

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.775 & 776/Ahd/2024

निर्धारण वर्ष /Assessment Years : 2015-16 & 2017-18 respectively

Gopi Saurabh Patwa A-26 Aryaman Bungalows Next to Railway Crossing- -Thaltej-Shilaj Road, Shilaj Ahmedabad - 380 059 (Gujarat)	बनाम/ v/s.	The CIT (IT & TP), Now PCIT-3 Ahmedabad
स्थायी लेखा सं./PAN: AGRPP 8059 P		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :		Shri Vartik Chokshi, AR
Revenue by :		Shri H. Phani Raju, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03/09/2024
घोषणा की तारीख /Date of Pronouncement: 10/09/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These two appeals by the Assessee are directed against the separate orders both dated 21/03/2024 passed by the Ld.Commissioner of Income Tax (IT & TP) [Now Pr.CIT] (hereinafter referred to as "Ld.PCIT"), for the Assessment Years (AYs) 2015-16 & 2017-18 arising from the orders passed

by the Assessing Officer (hereinafter referred to as "AO") u/s. 147 read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Facts of the case:

2. The assessee, a Non-resident Individual, filed her returns of income and the case(s) for A.Y. 2015-16 and A.Y. 2017-18 were reopened and the reassessments were completed by accepting the returned income as detailed below:

Sr	Particulars	A.Y. 2015-16	A.Y. 2017-18
1	Date of filing Return of Income	25-07-2015	01-07-2017
2	Total Income Declared	Rs. 1,66,820/-	Rs. 2,64,900/-
3	Date of Notice u/s 143(2) of the Act	21-06-2021	23-06-2021
4	Date of Notice u/s 142(1) of the Act	NIL	30-12-2021
5	Date of Order passed u/s 147 r.w.s. 144B of the Act	29-03-2022	31-03-2022

2.1. The reason for re-opening the assessment u/s.148 of the Act, as stated in the order(s) of the Ld.PCIT, was the allegation of "on-money" payments made by the assessee for the purchase of Unit No.122 in the "Kalhaar Blues and Greens" (KBG) Project developed by Navratna Organizers and Developers Pvt. Ltd. (NODPL). This information was based on a report from the Investigation Wing which indicated that, during a search operation on NODPL, the builder admitted to receiving "on-money" in cash payments for the sale of villas. An excel file found during the search reportedly showed details of these cash payments, and the reopening was initiated on

the basis of this seized evidence, implicating the assessee in making such a payment for the property purchase. The assessee had purchased property jointly with Saurabh Sumant Patwa, Kalpana Saurabh Patwa and Shimoli Vishal Shah from NODPL.

2.2. During the reassessment proceedings for the AY 2015-16, the assessee raised significant objections regarding the validity of the re-opening of the assessment. Despite repeated requests, the AO failed to provide the assessee with the actual copy of the reasons recorded for re-opening the assessment, which had been submitted to the Ld.Principal Commissioner of Income Tax for approval. The assessee denied making any payments beyond what was declared in the Sale Deed for the purchase of Unit No. 122 in the Kalhaar Blues and Greens project. While the AO alleged the possibility of undisclosed payments, the assessee maintained that the entire consideration as per the Sale Deed had been fully disclosed.

2.3. The assessee further contended that the investment in the property was scrutinized in the original assessment proceedings under section 143(3) of the Act for AY 2016-17, wherein the AO accepted the investment as declared. The assessee argued that documents found during a search operation did not directly mention the assessee's name, nor did they establish any direct connection between the assessee and the third-party information. The assessee requested clarification on the names of the individuals against whom the search was conducted and the specific link between the assessee and the said search. Additionally, the assessee sought clarity regarding the role of Shri Marutibhai Trivedi, whose name appeared in connection with backup data related to the Kalhaar Blues and Greens

project, and whether Shri Trivedi was an employee or related to the person being searched. The assessee also stated that the housing unit was purchased by her parents, however, for the purpose of inheritance assessee's name was added.

2.4. For AY 2017-18, the assessee similarly submitted various documents related to the purchase of property, contending that no cash payments were made and demanding copies of the data retrieved during the search of Murlidhar Trivedi's premises. The assessee compared the Jantri rate with the actual purchase price, asserting that the property was acquired at a rate higher than the government-determined value. The assessee provided complete details of the purchase, the total payments made, the source of funds, as well as relevant ledgers and bank statements.

2.5. After going through the submissions of the assessee, the AO passed the order u/s.147 r.w.s. 144B of the Act. Later on, the Ld.PCIT observed that the AO has not made any enquiry or conscious efforts to examine the facts reported in report of Investigation Wing. Therefore, he issued the show cause notice to the assessee u/s.263 of the Act for both the assessment years.

2.6. In reply to the notices u/s.263 of the Act, the assessee objected to the notices and stated that the Ld.PCIT has not given any details of information received, its analysis and independent inquiry. The assessee also stated that during the reassessment proceedings the AO has already conducted the inquiry about the impugned issue and completed the reassessment. The assessee also argued that where two views are possible and one view is

adopted by the AO, then existence of other possible view alone would not be sufficient to assume jurisdiction u/s.263 of the Act. Additionally, without prejudice to her contentions, the assessee submitted the details of deed of conveyance, details of payments made by way of purchase consideration, copy of bank account passbook and confirmation from the developer (NODPL) to bring on record that she was not party to payment consideration.

2.7. The Ld.PCIT set aside the orders of AO by passing order u/s.263 of the Act. While doing so, the Ld.PCIT rejected the contentions of the assessee stating that details noted in incriminating documents i.e. excel sheet had proper details of KBG units such as number of unit, selling price of land, construction cost, amount received were matching with the unit of the assessee and the NODPL, on the basis of seized documents, accepted the receipt of "On Money" before the Settlement Commission and paid due taxes on it.

3. Aggrieved by the order of the Ld.PCIT, the assessee is in appeal before us with following grounds of appeal:

Common Grounds of Appeal(s) in ITA Nos. 775 and 776/Ahd/2024 (For AYs 2015-16 & 2017-18) respectively.

- 1. In law and in the facts and circumstances of the Appellant's case, the impugned order u/s. 263 passed by the Ld. PCIT is bad in law and deserves to be quashed.*
- 2. In law and in the facts and circumstances of the case, the Ld. PCIT has erred in holding that Assessment Order passed by the Assessing Officer was*

without proper verification and was, therefore, erroneous and prejudicial to the interest of Revenue. Such conclusions are contrary to the facts of the case. As such. Provisions of Section 263 are unjustifiably invoked.

3. *In law and in the facts and circumstances of the Appellant's case, the order passed by the Ld. PCIT may please be held to be unjustified, unwarranted and may please be quashed.*
4. *The Appellant craves leave to add to, amend or to raise any further ground(s) of appeal, as the case may arise.*
5. During the course of hearing before us, the Ld.Authorised Representative (AR) of the assessee took us through the notices issued by the AO during the course of re-assessment proceedings and submissions made in response thereto. The Ld.AR argued that the purchase was legitimate and supported by a registered-deed and banking documents. The Ld.AR also stated that the unit was initially booked by a third party, Shri Ajay Mittal, who later cancelled the booking and the excel sheet cited by the Department pertained to transactions between NODPL and Shri Ajay Mittal, and not the assessee. The Ld.AR contended that the sheet contained errors and could not be relied upon. The Ld.AR also emphasized that no evidence was provided to show any cash trail or vouchers supporting the "on-money" allegations. The assessee also highlighted discrepancies in the area and cost calculations mentioned in the excel-sheet, labeling it a "dumb document." The Ld.AR specifically explained the contents of excel-sheet in which the name of Shri Ajay B. Mittal appeared against Unit No. 122 and name(s) of S.K. Mittal/Urmila Mittal appeared against Unit No. 64. The date of booking is 02/12/2009 and 28/01/2010 at Sr. No. 248 and 299 of the excel sheet representing Unit No. 541 and 122 respectively. The Ld.AR also submitted that these units were originally booked by Shri Mittal, who

cancelled the bookings as per his letter dated 30-05-2011 to NODPL which was submitted to the AO. While denying the contents of the excel-sheet, the Ld.AR stated that the assessee's parents booked the unit No. 641 in February-2015 and paid the initial consideration of Rs.61,79,250/-, whereas the dates showing the details in excel are of 2013. The Ld.AR, to sum up the arguments, stated that the order passed by the Ld.PCIT need to be treated as bad at law and even on merit, in absence of any evidence, deserve to be vacated. The Ld.AR placed reliance on the **decision of Co-ordinate Bench in case of Divyesh Bhupendra Desai Vs. PCIT in ITA No. 802/Ahd/2024 dated 29-08-2024.**

6. On the other hand, the Ld.Departmental Representative (DR), relied on the order of the Ld.PCIT and also stated that the since the AO has failed in conducting the inquiry, the order passed by him is erroneous and prejudicial to the interests of the Revenue. The Ld.DR placed reliance on the **decision of ITAT Rajkot Bench in case of Prakashbhai Ishwarbhai Changela Vs. PCIT, Rajkot in ITA No.46 & 47/Rjt/2022 dated 10-04-2024.**

7. We have heard the rival contentions and perused the material on record. It is well-settled law that for invoking Section 263 of the Act, the Ld.PCIT must demonstrate that the order passed by the AO was erroneous and prejudicial to the interests of the Revenue. The primary reason cited by the Ld.PCIT for invoking Section 263 of the Act is that the AO did not sufficiently inquire into the alleged "on-money" payments. However, it is evident from the assessment records that the AO had conducted an inquiry into the assessee's property purchase. The assessee provided documentary evidence, including the sale deed, bank account statements, and payment

confirmations, which were duly examined by the AO. Further, the assessee's name does not appear in the incriminating documents, and the AO did not question the explanation that the unit was purchased by the assessee's parents, and her name was added only for inheritance purposes. The reliance placed by the Ld.DR on *Prakashbhai Ishwarbhai Changela (supra)* is misplaced. In that case, the AO had accepted a large sum of unexplained cash deposits without any inquiry and the Ld.PCIT held that the entire amount should have been taxed, particularly in the absence of plausible explanations. In that case it was noted that the assessee made contradictory submissions—first, claiming the deposits did not belong to him, and second, stating that they were related to his business. The AO accepted the latter without sufficient inquiry into either of these explanations. In contrast, the present case involves a detailed inquiry conducted by the AO into the property purchase, supported by documentary evidence, including the sale deed, bank statements, and confirmations from the developer. The assessee consistently denied making any “on-money” payments, and the AO found no direct evidence implicating the assessee. Therefore, unlike in the case of *Prakashbhai Ishwarbhai Changela (supra)*, the AO's assessment in the present case was based on a proper examination of all relevant facts and documents, and there were no contradictory explanations that warranted further inquiry.

7.1. The facts of the present case are more akin to the decision in *Divyesh Bhupendra Desai Vs. PCIT (supra)*, where the Tribunal held that when the AO has taken a plausible view based on inquiry and material on record, the invocation of Section 263 of the Act is unwarranted. The Co-ordinate Bench

relied on the **judgment of the Hon'ble Gujarat High Court in *Kaushik Nanubhai Majithia Vs. PCIT (Tax Appeal No. 20 of 2024)***, where the Hon'ble Court ruled that initiating proceedings solely based on an excel-sheet found during a search in the premises of a third party (as in the present case) does not provide a valid basis for assuming the existence of a transaction between the assessee and the developer. The Court noted that the excel sheet, which allegedly contained payment details from the assessee to the developer, lacked any corroborative material or signature, making it an unreliable document. The Hon'ble Court also found that there was no direct evidence, such as corroborative material, linking the assessee to the alleged payments and, therefore, the reliance on the developer having paid taxes on amounts shown in the excel-sheet before the Settlement Commission was deemed insufficient. The Hon'ble High Court emphasized that unless there is clear adjudication or substantiating evidence that the assessee actually made those payments, mere entries in an excel sheet found from a third party cannot form the basis for proceedings against the assessee.

7.2. Thus, in light of the facts and the principles established by the judicial precedents, we find that the PCIT's order under Section 263 is unjustified. The AO's original assessment was based on a proper examination of the relevant material, and there is no error or prejudice to the interests of the Revenue. Accordingly, we quash the orders passed by the Ld.PCIT for both the Assessment Years 2015-16 and 2017-18 and allow the appeals of the assessee.

8. In the combined result, both the appeals of the assessee; i.e. ITA Nos.775/Ahd/2024 & 776/Ahd/2024 are allowed.

Order pronounced in the Open Court on 10th September, 2024 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 10/09/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)/CIT (IT & TP) Now PCIT-3, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad