

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 316/Ind/2024**  
**Assessment Year: 2018-19**

D.K.Constructions, DK Cottage, 24, Carat E8, Near Gujrati Colony,, Bawadiya Kalan, Bhopal (Assessee/Appellant)	<b><u>बनाम/</u></b> Vs.	PCIT (Central), Bhopal (Revenue/Respondent)
<b>PAN: AAAFD7121P</b>		
Assessee by	Shri S.S. Deshpande, CA	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	28.08.2024	
Date of Pronouncement	30.08.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by revision-order dated 26.03.2024 passed by learned Pr. Commissioner of Income-Tax, Indore-1 ["PCIT"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of assessment-order dated 18.06.2021 passed by learned DCIT, Central-I, Bhopal ["AO"] u/s 143(3) of the act for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee-firm filed return of income of relevant AY 2018-19 which was subjected to scrutiny-assessment and the AO completed assessment u/s 143(3) vide order dated 18.06.2021. Subsequently, Ld. PCIT examined the record of assessment-proceeding and viewed that the assessment-order passed by AO is erroneous in so far it is prejudicial to the interest of revenue which attracts revisionary-jurisdiction u/s 263. Accordingly, the PCIT issued show-cause notice dated 16.01.2024 and finally passed revision-order dated 26.03.2024. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee carried us to revision-order and demonstrated that there is one single issue for which the PCIT undertook revision. The PCIT has noted that the assessee had purchased an immovable property from Shri Arun Sabharwal and Smt. Anita Sabharwal at Khasra No. 452/2 comprising 0.110 hectare situated at Village – Hinotiya Alam, RI Circle, Ratibad, Tehsil – Huzur, Bhopal [**“impugned property”**] for a consideration of Rs. 65,12,000/- which was less than the valuation of Rs. 1,02,00,000/- made by stamps authority, hence the difference of Rs. 36,88,000/- being shortfall in consideration paid by assessee attracted taxability u/s 56(2)(x)(b) of the Act. However, neither the assessee has offered the differential amount as income in terms of section 56(2)(x)(b) nor the AO has conducted any enquiry qua this issue while passing assessment-order. Therefore, the

assessment-order passed by AO is rendered erroneous-cum-prejudicial to the interest of revenue warranting invocation of revision u/s 263.

4. Having explained the basis of revision done by PCIT, Ld. AR raised following contentions to assail the impugned revision-order:

- (a) That the assessee is a partnership firm engaged in the business of real estate and the impugned property purchased by assessee was a part of stock-in-trade of assessee and not held as 'capital asset'. The provision of section 56(2)(x)(b) is not applicable as per the term 'property' has been defined in Explanation to section 56(2)(x) read with Explanation (d) to section 56(2)(vii) to mean only a 'capital asset'. It is also clarified by ***CBDT in Para No. 13.4 of Circular No. 01/2011 dated 06.04.2011 [F.No. 142/1/2011-SO(TPL)]*** and also judicially decided so by ***ITAT, Jaipur in Satendra Kaushik, ITA No. 392/JP/2019 order dated 23.04.2019; ITAT, Pune in Mubarak Gafur Korabu Vs. ITO (2019) 55 CCH 0467; ITAT, Jaipur in Yogesh Maheshwari Vs. DCIT, 125 Taxmann.com 273; ITAT, Jaipur in Prem Chand Jain Vs. ACIT, ITA No. 98/JP/2019 order dated 08.06.2020***, that the provision of section 56(2)(x)(b) [or corresponding erstwhile provision of section 56(2)(vii)(b)] is not applicable where the property purchased by assessee is not a 'capital asset' or it is a part of 'stock-in-trade' of assessee.
- (b) That the assessee filed tax audit report u/s 44AB of the Act and in

Column No. 29B of Form 3CD, against the question asking for income chargeable u/s 56(2)(x), the auditors have reported “No such income was noted during the audit. The section 56(2)(x) includes capital asset and it is not applicable to business stock-in-trade.”. The AO has considered the auditors’ report while framing assessment. Further, the AO has made addition of Rs. 1,11,00,000/- u/s 56(2)(x)(b) in respect of one more property purchased by assessee at Khasra No. 204/3 & 203/2/2/1 for a consideration of Rs. 1.5 crore having stamps valuation of Rs. 2.61 crore as ‘stock-in-trade’ [**“another property”**]. The assessee has already filed an appeal before CIT(A) contesting the addition of Rs. 1,11,00,000/- on the very same premise that the provision of section 56(2)(x) was not applicable to property acquired as ‘stock-in-trade’. The appeal is still pending at the level of CIT(A). This point, according to Ld. AR, shows two aspects in favour of assessee, namely (i) the AO has made enquiry in the matter of purchase of property by assessee during assessment and taken a cautious view for not making any addition qua the impugned property, (ii) once the issue of applicability or non-applicability of section 56(2)(x) is pending before CIT(A) even for another property, the PCIT is barred from exercising revisionary jurisdiction u/s 263 for impugned property by virtue of Explanation 1(c) to section 263. Reliance is placed on ***ITAT, Indore in Arvind Kumar Singh Vs. PCIT, ITA No. 132 to 135/Ind/2021 order dated 10.11.2022; CIT Vs. Vam Resorts &***

*Hotels Ltd. (2019) 418 Taxmman.com 723 (Allahabad); Smt. Renuka Phillip Vs. ITO (2019) 101 Taxmann.com 119 (Madras); RNR Devcon Vs. PCIT in ITA No. 459/Ind/2018.*

5. With above submissions, Ld. AR submitted that there is no error in the assessment-order of AO. Accordingly, Ld. AR prayed that the revision-order passed by PCIT is not sustainable and must be quashed and the AO's assessment-order must be restored.

6. Per contra, Ld. DR for revenue very strongly raised following contentions to oppose the submissions of Ld. AR:

(a) The AO himself committed a mistake by applying section 56(2)(x)(b) to another property but not to the impugned property. This is a serious error in assessment-order rightly identified by PCIT.

(b) The issue pending before CIT(A) is concerning another property purchased by assessee and not the impugned property with which we are concerned. Therefore, the Ld. AR's claim that the revisionary jurisdiction of PCIT is barred is not valid. The case-laws relied by Ld. AR are not helpful to assessee.

7. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. On a careful consideration, we find that the assessee has purchased two different properties i.e. 'impugned property' and

'another property' as referred and detailed by us in foregoing para. Both properties were held by assessee as 'stock-in-trade' and not 'capital assets' and both properties were purchased for a consideration less than the stamps authority valuation. However, while completing assessment, the AO has made addition u/s 56(2)(x)(b) for 'another property' but not for 'impugned property'. In fact, the AO is totally silent about 'impugned property' in assessment-order. When it is so, we are in immediate agreement with Ld. DR for revenue that the order passed by AO is certainly erroneous for non-consideration of 'impugned property' for taxation u/s 56(2)(x)(b) when there is no difference in two transactions. Hence, the PCIT is very much justified in invoking revisionary action to assessee's case.

8. So far as the claim of Ld. AR that the issue of taxability done by AO u/s 56(2)(x)(b) qua 'another property' is pending before CIT(A) and therefore the PCIT is barred from invoking revisionary action in terms of Explanation 1(c) to section 263 is concerned, we re-produce below the said Explanation 1(c) for an immediate reference, which reads as under:

*“(c) Where any order referred to in this sub-section and passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, had been the subject matter of any appeal filed on or before or after the 1<sup>st</sup> day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.”*

Thus, the Explanation 1(c) empowers the PCIT to take up revisionary action to 'such matter as had not been considered and decided in appeal'.

Undisputably, the appeal filed by assessee before CIT(A) is qua the addition

made by AO in relation to 'another property' and the matter of 'impugned property' is not before CIT(A). Therefore, the Explanation 1(c) very much empowers the PCIT to take up the issue of 'impugned property' for revision. Hence, we do not find any merit in the claim raised by Ld. AR.

9. The above discussion brings us to conclude that the order passed by PCIT is very much in accordance with the provision of section 263. We therefore uphold the same. The assessee fails in this appeal.

10. Before parting, we would like to make a mention. Ld. AR for assessee has raised an important legal claim that the 'impugned property' purchased by assessee was part of 'stock-in-trade' and not a 'capital asset', therefore the provision of section 56(2)(x)(b) is not applicable as per definition of the term 'property' prescribed in Explanation to section 56(2)(x) read with Explanation (d) to section 56(2)(vii) and also clarified by ***CBDT in Para No. 13.4 of Circular No. 01/2011 dated 06.04.2011 [F.No. 142/1/2011-SO(TPL)]*** and also judicially decided so by ***ITAT, Jaipur in Satendra Kaushik, ITA No. 392/JP/2019 order dated 23.04.2019; ITAT, Pune in Mubarak Gafur Korabu Vs. ITO (2019) 55 CCH 0467; ITAT, Jaipur in Yogesh Maheshwari Vs. DCIT, 125 Taxmann.com 273; ITAT, Jaipur in Prem Chand Jain Vs. ACIT, ITA No. 98/JP/2019 order dated 08.06.2020.*** The assessee may raise this claim before AO during consequential proceeding before AO pursuant to the revision-order and we expect the AO to consider such a claim of assessee with a judicious approach.

**11. Resultantly, this appeal is dismissed.**

Order pronounced in open court on 30.08.2024

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

*दिनांक* /Dated : 30.08.2024

CPU/Sr. PS

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  
Indore Bench, Indore