

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.408/SRT/2024**

(Assessment Year: 2016-17)

(Virtual Hearing)

Chhitubhai Narsinhbhai Patel, 596, Kanbiwad, At & Post Kholwad, Kamrej, Surat - 394190	Vs.	The PCIT – 1, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BNKPP2956E		
(Appellant)		(Respondent)

Appellant by	Shri Ashwin K. Parekh, CA
Respondent by	Shri Ravinder Sindhu, CIT-DR
Date of Hearing	08/07/2024
Date of Pronouncement	28/08/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 263 of the Income-tax Act [in short, 'the Act'] of the Learned Principal Commissioner of Income-tax (Appeals) - 1, Surat [in short, 'the Ld. PCIT'], dated 08.03.2024 for the assessment year (AY) 2016-17.

2. The grounds of appeal raised by the assessee are as follow:

"1. The learned Pr. Commissioner of Income-tax-1, Surat has grievously erred in law and on facts in setting aside the Order u/s. 143(3) r.w.s. 263 of the Act and directing the Assessing Officer to verify the specific issue of deduction u/s. 54B of the Act in respect of new agriculture land purchased for amount of Rs.7,96,020/- without appreciating the non-existence of twin conditions of "Erroneous" and "Prejudicial" order in respect of issue. The order of Principal Commissioner of Income-tax be quashed.

2. The learned Pr. Commissioner of Income-tax-1, Surat has erred on facts and in law in assuming Jurisdiction u/s. 263 by substituting his opinion with that of Assessing Officer, formed after detailed examination / inquiries and proper

application of mind which is not permissible in law. The order of Principal Commissioner of Income-tax be quashed.

3. The learned Pr. Commissioner of Income-tax-1, Surat has grievously erred in law and on facts in directing the Assessing Officer to re-verify the deduction of Rs.7,96,020/-u/s. 54B despite the verification done by Assessing Officer in order u/s. 143(3) r.w.s. 263 of the Act without offering any reasons for reinvestigation of issue already raised, verified and accepted by Assessing Officer after inquiry and appreciation of evidences. The order of Principal Commissioner of Income-tax be quashed.

The appellant reserves the right to add, alter, modify, amend or withdraw any of the grounds of appeal before hearing.”

3. The facts of the case in brief are that assessee filed on 28.08.2016 declaring total income at Rs.1,00,19,150/- and agricultural income of Rs.6,73,150/-. The case was selected for scrutiny and assessment order u/s 143(3) was passed on 29.11.2018 determining total income at Rs.1,30,19,152/-. The case records were verified by Ld. PCIT who found that assessee had claimed wrong deductions u/s 54B and 54F of the Act. After hearing the assessee, order u/s 263 was passed wherein deduction of Rs.5,41,696/- and Rs.7,96,020/- claimed u/s 54B in respect of two properties was found not to be allowable. The Ld. PCIT also found that deduction of Rs.47,69,576/- claimed u/s 54F is not correct. Therefore, assessment order u/s 143(3) dated 29.11.2018 was set aside to the AO to be decided *de novo* with a direction to AO to examine, the issue of capital gain and deduction u/s 54B and 54F of the Act. Pursuant to the above direction u/s 263, the AO passed order u/s 143(3) r.w.s. 263 by disallowing deduction of Rs.5,41,696/- and Rs.47,69,576/- claimed u/s 54B and 54F respectively. However, deduction of Rs.7,96,020/- was not disallowed by AO. Therefore, the Ld. PCIT observed that the re-assessment order was passed

without proper verification and inquiry on the issue which had been set aside by the predecessor PCIT u/s 263 of the Act. Hence, the order was erroneous or prejudicial to the interests of revenue. Accordingly, show cause notice was issued by the Ld. PCIT on 31.03.2021 which is at para 4 (page nos. 5 to 11) of the 263 order. The three properties on which deduction u/s 54B has been claimed are agricultural land at (i) Block No.45, Timba (Rs.1,79,850/-), (ii) R. S. No.534/1, 535/1,535/2, Timba (Rs.6,16,170/-) and (iii) Block No.704 & 705, Timba (Rs.5,41,696/-). It was mentioned that the property at No.3 was registered on 20.07.2015 which is prior to the sale of agricultural land at Kholwad for consideration of Rs.4,42,35,000/- on 25.01.2016. Regarding the properties at No.1 and 2 no purchase deed, details of payments and relevant evidence have been furnished to prove genuineness of claim of Rs.7,96,020/- (Rs.1,79,850 + Rs.6,16,170). Thereafter, section 54B was extracted and it was stated that provisions of section 54B were not fulfilled in respect of the above transactions. The AO should have disallowed Rs.7,96,020/-, which he failed to do while passing the order u/s 143(3) r.w.s. 263 of the Act.

3.1 The assessee was asked to offer his objection for the proposed action u/s 263 of the Act by offering explanation and evidence. In response thereto, assessee filed reply on 08.03.2024 which is at para 4.1 (pages 11 to 16) of the 263 order. The assessee submitted that AO had issued show cause notice wherein he had proposed addition of Rs.1,79,850/- and Rs.6,16,170/- (Rs.7,96,020/-). The assessee explained that Rs.1,79,850/- was paid on 18.10.2014 out of down payment of land sold and Rs.6,16,170/- on 20.01.2015 out of sale proceeds of

land received on 30.10.2014 of Rs.25,00,000/-. In respect of third property, Rs.5,41,696/- was paid on 20.07.2015. It was, therefore, submitted that AO was satisfied with submission of details of the purchase of two agricultural lands amounting to Rs.7,96,020/-. He had verified the issue and, therefore, proposed addition is not correct. The assessee relied on some decisions in support of his claim. The Ld. PCIT considered the submission and found that purchase of the alleged land was made by assessee before sale of the agricultural land. Hence, benefit of 54B is not attracted in case of the above claim. The Ld. PCIT further stated that no documentary evidences have been furnished by the assessee to prove the purchase of these two agricultural lands. In absence of documentary evidence, genuineness of claim of Rs.7,96,020/- u/s 54B is not established. However, AO did not make any disallowance either in the original assessment order or during the order passed u/s 143(3) r.w.s. 263 of the Act. Therefore, AO passed the assessment order without proper verification / inquiry, application of mind and law on the issue. He failed to make the impugned addition to the total income as per law which has rendered the order u/s 143(3) r.w.s. 263 erroneous in so far as it is prejudicial to the interests of revenue within the meaning of section 263 of the Act. Thereafter, the Ld. PCIT has referred to section 263 of the Act and relied on various decisions and stated that both limbs of section 263 are satisfied, i.e., the AO did not make addition of Rs.7,96,020/- due to which lawful tax of Rs.2,82,859/- was lost by revenue. The Ld. PCIT has relied on the decisions in the case of (i) Malabar Industries Ltd. vs. CIT, 243 ITR 83 (SC), Paville Projects (P.) Ltd., (2023) 149 taxmann.com 115 (SC), CIT vs. Nagesh Knitwears Pl. Ltd. &

Ors., (2013) 345 ITR 135 (Del), ITO vs. D. G. Housing Projects Ltd., ITA No.179/2011 (Del), dated 01.03.2012 and Gee Vee Enterprises vs. Addl. CIT, (1975) 99 ITR 375 (Del) and set aside the assessment order dated 29.03.2022 with a direction of pass fresh assessment order after taking into consideration the issues discussed in his order.

4. Aggrieved by the order of Ld. PCIT, the assessee filed appeal before this Tribunal. The Learned Authorized Representative (Ld. AR) of the assessee has strongly contested the order u/s 263 dated 08.03.2024 and has filed paper book containing 75 pages. He has relied on the submissions dated 23.03.2022 to the AO and submission dated 08.03.2024 to the Ld. PCIT. In the note placed at page 55 & 56 of the paper book, he has submitted that the appellant sold land bearing Block No.338 of Kholwad by registered sale deed executed on 25.01.2016 for total sale consideration of Rs.4,42,35,000/-. The first payment of Rs.25,00,000/- was received on 30.10.2014. Thereafter, various payments have been received and possession of land was given on 29.06.2015. Purchase consideration was paid for the new agricultural land after sale of agricultural land. As the investment was made after sale of land, the assessee is entitled to deduction u/s 54B of the Act. He submitted that the meaning of word purchase in section 54(1) has to be given its common meaning viz., buy for a price or equivalent of price by payment in time or adjustment towards a debt or for other monetary consideration. Once the assessee paid substantial amount to purchase the property within a period of one year, he is entitled to deduction u/s 54 of the Act. He has relied on the decisions in case of Balraj vs. CIT, (2002) 254 ITR 22 (Del) and

Ms. Moturi Lakshmi vs. ITO, Tax Case Appeal No.181 of 2019, dated 17.08.2020 (Mad).

5. On the other hand, Learned Commissioner of Income-tax – Departmental Representative (Ld. CIT-DR) has strongly relied on the order of Ld. PCIT u/s 263. He stated that the original assessment order passed by AO on 29.11.2018 was found to be erroneous and prejudicial to the interests by the Ld. PCIT and in his order u/s 263 dated 31.03.2021, he has set aside the assessment order u/s 143(3) dated 29.11.2018 to decide *de novo* with a direction to examine the issue of capital gain deduction u/s 54B and 54F of the Act. The deduction u/s 54B pertains to Rs.5,41,696/- and Rs.7,96,020/- discussed above. Deduction u/s 54F was for Rs.47,69,576/-. In compliance to the above direction, AO has passed order u/s 143(3) r.w.s. 263 on 29.03.2020 wherein he has added Rs.5,41,696/- and Rs.47,69,576/- being disallowance of claim of deduction u/s 54B and 54F of the Act. Though, he has disallowed claim of Rs.5,41,696/- but has not disallowed similar claim of Rs.7,96,020/- u/s 54B of the Act. Hence, the order is erroneous and prejudicial to the interests of revenue as per the provisions of section 263 of the Act.

6. We have heard rival submission of both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by both sides. In this case, original assessment order u/s 143(3) was passed on 29.11.2018 by making disallowance of Rs.30,00,000/- and total income was determined at Rs.1,30,19,150/-. The order was found to be erroneous and prejudicial to the interests of revenue because AO had not examined the issue of

capital gain and deduction u/s 54B and 54F of the Act. The AO subsequently passed order u/s 143(3) r.w.s. 263 on 29.03.2022 by disallowing deduction claimed u/s 54F of the Act. He has, however, partially disallowed deduction claimed u/s 54B of the Act. He added Rs.5,41,696/- and did not make any disallowance of the remaining claim of Rs.7,96,020/- comprising of purchase of two pieces of agricultural land at Block No.345, Timba of Rs.1,79,850/- and R. S. No.534/1, 535/1 & 535/2, Timba of Rs.6,16,170/- (Total Rs.7,96,020/-). It is seen from the details submitted by the assessee before the AO and Ld. PCIT that assessee has sold agricultural land bearing Block No.338 of Kholwad vide registered sale deed dated 25.01.2016. The assessee received the sale consideration in installments from 30.10.2014 to 03.01.2016. The first receipt was Rs.25,00,000/- on 30.10.2014 and the total receipt was Rs.4,42,35,000/-. The assessee in his submission to the AO on 23.03.2022 has stated that he had paid Rs.1,79,850/- on 18.10.2014 for the land bearing Block No.345 at Timba. Therefore, the submission before the Tribunal that he has made payment out of down payment of land sold is not correct because the first receipt on sale of land was on 30.10.2014 whereas the investment in new land was on 18.10.2014. Despite having specific details before him, the AO has allowed deduction u/s 54B in respect of the above property, which certainly makes the order erroneous as well as prejudicial to the interests of revenue. Regarding the second investment of Rs.6,16,170/-, the assessee stated that the amount was paid on 20.01.2015 out of sale proceeds of land received on 30.10.2014 of Rs.25,00,000/-. Though the payment is claimed to have been made out of sale consideration but the Ld.

AR has not submitted any documentary evidence i.e., copy of sale deed, details of mode and source of payment etc. in respect of purchase of both properties to prove that purchase of land for claiming deduction u/s 54B of the ACT was genuine. The assessee has submitted copy of sale deed of agricultural land at Kholwad but no copies of purchase deed have been submitted before us. In absence of such primary evidence, the claim of assessee of new investment for the purpose of deduction u/s 54B is not established. It was because of the same fact i.e., failure to furnish documentary evidence to prove purchase of these two agricultural lands that the Ld. PCIT and his predecessor had set aside the assessment orders. Before us also, the assessee has not supported his claim of payment with necessary documentary evidence. Therefore, it is a clear case of assessment order, passed by AO, without proper verification, inquiry and application of mind to the fact and relevant law on the impugned issue. Therefore, provisions of section 263 are clearly applicable. Explanation 2 of section 263 enumerates the circumstances under which the order shall be deemed to be erroneous in so far as it is prejudicial to the interests of revenue.

The same may be reproduced below for ready reference and clarity:

“263. Revision of orders prejudicial to revenue.-

Explanation 2.- For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-

- (a) the order is passed without making inquiries or verification which should have been made;*
- (b) the order is passed allowing any relief without inquiring into the claim;*
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

The Explanation 2 inserted in sub-section (1) of section 263 provides that an order passed by the AO shall be deemed to be erroneous in so far as prejudicial to the interest of revenue, if, in the opinion of the PCIT, (a) the order is passed without making inquiries or verification which should have been made, (b) the order is passed allowing relief without inquiring the claim, (c) the order was not in accordance with the instruction of CBDT u/s 119 and (d) the order was not passed in accordance with any decision, which is prejudicial to the assessee, by the jurisdictional High Court or the Supreme Court. This explanation was inserted with effect from 01.06.2015 and hence is applicable for AY.2016-17. As discussed above, the case of the assessee clearly falls under clause (a) and (b) of Explanation 2 because the AO passed the order without making inquiries or verification which should have been made and he allowed relief without inquiring into the claim of deduction u/s 54B of the Act. The same is clearly evident from the facts discussed above. The decisions relied upon by the Ld. AR are not applicable to the instant case. We have clearly found that the assessee was not eligible for deduction u/s 54B in respect of both properties for the reasons stated above. We find that the Hon'ble Rajasthan High Court in case of CIT vs. Emery Stone Mfg. Co., 213 ITR 843 (Raj) held that the powers of revision u/s 263 can be exercised by the CIT if he considers that any order passed by AO is erroneous in so far as it is prejudicial to the interests of revenue. Allowing certain deductions without proving the claim or without proper verification or in ignorance of the

provisions of law are the various instances on the basis of which the order can be considered as prejudicial to the interests of revenue and can be set right in revisional jurisdiction. In a case where there is non-application of mind with regard to any particular provisions of law, the proper course is to set aside the assessment order and sent back to the AO for determining the said issue, in accordance with provisions of law, so that the necessary evidence come on record. The facts of the present case are clearly covered by the ratio of the above decision. The other decisions relied upon by the Ld. PCIT also furthers the cause of revenue. In view of the above factual and legal positions, we find no merit in the argument of the Ld. AR of the assessee and dismiss the appeal of the assessee.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced on 28/08/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 28/08/2024

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat