

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

BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 513/Ahd/2024
Assessment Year: 2015-16

Dipikaben Kaniyalal Prajapati, Prop. Of Shivam Roadways, 17, Bhuyangdev Society, Sola Road, Ghatlodia, Ahmedabad, Gujarat -380061	<u>बनाम/</u> Vs.	Principal Commissioner of Income-tax, Ahmedabad-3, Ahmedabad
(Appellant)		(Respondent)
Assessee by	Shri Shailesh Shah, CA	
Revenue by	Shri H. Phani Raju, CIT-DR	
Date of Hearing	13.08.2024	
Date of Pronouncement	20.09.2024	

आदेश/ ORDER

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income-Tax, Ahmedabad-3 [hereinafter referred to as "PCIT" for short] dated 12.02.2024, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2015-16.

2. The Grounds of appeal raised by the assessee are as follows:-

"[1] That the learned principal Commissioner of Income tax, Ahmedabad-3, has erred in assuming the jurisdiction under section 263 of the Income Tax Act, 1961 which is bad in law inter alia for this reason that the reassessment order passed under section 147 r.w.s. 144B of the IT Act, dated 26/03/2022 which is sought to be revised u/s.263 itself was invalid, in inter alia on various grounds as mentioned below and thus proceedings

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initiated under section 263 against the invalid re assessment order is clearly bad in law.

- a) The assumption of jurisdiction under section 147 is itself is bad in law as the reason recorded would not have led to the formation of belief of escapement of income.*
- b) That no valid satisfaction/approval under section 151 was obtained.*
- c) That impugned reassessment order was passed without complying with the mandatory conditions of section 147 to 151.*

[2] *That the learned principal Commissioner of Income tax, Ahmedabad-3, has erred in assuming the jurisdiction under section 263 of the Income Tax Act, 1961 and, thereby, holding that the assessment has framed by the assessing officer is erroneous and prejudicial to the Interest of the revenue and further erred in setting aside the order dated 26/03/2022 as passed by the Assessing Officer.*

Where assessment was sought to be reopen based on documents found during search in case of third party, correct course of reassessment was under section 153C and not under section 147. Therefore, order passed u/s.147 r.w.s. 144B of the IT Act is not in accordance with the law.

[3] *That the learned Principal Commissioner of Income tax, Ahmedabad-3, has failed to appreciate the fact that, the assessment had been framed after due application of mind and through investigation and all the issues/impounded material has been analyzed, enquired in to, and dealt with by the concerned assessing officer, before passing the order u/s. 147 r.w.s. 144B of the IT Act.*

[4] *That the learned Principal Commissioner of Income tax, Ahmedabad-3, erred in law and on the facts and in the circumstances of the case in directing the Assessing Officer, to pass fresh assessment order after properly ascertaining the correct fact in respect of placing reliance on order of ITSC and verification of on money and deposit/credit appearing in bank during the year under consideration, even though the appellant denied payment of on money.*

[5] *That the learned Principal Commissioner of Income tax, Ahmedabad-3, erred in law and on the facts and in the*

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circumstances of the case in directing the Assessing Officer to make fishing and roving inquiries in concluded matters.

- [6] *The Order of the Principal Commissioner, Ahmedabad-3 being contrary to laws, evidence and facts of the case may be set-aside / cancelled / amended or modified.*
- [7] *The Learned Principal Commissioner of Income Tax has erred in holding that the Assessment Order dated 26/03/2022 passed by the Assessing officer is erroneous in so far as the same is prejudicial to the interest of the revenue.*
- [8] *The Learned Principal Commissioner of Income Tax failed to appreciate that the conditions specified under explanation-2(a) section 263 are not satisfied in the appellant case. Accordingly, the appellants prays that impugned order passed by the Learned Commissioner of Income Tax is ultra vires, in valid and ought to be struck down.*
- [9] *The Learned Principal Commissioner of Income Tax has erred in holding that the Assessing Officer failed to conduct adequate inquiries during the course of assessment proceeding in spite of the facts that the Assessing officer had considered adequate evidence submitted by the appellant during the course of assessment proceeding.*
- [10] *The Learned Principal Commissioner of Income Tax failed to appreciate that, there is due application of mind by the Learned Assessing Officer during assessment proceeding and setting aside of the impugned order is erroneous, in excess of jurisdiction and bad in law.*
- [11] *The Learned Principal Commissioner of Income Tax has ought to have appreciated that, where the Learned Assessing Officer adopted one view out of the two possible views, the provision of section 263 of the act, cannot be invoked merely because the Principal Commissioner proposes to take another view.*
- [12] *That the replies as filed during the course of proceeding before the assessing officer and the learned Principal commissioner of Income- tax, have not considered property.*
- [13] *The Learned Principal Commissioner of Income Tax, Ahmedabad- 3, has neither herself conducted any inquiry nor got such inquiry conducted on the issue(s) on which the impugned order u/s.263 of the IT Act, 1961 has been set-aside, therefore, the Principal Commissioner of Income Tax, Ahmedabad-*

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3 is not justified in exercising powers u/s.263 of the IT Act, 1961.

- [14] That, the reasons for initiating revision proceedings under section 263 of the IT Act, 1961 given in show-cause notice u/s. 263 of the IT Act, 1961 dated 12/01/2024 are ambiguous, non-specific and different from the reasons for which the impugned assessment order has been set-aside, hence the said revision order is insupportable in law and on the facts and deserves as to be quashed and the assessment order restored.
- [15] That, the Learned Principal Commissioner of Income Tax, Ahmedabad-3, has failed to bring on record lack of inquiry on the part of the Assessing Officer during the assessment proceedings on the issues dealt within the proceedings u/s.263 of the IT Act, 1961, therefore, the assumptions of jurisdiction u/s.263 of the IT Act, 1961 is void ab initio and the consequent impugned order passed u/s.263 of the IT Act, 1961 is unsustainable in law and on the facts and liable to be quashed.
- [16] That, the order passed u/s 263 of the IT Act, 1961 by The Learned Principal Commissioner of Income Tax, Ahmedabad-3, is contrary to the Principles of natural justice and equity and liable to be quashed.
- [17] That the twin conditions that the impugned assessment is erroneous and prejudice to the interest of the revenue are totally absent in the facts of the present case hence, the order under appeal is bad in law and deserves to be quashed.
- [18] That the Learned Principal Commissioner of Income Tax, Ahmedabad-3, has erred in law and on the facts in not pointing out specifically any categorically as to how the assessment order was erroneous as well as prejudicial to the interest of the revenue, therefore, the impugned revision order passed u/s.263 of the IT Act, 1961 is liable to be quashed.
- [19] That the Learned Principal Commissioner of Income Tax, Ahmedabad-3, has erred in law and on the facts by not considering second proviso to section 245M(5) of the Act, while reopening revision proceeding u/s.263.”

3. The assessee filed return of income for AY 2015-16 on 31.07.2015 declaring total income at Rs.4,73,670/-. The case was reopened u/s 147 of the Act on the issue of search action u/s 132

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carried out in the case of Navratna Group and related to the development of various real estate projects being “Kalhaar Blues and Greens” project and “Navratna Business Park”. The assessment was finalized u/s 147 r.w.s. 144B of the Act on 26.03.2022 by accepting the returned income of the assessee. The PCIT observed that in view of the admission made by the “Navratna Organisers and Developers Pvt. Ltd.” before the Hon’ble Settlement Commission regarding receipt of on-money and perusal of the other excel file seized, the assessee had also paid 50% (being the joint ownership) on-money of Rs.86,12,700/- i.e. Rs.43,06,350/- for the purchase of the said property. The PCIT, therefore, issued show-cause notice to the assessee thereby invoking Section 263 of the Act. After taking cognizance of the assessee’s submission, the PCIT directed the Assessing Officer to apply correct provisions of the Act, i.e. Section 115BBE while making addition towards on-money payments.

4. Being aggrieved by the order passed by the PCIT u/s 263 of the Act, the assessee preferred appeal before us.

5. The ld. AR submitted that the case was reopened under the provision of clause (b) of *Explanation 2* to Section 147 of the Act and the assessee has submitted its reply on various occasions along with the supporting documents. The ld. AR submitted that the observation of the Assessing Officer that the source of investment has been explained by the assessee in the form of chart in respect of both being availed a loan from State Bank of India, that is of Rs.44,00,000/-, and the assessee showing housing loan in respect of other sources totaling to Rs.34,68,719/-. The ld. PCIT has not taken cognizance of the assessee’s reply and details filed before the Assessing Officer during

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the reassessment proceedings as the assessee has categorically rebutted the admission of 'Navratna Organisers and Developers Pvt. Ltd.' related to the on-money payment for purchase of plot. Further, the ld. AR submitted that where the Assessing Officer has already taken a view, the PCIT cannot take a different view and the provisions of Section 263 of the Act cannot be invoked in that context.

6. The ld. DR submitted that the Assessing Officer has not verified on-money transactions and, therefore, the PCIT has rightly invoked the revisionary powers. The ld. DR relied upon the decision of the Tribunal in the case of Prakashbhai Ishwarbhai Changela Vs. PCIT (ITA No. 46/Rjt/2022, Order dated 10.04.2024).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the reopening was on the very same issue that of on-money transactions, and the Assessing Officer has rightly verified all the evidences given by the assessee during the assessment proceedings conducted u/s 147 of the Act. The assessee during the assessment proceedings has given the details of the source of his income and also has given the trailer of that income related to purchase of the property and after coming into the satisfaction, the Assessing Officer has accepted the assessee's return of income. The PCIT has not pointed out that as to why Section 115BBE of the Act has to be applied in the case where the Assessing Officer has verified all the aspects related to the on-money transactions. Even if it is saying that the Hon'ble Settlement Commission before whom the other parties have admitted the transactions, but since the assessee established his onus before the Assessing Officer and once the Assessing Officer has, after inquiry, taken a view, that cannot be stated as no-inquiry or inadequate

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inquiry. Thus, the invocation of *Explanation 2* to Section 263 in assessee's case for *denovo* inquiry thereby setting aside the assessment order is not justifiable on the part of the PCIT. Hence, the appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/09/2024 at Ahmedabad.

Sd/-

Sd/-

(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 20/09/2024

****btk**

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)-
5. विभागीय प्रतिनिधि,अधिकरण अपीलीय आयकर ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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