

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 613/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)

Bhogilal Bhailalbhai Patel 475/2, Sagar Faliya, At & Post Bhayali, Vadodara - 391410	बनाम/ Vs.	The Pr. Commissioner of Income Tax-1 Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BKKPP3136R		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Hemant Suthar, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Samir Tekriwal, CIT. DR

Date of Hearing	19/11/2024
Date of Pronouncement	28/11/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax, Vadodara-1 (in short ‘the PCIT’), dated 16.02.2024 passed under revisional jurisdiction under Section 263 of the Income Tax Act, 1961 (in short ‘the Act’) for the Assessment Year 2015-16.

2. The brief facts of the case are that the assessee had filed the return of income for A.Y. 2015-16 on 31.08.2015 declaring total income of Rs.6,19,980/- and agricultural income of Rs. 1,94,450/-. The original assessment was completed u/s.143(3) of

the Act on 22.06.2017 and the return of income was accepted. The PCIT, Vadodara-1 vide order u/s.263 of the Act dated 24.02.2020 had set aside the assessment order of the AO with a direction to examine the allowability of deduction u/s.54B of the Act. The assessment in pursuance to the direction of the PCIT was passed on 29.09.2021 u/s.143(3) r.w.s. 263 of the Act and the total income was determined at Rs.3,92,12,846/-. Thereafter, the said assessment order has once again been set aside vide the impugned order u/s.263 of the Act dated 16.02.2024.

3. Aggrieved with this order of the Ld. PCIT, the assessee is in appeal before us. The following grounds have been taken in this appeal:

- “1. *The Ld. Pr. CIT has exceeded her jurisdiction in setting aside the assessment order and directing the AO to make fresh assessment when the Original assessment was selected for LIMITED SCRUTINY to verify limited issues and the order passed by the Ld. PCIT to make inquiry and verification on the issues not covered under LIMITED SCRUTINY is bad in law. Hence the order passed u/s 263 is illegal and bad in law.*
2. *Without prejudice to Ground No. 1, the Ld. Pr. CIT has erred in law and in facts in holding that the assessment order passed by the Ld. A.O. u/s. 143(3) r.w.s. 263 r.w.s. 144B of the I.T. Act dated 29.09.2021 is erroneous and prejudicial to the interest of the revenue so as to justify the invocation of powers u/s. 263 and directing to revise the assessment order as the Ld. A.O. has wrongly allowed the amount of Rs. 27,47,730/-, being the cost of acquisition (indexed cost of acquisition) without due application of mind and without making necessary reference to DVO. The order of the Pr. CIT being erroneous in law and in facts is prayed to be cancelled / revoked.*
3. *The Ld. Pr. CIT, Vadodara has further erred in law and in facts in directing the conduct of enquiry and verification which are beyond the scope of powers vested u/s 143(3) and consequently u/s. 263 of the I.T. Act, 1961.”*

4. Shri Hemant Suthar, Ld. AR appearing for the assessee explained that this is the second round of order u/s.263 of the Act passed in the case of the assessee. He explained that the return of the assessee for A.Y. 2015-16 was initially selected for limited scrutiny under CASS to examine the deduction claimed by the assessee u/s. 54B, 54C, 54D, 54G & 54GA of the Act. In the original assessment u/s.143(3) of the Act dated 22.06.2017, deduction claimed by the assessee was accepted and the assessment was completed as per returned income. Thereafter, the Ld. PCIT vide order u/s.263 of the Act dated 24.02.2020 had set aside the order of the AO with a direction to decide the deduction u/s.54B of the Act afresh. In consequence to this order, the AO had completed assessment u/s.143(3) r.w.s. 263 of the Act at total income of Rs.3,92,12,846/-. While completing this assessment, the AO had disallowed the deduction claimed by the assessee u/s.54F of the Act. The Ld. AR submitted that when the deduction claimed by the assessee u/s.54F of the Act was already examined and disallowed by the AO, the Ld. PCIT was not correct in holding that the order of the AO was erroneous and prejudicial to the interest of the revenue. He submitted that the issue of deduction claimed under the head 'capital gain' on which the case was initially selected for scrutiny was examined twice - in the course of original assessment and again in the course of first set aside assessment. Under the circumstances, it cannot be held that this issue was not examined by the AO and that the order of the AO neither erroneous nor prejudicial to the interest of revenue. In this regard he has placed reliance on the following decisions:

- (i) *Vijay Rajnikant Patel Vs. PCIT 160 taxmann.com 178 (Ahmedabad-Trib.)*
- (ii) *Preetiben Chhatrasingh Chauhan Vs. PCIT ITA No. 238/SRT/2023 Dated 16.10.2023*
- (iii) *PCIT Vs. Shark Mines & Minerals Pvt. Ltd. 151 taxmann.com 71 (Orissa)*
- (iv) *Mind Sports League Pvt. Ltd. Vs. PCIT 157 taxmann.com 815 (Kolkata-Trib.)*

5. Per contra, Shri Samir Tekriwal, Ld. CIT.DR submitted that in the order u/s.143(3) r.w.s. 263 of the Act dated 29.09.2021, the AO had given a categorical finding that the assessee was not eligible for deduction in respect of inflated cost of acquisition but while computing the income, this disallowance was not made by the AO. He explained that in view of the apparent dichotomy in the body of the order and in the computation of income as made by the AO, the Ld. PCIT had correctly held that the order of the AO was erroneous and prejudicial to the interest of the Revenue. He submitted that the AO had wrongly allowed the cost of acquisition with indexation as claimed by the assessee in the computation of income, while giving a finding in the body of the order that this claim was not correct.

6. We have carefully considered the rival submissions. There is no dispute to the fact that the case was initially selected for limited scrutiny to verify the deduction claimed under the head 'capital gain'. The revisional order passed by the Ld. PCIT pertains to this deduction only. Therefore, the contention of the assessee that the Ld. PCIT has exceeded his jurisdiction and passed revisional order on the issue not covered by limited

scrutiny is not found correct. The decisions relied upon by the assessee in this regard are, therefore, not found applicable to the facts of the case. The principle that powers of PCIT for revision u/s 263 of the Act would be limited to issues which had been considered in limited scrutiny assessment was also upheld in the cases as relied upon by the assessee. The revisional order of the PCIT in this case pertains only to the issue for which the case was selected for limited scrutiny.

7. The second contention of the assessee is that when the original order of the AO was first set aside to examine the deduction u/s.54B of the Act and when the AO had made the disallowance in the order, the Ld. PCIT was not correct in holding for the second time that the order of the AO was erroneous and prejudicial to the interest of the revenue. On the other hand, the Ld. CIT.DR has pointed out to the specific findings as recorded by the AO in the body of the order which is not effectuated in the computation of income. The Ld. PCIT had found that the order of the AO was erroneous in respect of indexed cost of acquisition of Rs.27,47,730/- as claimed by the assessee, which was allowed in the computation of income. The AO in the assessment order had given the following findings in this regard:

*“4.5) The perusal of the computation of income carried out by the assessee revealed that the assessee has taken the indexed cost of acquisition of the property at Rs.27,47,730/- and also claimed indexed cost of improvement at Rs.3,34,66,666/-. Vide notices u/s. 142(1) dated 09.3.2021 and 27/08/2021 as detailed above, the assessee was asked to furnish documentary evidences in respect of the cost of improvement of the property, however assessee did not submit any such details. Therefore, the claim of the assessee in this respect cannot be accepted. **It is also interesting to note that the assessee has submitted valuation report of M/s. Space Age***

Architect & Engineers in support of cost of acquisition claimed. As per the said valuation report the cost of acquisition of the said property as on 01.04.1981 has been held to Rs. 8,08,542/- though assessee in its return of income had shown the cost of acquisition as on 01/04/1980 at Rs.2,68,333/- only. The rationale for valuing the property at Rs. 8,08,542/- has been given as under:

If the basis and rationale adopted by the valuer in the said valuation report is considered. It is found that it is devoid of any rational basis. Though the valuer is allegedly valuing the property as on 01.04.1981, however, he is adopting factors like ratio of frontage proximity of civic amenities, surface communication, power, drainage, gas availability, road frontage premium etc. which were not existent on the said property in 1981. Also, though the land of the assessee is freehold land without any civil work on type of building. type of finishing done in the building, height of building, present condition of the building etc. which never existed on the said land. It is also interesting to note that alleged valuation has been carried out 26.05.2018 though the assessee has already transferred the land in FY 2014-15, and has no ownership over the land as on date of valuation.

Thus, since assessee could not furnish any details whatsoever, in respect of the cost of improvement despite specific opportunities afforded in this regard, assessee attempted to claim the higher cost of acquisition based on a non-genuine valuation report.

In view of the above discussion, assessee is neither eligible for the claim of cost of improvement which it claimed in its return of income, nor the inflated cost of acquisition which it attempted through a non-genuine valuation report. Thus, the claim of indexed cost of improvement amounting to Rs.3,34,66,666/- made by the assessee is found to be non-genuine and therefore, not allowed as deduction from the full value of consideration received by the assessee for the computation of capital gain. Penalty proceeding u/s.271(1)(c) of the Act hereby separately initiated for filing inaccurate particulars of income.” [Emphasis supplied]

8. It is, thus, found that the cost of acquisition of the property as on 01.04.1980 was Rs.2,68,333/- only. The assessee had filed a valuation report as per which the cost of acquisition of the property as on 01.04.1981 was taken at Rs.8,08,542/- and applying indexation on this valuation, the assessee had claimed deduction of Rs.27,47,730/- in respect of cost of acquisition. The

AO had given a categorical finding that the assessee was not eligible for deduction of inflated cost of acquisition obtained through a non-genuine valuation report. The AO had also observed that the valuation was carried out by the assessee on 26.05.2018 and considered various other factors which were not in existence on 01.04.1981. Thus, it is found that the AO had doubted the correctness of the cost of acquisition with indexation as claimed by the assessee. In the computation, however, the claim for deduction of Rs.27,47,730/- in respect of cost of acquisition with indexation as made by the assessee, was allowed. When the AO had himself casted serious doubts on the correctness of the cost of acquisition with indexation and given a finding that the assessee was not eligible for deduction of the inflated cost of acquisition; his action of allowing the claim of the assessee cannot be held as correct. This made the order of the AO not only erroneous but also prejudicial to the interest of the revenue. In view of the specific findings as recorded by the AO as mentioned above, we are of the considered opinion that the Ld. PCIT has correctly held that the order of the AO was erroneous and prejudicial to the interest of the revenue. Therefore, the exercise of revisional jurisdiction u/s 263 of the Act by the Ld. PCIT can't be faulted. Further, the direction of the Ld. PCIT to refer the matter to the DVO is also found to be correct. When the AO had doubted the genuineness of the valuation report filed by the assessee, he should have referred the matter to the DVO. Further, the direction of the PCIT to refer the matter to the DVO will not cause any prejudice to the assessee as proper opportunity will be allowed to the assessee to raise his

objections, if any, before the DVO as well as before the AO. The order of the Ld. PCIT is, therefore, upheld.

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

This Order pronounced on	28/11/2024
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Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 28/11/2024
S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad