

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.236/Nag./2024**  
**(Assessment Year : 2016-17)**

Yeshwant Pandurangji Ashtankar  
Rajpur, Tehsil Hingna, Dist. Hingna  
Nagpur 411 110 PAN – AEVPA2113H

..... Appellant

v/s

Principal Commissioner of Income Tax  
Nagpur-2, Nagpur

..... Respondent

Assessee by : Shri Manoj G. Moryani  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 27/11/2024

Date of Order –

**ORDER**

**PER V. DURGA RAO, J.M.**

This appeal by the assessee is against the impugned order dated 31/03/2024, passed by the learned Principal Commissioner of Income Tax, National Faceless Appeal Centre, Delhi, [*learned PCIT*], for the assessment year 2016-17.

2. The assessee has raised following grounds:-

*"1. The order passed U/s. 263 by the Pr. Commissioner of Income Tax, Nagpur-2 is illegal, invalid and bad in law.*

*2. The Pr. Commissioner of Income Tax, Nagpur-2 ought to have considered order passed U/s. 147 r.w.s. 144B by the assessing officer NeFAC and all the issued were discussed and considered at the time of assessment proceedings and addition were made at Rs. 14,11,133/- U/s. 69 as unexplained investment*

*and the appeal is pending before National Faceless Appeal Centre, therefore, again re- examine on same issue is unjustified, unwarranted and excessive.*

*3. The Pr. Commissioner of Income Tax, Nagpur-2 ought to have considered order passed U/s. 147 r.w.s. 144B by the assessing officer NeFAC is neither erroneous and nor prejudicial to the interest of revenue and appeal pending before National Faceless Appeal Centre. Therefore order passed U/s. 263 is unjustified, unwarranted and excessive.*

*4. The Pr. Commissioner of Income Tax, Nagpur-2 ought to have considered order passed U/s. 147 r.w.s. 144B passed by NeFAC and NeFAC considering all the replies and relating income from other sources U/s. 56(2)(vii)(b) and were considered and no addition has been made on 56(2)(vii)(b), again on same issue order passed U/s. 263 is unjustified, unwarranted and excessive.*

*5. The Pr. Commissioner of Income Tax, Nagpur-2 ought to have considered that the assessee has preferred appeal against the order passed U/s. 147 r.w.s. 144B of the Income Tax Act and addition made U/s. 69 as unexplained investment at Rs. 14,11,133/- and the same issue has to be merged with the appellate proceedings, therefore again passing order U/s. 263 is unjustified, unwarranted and excessive.*

*6. The Pr. Commissioner of Income Tax, Nagpur-2 has not considered the written submission of the assessee and passed the order U/s. 263 without considering details reply and without going into merits of the case; therefore order passed is unjustified, unwarranted and excessive.*

*7. The Pr. Commissioner of Income Tax, Nagpur-2 has not accepted that assessee has submitted entire details during the course of assessment proceedings, again on same issue order passed U/s. 263 is unjustified, unwarranted and excessive.*

*8. The Pr. Commissioner of Income Tax, Nagpur-2 erred in passing order U/s. 263 and setting asides the assessment framed 147 r.w.s. 144B of Income Tax Act, 1961 therefore order passed is unjustified, unwarranted and excessive.*

*9. The appellant seeks permission to add any other ground of appeal or amend or alter the aforesaid ground of appeal."*

3. Facts in brief are that, initially, the assessee did not file his return of income. The assessment was originally framed and the case was re-opened under section 147 of the Income Tax Act, 1961 ("*the Act*"). Notice was issued under section 148 of the Act. The Assessing Officer found that the assessee has purchased immovable property for a consideration of ₹ 1,19,79,000, and the said transaction has not been shown by the assessee in his return of

income for the year under consideration. Thereafter, the Jurisdictional Assessing Officer issued notice under section 142(1) of the Act seeking certain details and documents from the assessee, but the assessee chose not to respond to the notice of the Jurisdictional Assessing Officer. Subsequently, for the year under consideration, the assessee filed its return of income disclosing net total income at ₹ 2,39,960, and has also claimed exemption on income for agriculture to the tune of ₹ 3,05,000. Thereafter, the assessment was completed under section 147 r/w section 144B of the Act on 30/03/2022, by the NaFAC assessing total income of ₹ 16,51,093, by making addition under section 69 of the Act on account of unexplained investment of ₹ 14,11,133. However, by examining the records, it was seen that the Assessing Officer, NaFAC failed to examine and verify the source of investment in the immovable property purchased and did not examine the difference between the stamp duty value over the purchase consideration before passing the assessment order. On examination of the assessment order and records, it was seen that the assessment order is erroneous inasmuch as it is prejudicial to the interests of Revenue for the reasons stated by the learned PCIT in his order vide Para-3a to 3c.

4. Meanwhile, the learned Principal Commissioner of Income Tax ("*learned PCIT*"), in exercise of revisionary power conferred to him for execution of proceedings under section 263 of the Act, issued notice of hearing dated 22/03/2024, in response to which assessee filed written submissions electronically on 27/03/2024. Following submissions were made by the assessee:-

"1) The assessee strongly objected to revision proceedings initiated u/s 263 of the Income Tax Act, 1961.

ii) The difference in the market value (Rs.1,02,85,000/-) and sales consideration (Rs. 16,94,000/-) is 14.1% which is less than 15% which is nominal and that the same be considered. The assessee stated that in view of this he had objection in treating Rs.5,64.666/-, as income from other sources as per the provisions of section 56(2)(vii)(b) of the IT Act. The assessee also relied on the following judgements stating that in these it was held that the difference of 10% to 15% is nominal difference:

a) 2015) ITA no.267/Kol/2013  
M/s LGM Limited Vs, ITO, Ward-2(3)

b. (2017)ITA No.7454/Mum/2014  
M/s John Fowler (India) Pvt. Ltd. Vs DCIT

c. (2021)85 ITR (Trib) 0674 (Mumbai)  
Maria Fernandes Cheryl-Vs-Income Tax Officer (International Taxation)

In addition, the assessee also stated that the Finance Act, 2020, increased the safe harbour rate i.e. the rate of variation that will be allowed between the actual sale consideration value and stamp value of property @ 20%. As this variation in the assessee's case was less than 20%, the assessee requested that to be considered in the interest of justice.

iii). That the notice u/s 148 was issued on 31.03.2021 which was beyond 3 years period though the income considered as escaped is not more than 50Lacs. Therefore the notice issued u/s 148 is illegal, invalid and bad in law and consequential proceedings are null and void.

iv) In respect of source of purchase of property, the assessee stated that the property was jointly purchased by assessee and other two co-owners i.e. Vaishnav Ashtankar and Keshav Ashtankar. The assessee stated that his contribution for purchase of the agricultural land were at Rs.66,07,000/- and remaining amount were paid by the other two co-owners of the property. This investment of Rs.66,07,000/-, was stated by him as being out of his old savings duly accumulated over the years, agricultural income, sale of agricultural land and loans from various parties of the assessee, which was considered by the NaFAC and addition of Rs. 14,11,133/- was only treated as unexplained investment without accepting his contention that payment was made from agricultural land sold at Rs.27,36,866/-. The assessee further stated that the entire stamp duty and registration charges were paid by Keshav Ashtankar and himself.

v) The assessee submitted that the AO NaFAC has passed the order after considering all the aspects of the case, then again the same can't be reopened u/s 363 of the Income Tax Act, 1961."

5. The learned PCIT considering the submissions of the assessee set aside the entire matter to the file of the Assessing Officer for adjudication afresh.

While doing so, the learned PCIT observed as under:-

*"7. I have carefully considered the facts of the case and the assessment order along with contentions of the assessee. So far as assessment order dated 30.03.2022 is concerned, I have carefully gone through the record and I find that the Assessing Officer has failed to examine the facts discussed above which have resulted in under assessment of income and thus causing prejudice to the interest of revenue.*

*8. In the light of above discussion, I am satisfied that the order passed u/s 147 r.w.s. 144B of the I.T. Act, 1961, dated 30/03/2022 is erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, in exercise of power vested in me u/s 263 of the I.T. Act, 1961, I hereby set aside the order dated 30/03/2022 passed by the NaFAC under section 147 r.w.s. 144B of the Act, 1961 in this case for the A.Y.2016-17, with a direction to the assessing officer to pass a fresh assessment order on examination of (i) Income from other sources u/s 56(2)(vii) (b) of the IT Act, 1961*

*(ii) Cash payment for purchase of property (iii) Source of investment in the purchase of property after giving an opportunity of being heard to the assessee and after conducting necessary enquires."*

Aggrieved, the assessee is in further appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the Assessing Officer has re-opened the assessment only for the purpose of examination of all the aspects what is pointed out by the learned PCIT which are mentioned in the show cause notice placed in the Paper Book at Page-8, which is reproduced below:-

**"ANNEXURE**

- 1. Please provide computation of income for A.Y.2016-17.*
- 2. Provide 26AS details for the period 01.04.2015 to 31.03.2016.*
- 3. Please furnish all bank statement for the period 01.04.2015 to 31.03.2016.*
- 4. During the year under consideration, you have purchased an immovable property for a total consideration of Rs.1,19,79,000/-. As per provisions of*

*sec.56(2)(vii)(b), you have liable to pay taxes on the difference amount between the actual sale consideration and the fair market value. Please furnish the copy of challan of taxes paid, if any.*

*5. Please furnish the copy of purchase deed of the said property.*

*6. Please furnish the source of investment in the said property along with supporting documentary evidences."*

7. The learned Counsel also pointed out that he has explained it in detail in respect of cash deposit in the bank account which is at Page-78/Para-4. He submitted that after considering all the details, the Assessing Officer passed the assessment order which cannot be re-visited by the learned PCIT.

8. Per-contra, the learned Departmental Representative strongly supported the order passed by the learned PCIT and submitted that the Assessing Officer's order is contrary to the provisions of section 56(2)(vii)(b) of the Act. He strongly supported the order passed by the learned PCIT.

9. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The Assessing Officer, in the present case, after issuing notice seeking explanation from the assessee and examining all the details such as bank statement, source of income, etc., made addition of ₹ 14,11,133. Therefore, it cannot be said that the order passed by the Assessing Officer is erroneous. We have also gone through the contents of the Paper Book filed by the assessee and we find that the assessee has filed all the details before the Assessing Officer particularly Page-77, 78, 79, 80, 82 and 83, which show that the assessee has discussed all the necessary facts before the Assessing Officer. After considering the entire record, the Assessing Officer has come to an opinion that there is

escapement of income and accordingly, he taxed the assessee. In view of the aforesaid discussion, we are of the opinion that it is not a fit case of invoking attaining jurisdiction under section 263 of the Act by the learned PCIT. Thus, the order passed by the learned PCIT is hereby quashed.

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

Order pronounced in the open Court on 06/12/2024

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 06/12/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur