

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.131/Ahd/2021
Assessment Year: 2015-16**

Aslam Fazlurrehman Kagdi, Plot No.129, B/h. Kashiram Textile Mills, Narol Road, Narol, Ahmedabad – 380 028. [PAN – AGBPK 2131 K]	Vs.	The Principal Commissioner of Income Tax – 1, Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Mehul Thakkar, AR	
Revenue by	Shri Sudhendu Das, CIT(DR)	
Date of Hearing	19.09.2024	
Date of Pronouncement	08.10.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 10.03.2021 passed by the Principal Commissioner of Income Tax, Ahmedabad-1 for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

- “1. That the Ld. Pr. CIT has erred in passing the order u/s 263 as he could not have passed the order u/s 263, being taken the case for limited scrutiny under CASS and, therefore, the Pr. CIT has exceeded his jurisdiction in issuing the notice u/s 263 and passing the order u/s 263 (1).
2. That the order as passed by the Ld. Pr. CIT is against the norms laid down under the CBDT circular for "limited scrutiny" and having not raised the issue in the show cause notice with regard to issue under "limited scrutiny case" and raising other issues in the show cause notice under

section 263 of the Act, is against the facts and circumstances of the case. Hence the order as passed by the Pr. CIT deserves to be quashed.

3. *That the Ld. Pr. CIT has erred in law in assuming jurisdiction under section 263 of the Income Tax Act on the ground that no inquiry has been conducted for the purchase of property by the Assessing Officer while passing order under Section 143(3) of the Act.*
4. *That the Ld. Pr. CIT further erred in law and facts in not appreciating the detailed submission of the assessee dated 23rd December, 2019 in a right perspective.*
5. *That the Ld. Pr. CIT has also erred in law in setting aside the whole assessment order and directing the Assessing Officer to redo the assessment de-novo."*

3. The assessee filed return of income for Assessment Year 2015-16 on 30.09.2015 declaring total income at Rs.29,78,150/-. The case was selected under "limited scrutiny" and the Assessment Order under Section 143(3) of the Income Tax Act, 1961 was passed on 17.10.2017 determining total income at Rs.29,78,150/-. The PCIT observed that the assessee alongwith two other co-owners namely Shri Asad Fazlurrehman Kagdi and Shri Mohammed Fazlurrehman Kagdi (all three having equal share of one third each) had purchased an immovable property being land situated at Ishanpur, Ahmedabad on 05.11.2014. The said property was purchased vide Deed No.2173/2014 for a total consideration of Rs.59,01,000/- from Shri Manubhai Somabhai Patel and Shri Dashrathbhai Somabhai Patel (sellers). Mohammed Aslam Abdul Kader Kureshi was the confirming party in this land transaction. Thus, s having one third share in the said property, the assessee has paid Rs.19,67,000/- (being one third of Rs.59,01,000/-). The PCIT further observed that the assessee alongwith two co-owners had paid stamp duty of Rs.7,90,800/- in respect of the said purchase. Therefore, fair market value of the property in accordance with its stamp duty value works out at Rs.1,61,38,775/-. Hence, the fair market value of the entire property exceeded the claimed sales consideration by Rs.1,02,37,775/-. The PCIT observed that the provisions of Section 56(2)(vii)(b)(ii) of the Act should have been attracted in respect of the purchase made by the assessee for immovable property for a consideration which is less than the stamp duty valuation of the property. Thus, the difference of Rs.34,12,590/- was to be taxed in his hands being one third of assessee's share in total differential of Rs.1,02,37,775/-. The PCIT observed that this aspect was

not verified by the Assessing Officer and hence issued notice under Section 263 of the Act. The assessee did not respond to the same and, therefore, the PCIT passed the order under Section 263 of the Act thereby set aside the order passed under Section 143(3) of the Act and directed the Assessing Officer to pass a fresh Assessment Order.

4. Being aggrieved by the Order under Section 263 of the Act, the assessee filed appeal before the Tribunal.

5. The Ld. AR submitted that the Assessing Officer acquired jurisdiction by issuing a valid notice under Section 143(2) of the Act in original scrutiny case for the assessment under Section 143(3) of the Act. Notice under Section 143(2) of the Act is a jurisdictional notice. Further notice under Section 142(1) of the Act cannot substitute notice under Section 143(2) of the Act nor can it cure the defect of notice under Section 143(2) of the Act which is jurisdictional notice. The Ld. AR relied upon the following decisions:-

- 1) *CIT vs. Bharat G. Patel (2014) 43 taxmann.com 90 (Guj)*
- 2) *CIT vs. Sukhini P. Modi (2014) 367 ITR 682 (Guj)*
- 3) *PCIT vs. Silver Line (2016) 383 ITR 455 (Del)*
- 4) *CIT vs. Amit K. Jain (2016) 388 ITR 113 (Guj)*

6. The Ld. AR further submitted that the acquisition of jurisdiction to conduct scrutiny is based on issuance of valid notice under Section 143(2) of the Act. The acquisition of jurisdiction to conduct Limited Scrutiny is based on the issues identified for examination and such issues have to be communicated to the assessee in the notice under Section 143(2) of the Act. The Ld. AR further submitted that the issues/scope of Limited Scrutiny has to be specified in the notice under Section 143(2) of the Act and the format of notice has been notified by the CBDT vide Circular dated 11.07.2016. Validity of reopening stands or falls on the basis of reasons recorded, in the same way, scope of Limited Scrutiny stands on the basis of issues in the notice under Section 143(2) of the Act. Subsequent notice cannot cure the defect in the notice under Section 143(2) of the Act and also cannot expand scope of Limited Scrutiny. Any issue beyond the notice under Section 143(2) of the Act would be expansion of the scope of the scrutiny and such expansion without prior permission as prescribed would be illegal. The Ld. AR relied upon the decision of Hon'ble Apex

Court in the case of State of Jharkhand vs. Ambay Cement (Civil Appeal No.7994 of 2003). The Ld. AR further submitted that the Assessing Officer can certainly examine other issues in a limited scrutiny case but only after following prescribed procedure of obtaining permission from Higher Authorities and not by merely including it in subsequent notice under Section 142(1) of the Act. The Ld. AR further submitted that as far as participation of the assessee in the assessment proceedings and raising of such legal ground not before the Assessing Officer but for the first time before the PCIT, jurisdiction cannot be confirmed on the PCIT. The Ld. AR relied upon the decision of P.V. Doshi vs. CIT (1978) 113 ITR 22 (Guj). The Ld. AR also relied upon the order of the Tribunal in the case of Shrimant F.P. Gaekwad vs. ACWT (2010) 3 ITR (T) 476. The Ld. AR further submitted that notice issued under Section 263 of the Act was responded by the assessee vide submission dated 06.01.2020 but the same was not taken into account by the PCIT.

7. The Ld. DR submitted that the PCIT has rightly invoked Section 263 of the Act as the Assessing Officer failed to enquire or verify the transactions related to the transfer of one or more properties during the year which was part of notice under Section 142(1) read with Section 129 of the Act dated 27.06.2017 during the assessment proceedings. Thus, the PCIT has rightly directed the Assessing Officer to verify and accordingly passed the fresh Assessment Order.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that Section 142(1) of the Act cannot extend the scope of defective notice under Section 143(2) of the Act as stated by the Ld. AR. In fact, this can only be extended through approval of PCIT which was not done in the present case. It is further noted that as per the notice under Section 143(2) of the Act and that also the scrutiny was only to the extent of large cash deposits. In fact, notice under Section 142(1) also mentions transfer of property and not that of purchase of property. The assessee at the time the assessment proceedings has given details related to large cash deposits as well as transfer of property in the present Assessment Year. In fact, the PCIT cannot invoke Section 263 of the Act when the assessee has given the detailed reply to the issue which was called upon by the Assessing Officer not only that of notice under Section 143(2) of the Act but also after the issuance of notice

under Section 142(1) of the Act. Thus, the Assessing Officer has passed the Assessment Order after taking into account all the relevant details and this cannot be said as erroneous or prejudicial to the interest of Revenue. Besides this, the component of transfer of one or more properties during the year and the assessee's subsequent reply related to one third of the property and his investment in the said property of Rs.19,67,000/- conveys that the Assessing Officer has taken into account the transfer of property including that of purchase of property. Thus, the PCIT is taking different stand/view related to the valuation of the immovable property which cannot be matter of revision once the same has been verified by the Assessing Officer. The test of errors and prejudice to the interest of Revenue components in Assessment Order though has been mentioned by the PCIT being that the fair market value of the property in accordance with stamp duty value has not been taken by the Assessing Officer as held cannot be the sole criteria for making the Assessment Order erroneous and prejudicial to the interest of Revenue. Thus, the order passed by the PCIT is not justifiable under Section 263 of the Act.

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

Order pronounced in the open Court on this 8th October, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 8th October, 2024

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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
Ahmedabad benches, Ahmedabad