on the date of transfer of the long term capital assets (plots), the assessee should not own more than one residential house property. However, you have owned house at North Car Street, Door No.10 & 10B and another house at North Car Street, Door No.11 on the date of transfer of L TC assets. Since, you have owned more than one house property on the date of transfer of L TC assets on 08/2014, the exemption claimed and allowed u/s 54F is not in order. During the scrutiny proceedings, the above aspects were not properly enquired into."

Then the Id.PCIT has issued a show notice u/s. 263 of the Act on 27.02.2020 calling for submission of relevant documents. In response to show cause notice, the assessee filed written submissions dated 03.03.2020 as under:

"It is respectfully submitted that the exemption u/s 54F of the Income Tax Act, 1961 was granted I allowed to me only after due process of enquiry and my response substantiated with documentary proof and evidence submitted before the Assessing Officer during the course of assessment proceedings u/s 143(2) before him for the relevant Assessment Year. A copy of my submission dated 24.07.2017 during the course of assessment proceedings before the Assessing Officer, Ward-2, Tuticorin along with enclosures is attached for your immediate reference. The Assessing Officer did apply his mind and after raising queries and perusing my response regarding my claim for exemption u/s 54 F and having been satisfied with the correctness of the same, allowed exemption u/s 54 F of the Income Tax Act, 1961 and therefore the Assessing Officer was fully conversant with the facts of the case and was conscious of the genuineness and legality of the claim before accepting and completing the proceedings u/s 143 (3) of the Income Tax Act, 1961. Hence, it cannot be said that the assessment was completed without proper enquiry and non-application of mind by the Assessing Officer."

6. Further, the assessee also relied on the following case laws in raising objections for invoking revisionary jurisdiction u/s. 263 of the Act:

1. CIT vs Krishna Capbox Ltd [2015] 372 ITIZ. 310
2. CIT vs Vodafone Essar South Ltd [2012] 28 Taxmann.com 273/[2013]
3. CIT vs Sunbeam Auto Ltd [2011] 332 ITR 167
4. Idea Cellular Ltd vs DCIT &Ors. [2008] 301 ITR 407 (Bom)
5. CIT vs Fine Jewellery (India) Ltd [2015] 372 ITR 303/230

6. CIT vs Goyal Private Family Specific Trust [1988] 171 ITR 698

7. CIT vs Mahendra Kumar Bansal [2008] 297 ITR 99

7. Further, the assessee also stated that the claim of deduction u/s. 54F of the Act is as per the provisions of the Act on merits and stated as under:

"Notwithstanding the alleged lack of proper enquiry and application of mind, albeit rebutted (supra), I submit that there was no irregularity, ineligibility, illegality and infirmity in my claim for exemption u/s 54 F of the Income Tax Act, 1961 since I fully satisfied the requirement and condition of owning not more than one residential house on the date of transfer of the original asset giving rise to Long Term Capital Gains.

In view of the above submissions and such further submissions that may be put forth before you in the course of personal hearing when an opportunity to appear before you in person is afforded to me, I humbly request you to not proceed with the assumption of revisionary jurisdiction u/s 263 of the Income Tax Act, 1961 and drop the proceedings so as to render equity and justice."

8. However, the Id.PCIT perused the submissions of the assessee and not convinced and therefore, the Id.PCIT in exercise of powers conferred u/s. 263 of the Act, set aside the impugned order of the Assessing Officer by passing an order dated 24.03.2020 with the following observations:

"6. It is therefore seen from the above; that the assessment order passed by the Assessing Officer is not only erroneous but prejudicial to the interest of revenue since the same has been passed without proper verification of the deduction of Capital Gains claimed u/s 54F of the Act. It is judicially well settled that the powers under section 263 of the Income Tax Act can be exercised by the Principal Commissioner or Commissioner where the order was passed by the

Assessing Officer by incorrect application of Law or with incorrect assumption of facts or without any inquiry into the matter or without application of mind [Malabar Industrial Company Ltd. vs. CIT (243 ITR 83)]. The Hon'ble High Court of Allahabad in the case of Swarup Vegetable Products Vs CIT (187 ITR 412) has held that when the Assessing Officer accepted the assessee's claim without making proper enquiries, the Commissioner acting under section 263 was justified in setting aside the assessment order. Similar view has been taken by the Madras High Court in Jai Bharath Tanners (264 ITR 673). The Hon'ble High Court of Madras in the case of Ashok Leyland Ltd Vs CIT (260 ITR 599) has held but has failed to do so, the order passed by him was not only erroneous but also prejudicial to the interest of the revenue. Further, the Hon'ble Madras High Court in K. A. RamaswamyChettiar vs. CIT (220 ITR 657) has held that when the Officer is expected to make an enquiry of income and if he does not make an enquiry as expected, it is to be a ground to interfere with the order passed by the Assessing Officer since such an order passed by the officer is erroneous and prejudicial to the interest of revenue. In the assessment order, the Assessing Officer failed to discuss as to why and how the claim of claim of deduction from Capital Gains u/s 54F of the Act, was accepted as correct and therefore the revisional powers under section 263 would be justified in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Raja Industries (340 ITR 344)."

9. Aggrieved by the impugned action of the Ld.PCIT passing the impugned order on 24.03.2020, the assessee is in appeal before this Tribunal and has raised a legal issue, wherein, the Ld.AR pointed out that the issue which has been raked up by the Ld.PCIT have been enquired into by the AO during assessment proceedings, which had a particular reason for selection was **'(e) deduction claimed under the head capital gains'** and brought to PCIT's notice that during assessment proceedings one of the subject matter of scrutiny by CASS. The assessee had submitted the relevant documents

and information about the deductions claimed u/s. 54F of the Act from time to time during the assessment proceedings before the AO from 06.10.2016 to 26.10.2017 (Paper Book page No.1 to 99) as detailed below:

<i>S.No</i>	<i>Date</i>	<i>Particulars</i>
1	26.10.2017	Response filed by the appellant before the Income Tax Officer
2	25.09.2017	Response submitted by the appellant before the Income Tax officer for the notice dated 09.08.2017
3	09.08.2017	Hearing notice issued to the Appellant
4	21.08.2017	Response submitted by the appellant before the Income Tax Officer
5	-	Certificate issued by pearlcity Engineering Builders confirming the completion of building during August 2016
6	08.08.2017	Notice issued to the appellant asking for ledger extracts of P Lakshmanan Capital and Current a/c
7	-	Ledger extract of P Lakshmanan Capital account in the books of Abaraiitha Imports and Exports
8	-	Ledger extract of P Lakshmanan Current account in the books of Abarajitha Imports and Exports
9	-	Ledger extract of P Lakshmanan Capital account in the books of Sri Raja Rajeswari Plasters
10	-	Ledger extract of P Lakshmanan Current account in the books of Sri Raja Rajeswari Plasters
11	01.08.2017	Reply Letter filed before ITO explaining the amount debited under building at Dhanasekar Nagar along with the relevant ledger extract
12	27.07.2017	Reply Letter filed by the appellant before the ITO
13	24.07.2017	Response submitted in response to the queries raised regarding Door No. 10,10A,10B,11 & 15 North Car Street, Tuticorin
14	19.12.2012	Encumbrance certificate issued by SRO
15	14.07.2017	Letter submitted by the appellant in response to queries raised with respect to the proposed additions

16	-	<i>Recurring deposit details for the AY 2015-16</i>
17		<i>Copy of the EB summary generated electronically</i>
18	06.07.2017	<i>Notice issued to the appellant asking for various documents</i>
19	12.07.2017	<i>Response submitted by the appellant along with the documents called for</i>
20	08.07.2017	<i>Response submitted by the appellant along with various annexures</i>
21	-	<i>Date wise Break up of amounts construction</i>
22	06.03.2017	<i>Letter filed by the appellant enclosing the list of sundry creditors with names and addresses along with the relevant ledger extracts</i>
23	27.02.2017	<i>Letter submitted by the appellant</i>
24	20.02.2017	<i>Letter submitted by the appellant for the hearing posted on 21.02.2017</i>
25	06.02.2017	<i>Notice issued to the appellant fixing the hearing on 21.02.2017</i>
26	06.10.2016	<i>Response submitted in response to notice u/s. 143(2) dated 19.09.2016</i>
27	19.09.2016	<i>Notice issued u/s 143(2) to the appellant</i>

10. Moreover, it was submitted before the Id. PCIT that the assessee during assessment proceedings had furnished various property related documents like tax paid receipt, building construction account ledger extracts, encumbrance certificates also during the assessment proceedings in support of the claim u/s. 54F of the Act and the AO accepted the contention of the assessee after verification, which action of the AO cannot be termed as erroneous because the AO has completely verified the issue of long term capital gains arised on account of sale of

immovable property. The assessee had also placed on record before the Assessing Officer the ledger account of new building construction account as proof of deduction claimed u/s. 54F of the Act and also the letter filed by the assessee dated 14.07.2017, wherein the assessee asserted that he owns no residential house other than the one constructed by him in the said land. These facts, the AO also acknowledges in the assessment order by observing that assessee had filed reply on 24.07.2017 stating that the properties at Door nos. 10, 10A & 10B, North Car street, Tuticorin were purchased as vacant lands only with Door nos. retained in order to have benefits of EB/water connections based on Door nos. and no building existed even at the time of purchase of these properties and after enquiry and verification has accepted the claim of the assessee and passed the order u/s. 143(3) of the Act by allowing the deduction claimed u/s. 54F of the Act under the head long term capital gains. Therefore, according to the Id.AR, the Assessing Officer after enquiring and verification of the issue in question has accepted the claim of assessee after application of mind, cannot be termed as erroneous and prejudicial to revenue and therefore, Id.PCIT does not have

jurisdiction of exercising revision u/s. 263 of the Act. Therefore, he prayed for quashing the impugned order.

11. Per contra, the Id.DR supported the order of the Id.PCIT and asserted that the order of the AO u/s. 143(3) of the Act is erroneous and prejudicial to the interest of the revenue, since Assessing Officer didn't apply mind and hence, prayed for dismissal of the appeal.

12. Having heard both the parties, and on a careful consideration of the facts and circumstances, we find that in the case in hand the Ld. Pr. CIT invoked jurisdiction u/s 263 of the Act principally on the broad allegation that there was failure to conduct enquiry on the issue of allowing deduction of Rs.1,49,44,838/- u/s. 54F of the Act, against the long term capital gain earned by the assessee on account of sale of immovable properties consisting of eight plots for Rs.1,57,04,962/-. As a result, in the opinion of Ld. Pr. CIT, AO's order was erroneous and therefore liable for revision u/s.263 of the Act. The said findings of the Ld Pr. CIT have been seriously contested by the appellant.

13. In the circumstances therefore, before adjudicating the issues arising from the impugned order, we have to first examine the scope of revisional jurisdiction u/s. 263 of the Act. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in **Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC)** wherein their Lordship have held that twin conditions should be satisfied before jurisdiction u/s 263 of the Act is exercised by the Ld.CIT. The twin conditions which need to be satisfied are that (i) the order of the Assessing Officer must be erroneous and (ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous i.e. (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law; (ii) Assessing Officer's order is in violation of the principles of natural justice; (iii) if the AO's order is passed without application of mind; or (iv) if the AO has not investigated the issue before him. In the circumstances enumerated above only, the order passed by the Assessing Officer can be termed as erroneous for the purpose of S.263 of the Act. Coming next to the second limb, the AO's erroneous order can be revised by

the Ld. CIT only when it is shown that the said order is prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. The Hon'ble Supreme Court, held that for invoking powers conferred by S.263; the CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue. Their Lordship in the said judgment held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. It was further observed that when the Assessing Officer adopts one of the course permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

14. Keeping the aforesaid legal principles in mind when we apply the same to the facts of the present case, we note that the sole issue that has been raked up by the Ld.PCIT in the present case, emanated from assessment records.

15. The aforesaid assertion of the Id.PCIT that the AO while scrutinizing the assessment has failed to verify the issue stated (supra) is contrary to the facts revealed from the records and found to be incorrect assertion of the Ld.PCIT. From perusal of the Paper Book filed before us and the assessment order it reveals that the AO has properly conducted enquiry on the issue of capital gain and deduction thereon and the assessee had furnished all the relevant material during the assessment proceedings and which have been duly considered and verified by AO before concluding the assessment by accepting the claim of the assessee u/s. 54F of the Act. Therefore, we do not countenanced the impugned action of Id.PCIT on the facts and circumstances of the case

16. In the light of the aforesaid facts, we are of the view that the assessee succeeds and the PCIT erred in invoking his

jurisdiction of revisional powers u/s.263 of the Act. Therefore, the impugned order passed by the Id.PCIT dated 24.03.2020 is hereby quashed and the appeal of the assessee is allowed.

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

Order pronounced in the open court on 28th June, 2024 at Chennai.

Sd/-

(एबी टी वर्की)

(ABY T VARKEY)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(एस.आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 28th June, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF