

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 52/RPR/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Anil Kumar Jugal Tiwari
Office of the Commissioner of Central
Excise, Central Excise Bhawan,
Near Polytechnic Ambawadi,
Ahmedabad, Gujarat
Pin Code : 380015
PAN : AAPPT4527N.

.....अपीलार्थी / Appellant

बनाम / V/s.

Principal Commissioner of Income-Tax
Raipur-1, Aykaar Bhawan, Civil Lines,
Raipur, Chhattisgarh
Pin Code : 492001

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA
Revenue by : Shri S.L. Anuragi, CIT- DR.

सुनवाई की तारीख / Date of Hearing : 09.07.2024
घोषणा की तारीख / Date of Pronouncement : 22.08.2024

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income-Tax, Raipur-1 (PCIT) u/s 263 of the Income-tax Act, 1961 (in short 'the Act') dated 22.12.2023, which in turn arises from the order passed by the Assessing Officer (A.O.) under Sec. 147 r.w.s. 144B of the Act, dated 22.03.2022 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

Ground No. 1: The PCIT, Raipur-1 has erred in both facts and in law in passing order u/s 263 of the Income Tax Act, 1961 by treating the assessment order passed by the Assessing Officer u/s 147 r.w.s. 144B as erroneous.

Ground No. 2: That the assessee craves to add, amend or delete any of the above grounds of appeal during the course of hearing.

Ground No. 3: That the above grounds are without prejudice to each other."

2. Succinctly stated, the assessee had filed his return of income for AY 2017-18 on 27.07.2017, declaring his total income at Rs.21,70,760/-. As the assessee during the subject year had purchased a piece of agricultural land at Village Bakaniya, Tehsil Huzur, Bhopal for a consideration of Rs.1,02,60,000/- whereas its stamp duty value was Rs.1,39,71,600, therefore, the AO in order to bring the difference in the value

of purchase consideration vis-a-vis the stamp duty value of Rs.37,11,600/- to tax u/s 56(2)(vii)(b) of the Act initiated proceedings u/s 147 of the Act. Notice u/s 148 of the Act, dated 28.03.2021 was issued to the assessee. In compliance, the assessee filed his return of income declaring an income of Rs.21,70,760/- i.e. as was originally filed on 16.09.2021.

3. The AO vide his order passed u/s 147 r.w.s. 144B of the Act, dated 22.03.2022 accepted the returned income of the assessee.

4. After culmination of the assessment proceedings, the PCIT, Raipur-1 called for the assessment records. The PCIT after perusing the record held a firm conviction that the AO had without properly verifying the assessee's claim that the agricultural land at Village Bakaniya, Tehsil Huzur, Bhopal that was purchased by him during the subject year was situated beyond 8kms (aerially) from the municipal limits of Bhopal, had summarily accepted the same and not brought the difference between the purchase value vis-a-vis the stamp duty value of Rs.37,11,600/- to tax u/s 56(2)(vii)(b) of the Act. Accordingly, the PCIT called upon the assessee to explain as to why the assessment order passed by him u/s 147 r.w.s. 144B of the Act, dated 22.03.2022 may not be revised u/s 263 of the Act.

5. As the assessee failed to effect compliance to the "Show cause" notice ("SCN") issued by the PCIT, therefore, the latter was constrained to proceed with and pass an *ex-parte* order u/s 263 of the Act dated 22.12.2023.

6. The Id. PCIT held a view that the AO had failed to conduct a proper enquiry as regards the assessee's claim that the agricultural land purchased by him at Village Bakaniya, Tehsil Huzur, Bhopal was situated beyond 8 Kms (aerially) from the municipal limits of Bhopal and had without carrying out necessary verifications summarily accepted the same. It was further observed by him that the google map that was furnished by the assessee to substantiate his aforesaid claim revealed that the Village Bakaniya, Tehsil Huzur, Bhopal was well within 8kms from the municipal limits of Bhopal. The PCIT observed that there was no material available on record from where the aerial distance of Village Bakaniya from the municipal limits of Bhopal could be gathered. The PCIT after referring to a plethora of judicial pronouncements held the order passed by the AO u/s 147 r.w.s. 144B of the Act, dated 22.03.2022 as erroneous insofar it was prejudicial to the interest of the revenue, and set aside the same to his file with a direction to pass afresh assessment order after making necessary enquiries and affording adequate opportunity of being heard to the assessee.

7. The assessee being aggrieved with the order passed by the PCIT, Raipur-1 u/s 263 of the Act dated 22.12.2023 has carried the matter in appeal before us.

8. We have heard the learned authorized representatives of both the parties, perused the orders passed by the lower authorities and the material available on record as well as considered the judicial pronouncements that have been pressed into service by the Id. AR.

9. Shri Abhishek Mahawar, learned Authorized Representative (for short, Id. AR) for the assessee at the threshold assailed the validity of the jurisdiction that was assumed by the PCIT, Raipur-1 u/s 263 of the Act. Elaborating on his contention, Id. AR averred that as the AO while framing the assessment vide his order u/s 147 r.w.s. 144B of the Act, dated 22.03.2022 had deliberated at length on the subject issue, and had only after necessary verifications accepted the assessee's claim as regards the aerial distance of Village Bakaniya from the municipal limits of Bhopal, therefore, the PCIT, Raipur-1 was divested of his jurisdiction to revise his order u/s 263 of the Act. The Id. AR submitted that the PCIT could not have assumed jurisdiction u/s 263 of the Act for seeking substitution of his view as against the plausible view that was arrived by the AO after necessary deliberations. The Id. AR in support of his aforesaid contention had relied upon the judgment of the Hon'ble Apex Court in the case of ***Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC)***. The Id. AR further submitted that even if it was to be held that the AO had carried out inadequate enquiry, the same would not justify the assumption of jurisdiction by the PCIT u/s 263 of the Act. In support of his aforesaid contention, reliance was placed upon the judgments of the Hon'ble High Court of Delhi in the case of ***DIT vs. Jyoti Foundation, (2013) 357 ITR 388 (Delhi)*** and ***PCIT -2, Delhi vs. M/s. Clix Finance India Pvt. Ltd., ITA 1428/2018 dated 01.03.2024***. Also the Id. AR had pressed into service the judgment of Hon'ble High Court of Calcutta in the case of ***PCIT-Kolkata vs. M/s Britannia Industries Ltd, ITAT No.211/2022, dated 23.12.2022***.

10. Alternatively, the Id. AR submitted that the assessee in the course of the assessment proceedings had pursuant to the direction of the AO placed on his record a google map which established that the subject property i.e. agricultural land at Village Bakaniya was situated at a distance of 17.26 kms (aerial distance) from the municipal limits of Bhopal. The Id. AR had further taken us through the order-sheet notings recorded by the AO in the course of the assessment proceedings. It was submitted by him that the AO on 11.02.2022 had, *inter-alia*, called for the distance of the subject agricultural land from the municipal limits of the nearest city/town from the concerned Registrar. Elaborating further, Id. AR submitted that the AO vide his order-sheet entry dated 15.06.2022 had in context of sec. 56(2)(vii)(b) of the Act, observed that as the agricultural land purchased by the assessee at Village Bakaniya, Tehsil Huzur, Bhopal was situated outside the municipal limits and thus, was not a capital asset, therefore, it could not be taxed under the aforesaid statutory provision. The Id. AR had further drawn our attention to the order-sheet entry dated 17.03.2022 wherein, the assessee had enclosed the google map as per which the aerial distance of before us Village Bakaniya from the municipal limits of Bhopal was 17.26 kms. The Id. AR based on his aforesaid contentions submitted that not only the PCIT had traversed beyond his scope of jurisdiction u/s 263 of the Act but had also tried to dislodge the view that was arrived at by the AO based on necessary deliberations on the material gathered in the course of the assessment proceedings.

11. Per contra, Shri S.L. Anuragi, learned Departmental Representative (for short Id. DR) relied upon the order passed by the PCIT, Raipur-1. The Id. DR submitted

that though the case of the assessee was re-opened u/s 147 of the Act for the purpose of making addition u/s 56(2)(vii)(b) of the Act of Rs.37,11,600/-(supra) i.e. regarding the difference between the purchase consideration vis-a-vis Stamp Duty value of the agricultural land purchased by the assessee at Village Bakaniya, Tehsil Huzur, Bhopal but the AO had without carrying out any verifications and based on a cryptic order summarily accepted the assessee's claim and refrained from making any addition. Carrying his contentions further, Id. DR submitted that the PCIT in the totality of the facts involved in the case had rightly stepped in and set aside the assessment order with a direction to the AO to re-adjudicate the issue after affording an opportunity of being heard to the assessee.

12. Controversy involved in the present appeal lies in a narrow compass i.e. as to whether or not the AO while framing the assessment had rightly refrained from making addition u/s 56(2)(vii)(b) of the Act after duly verifying that the agricultural land at Village Bakaniya, Tehsil Huzur, Bhopal purchased by the assessee during the subject year was situated beyond 8kms (aerial distance) from the municipal limits of Bhopal?

13. Before proceeding any further, we deem it fit to cull out the observations of the PCIT, Raipur-1 based on which he had taken recourse to proceedings u/s 263 of the Act, as under (relevant extract):

"3.....The Arial distance from village Bakaniya to Municipal limits of Bhopal is not found available on record. However, from the map furnished by the assessee, it is clear that Village Bakaniya is well within 8 kilometers from municipal

limit of Bhopal. Hence, the immovable property under consideration was a capital assets within the meaning of Section 2(14) of the Act. Hence, the difference amount, Rs.37,11,600/- (Rs.1,39,71,600/- less Rs.1,02,60,000/-) was taxable income of the assessee u/s 56(2)(vii)(b) of the Income Tax Act, 1961, however, it is found that this income of the assessee was not taxed."

14. As is discernible from the google map that was filed by the assessee in the course of the assessment proceeding i.e. on 17.03.2022, Page 104-105 of the APB, we find that distance of the Village Bakaniya, Tehsil Huzur, Bhopal from the municipal limits of Bhopal cannot be gathered therefrom. Although, it is the claim of the Id. AR that as per the aforesaid map Village Bakaniya (supra) is situated at a distance of 17.26 kms from the municipal limits of Bhopal but we are unable to concur with the same. We, say so, for the reason, that though in the aforementioned map there is reference of Village Bakaniya but there is no mention of the municipal limits of Bhopal in the same. Accordingly, we are persuaded to subscribe to the observation of the PCIT, who rightly held that the aerial distance from the Village Bakaniya to municipal limits of Bhopal cannot be gathered from the google map that was filed by the assessee in the course of the assessment proceeding.

15. At the same time, we are unable to comprehend that as to on what basis the PCIT, had observed, that as per the map furnished by the assessee Village Bakaniya is well within 8 kms from the municipal limits of Bhopal. We may herein reiterate that as there is no reference of the municipal limits of Bhopal in the google map, therefore, it is beyond comprehension as to from where the PCIT had concluded that Village Bakaniya is within 8 kms from municipal limits of Bhopal.

16. Be that as it may, we are of a firm conviction that as the aerial distance of the subject property i.e. agricultural land purchased by the assessee at Village Bakaniya from the municipal limits of Bhopal is neither discernible from the records, nor anything has been placed before us in support thereof, therefore, we concur with the PCIT that the AO had without carrying out any verifications summarily accepted the assessee's claim, and concluded, that as the subject agricultural land was not a capital asset, thus, the difference in the purchase consideration vis-à-vis the stamp duty value of the same was not exigible to be assessed as the assessee's income u/s 56(2)(vii)(b) of the Act.

17. Before parting, we may herein observe that though it is the Id. AR's claim that inadequate enquiry cannot form a basis for revision of an order passed u/s 263 of the Act, but we are afraid that the case before us is that of lack of enquiry and not inadequate enquiry. As the AO had summarily accepted the google map filed by the assessee and not done the bare minimum that was expected on his part i.e. verified the distance of Village Bakaniya from the municipal limits of Bhopal, therefore, it is a case of lack of enquiry on his part. Apart from that, we are of the view that as per "Explanation 2(a)" of Sec. 263 of the Act, as has been made available on the statute with effect from 01.06.2014, in case if an order is passed without making enquiry/verifications which in the opinion of the PCIT should have been made, then the same is to be held as an order deemed to be erroneous insofar it is prejudicial to the interest of the revenue. As the AO in case of the present assessee before us had failed to carry out the bare minimum enquiry which ought to have been carried

out by him as regards verifying the aerial distance of the agricultural land purchased by the assessee at Village Bakaniya from the municipal limits of Bhopal, specifically, when the case was re-opened on the said count u/s 147 of the Act, therefore, the same would clearly fall within the realm of "Explanation 2(a)" of Sec. 263 of the Act. Our view is supported by the judgment of the Hon'ble Supreme Court in the case of ***Denial Merchants Pvt. Ltd. vs. ITO (2018) 95 Taxmann.com 366 (SC)***. The Hon'ble Supreme Court had observed that where the AO did not make any proper enquiry while making assessment and had accepted the explanation of the assessee, the Commissioner was right in setting aside the assessment order u/s 263 of the Act.

18. Apart from that, our aforesaid observation that the AO based on pre-mature verification had accepted the claim of the assessee i.e. Village Bakaniya was situated at an aerial distance of more than 8 kms from the municipal limit of Bhopal, can also be gathered from the fact that though he had called for the report of the Sub Registrar (Revenue), but despite the fact that the same was not made available to him in the course of the assessment proceeding, he had thereafter without carrying out any independent verifications accepted the unsubstantiated claim of the assessee.

19. We, thus, concur with the Id. PCIT that the AO while framing the assessment had without carrying out proper verification accepted the assessee's claim that Village Bakaniya was situated at an aerial distance of more than 8 kms from the municipal limits of Bhopal, but at the same time, do not concur with him to the

extent he had observed that as per the google map furnished by the assessee it could be gathered that Village Bakaniya is well within 8kms from the municipal limits of Bhopal.

20. We, thus, in terms of our aforesaid deliberations, though approve the order passed by the PCIT u/s 263 of the Act dated 22.12.2023 but modify the same in terms of our aforesaid observations. Accordingly, the AO is directed to pass a fresh assessment order after carrying out necessary verifications on the aforesaid aspect and affording proper opportunity of being heard to the assessee, **Ground of appeal No. 1 is dismissed** in terms of our aforesaid observations.

21. The **Grounds of appeal Nos. 2 and 3** are dismissed as not pressed.

22. Resultantly, the appeal filed by the assessee being devoid and bereft of any substance, is **dismissed**.

Order pronounced in open court on 22nd day of August, 2024.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 22nd August, 2024.

*Hem

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)

4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File

आदेशानुसार / BY ORDER,

//True copy//

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.