

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 421/Srt/2024 (Assessment Year: 2015-16)

(Physical hearing)

Vishnubhai Chelabhai Patel, F-19, Divya Jyoti Apartment, Samul Dairy Road, Alkapuri, Surat-395008 (Gujarat) PAN No. ADIPP 4007 B	Vs.	Pr.C.I.T.,Surat-1, Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Sapnesh Sheth, C.A.
Department represented by	Shri Ravi Kant Gupta, CIT-DR
Date of Institution of Appeal	12/04/2024
Date of hearing	27/11/2024
Date of pronouncement	30/01/2025

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of the learned Principal Commissioner of Income Tax, Surat-1, Surat [in short, the Id. Pr.CIT] passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) dated 20/03/2024 for the Assessment Year (AY) 2015-16. Following grounds of appeal have been raised by the assessee.

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in passing revisionary order u/s 263 of the I. T. Act, 1961 setting aside the order of Id. assessing officer passed u/s 147 r.w.s. 144B of the I. T. Act, 1961 dated 16.03.2022 for the year under consideration although said order is neither erroneous nor prejudicial to the interest of revenue.
2. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in holding that the assessee has under reported sale consideration to the tune of Rs. 1,03,06,558/- as per section 50C of the I. T. Act & the same is not considered by assessing officer during the assessment proceedings.
3. On the facts and circumstances of the case as well as law on the subject, the learned Pr. Commissioner of Income-tax has erred in passing revisionary order u/s 263 of

the 1. T. Act, 1961 setting aside the order of Id. assessing officer passed u/s 147 r.w.s. 144B of the I. T. Act, 1961 dated 16.03.2022 with a direction to the assessing officer to pass fresh assessment order after taking into consideration the issues as may have been already considered together with the issue covered u/s 263 of the I. T. Act.

4. *It is therefore prayed that order passed by Pr. Commissioner of Income-tax u/s 263 of the I. T. Act, 1961 setting aside the order of assessing officer and directing assessing officer to pass fresh assessment order may please be quashed.*
 5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*
2. Brief facts of the case are that the case of assessee was reopened on the basis of information that the assessee has transferred land of Revenue Survey (RS) No. 937/2/1 being non-agricultural land at Dumas, vide sale deed dated 18/10/2014 for a consideration of Rs. 32,40,442/-. The Stamp Valuation Authority valued the land for the purpose of registration of transaction at Rs. 1,35,47,000/- (Rs. 1.35 crore). On the basis of such information, the Assessing Officer after recording reasons under Section 147 of the Act and issued notice under section 148 to the assessee. The Assessing Officer recorded that after considering the reply of assessee, he accepted the returned income in the assessment order dated 16/03/2022. Assessment order dated 16/03/2022 was revised by the Id. Pr.CIT in his order dated 20/03/2024 passed under Section 263 of the Act. Before revising the assessment order, the Id. Pr.CIT issued show cause notice under Section 263 of the Act on 05/03/2024. In the show cause notice, the Id PCIT recorded that the assessment was completed by the Assessing Officer without proper verification and/or enquiry and application of mind and law, on the issue, which should have been applied during the assessment. Such non-application of mind rendered the assessment erroneous and in so far as prejudicial to the interests of revenue. The Id. Pr.CIT further recorded that as per information, the assessee transferred land in Revenue Survey No. 937/2/1 of Village-Dumas for a

consideration of Rs. 32.40 lacs, however, the Stamp Valuation Authority assessed the market value of land at Rs. 1.35 crores which resulted into under reporting of sale consideration of Rs. 1.03 crore, and provisions of Section 50C of the Act is attracted, therefore, the case was reopened as per provisions of Section 147 of the Act. During the assessment, the assessee took plea that provisions of Section 50C is not applicable in his case on the basis of proviso to Section 50C of the Act on the contention that the value adopted or assessed or assessable by the Stamp Valuation Authority on the date of agreement is applicable, in his case as the Stamp Valuation Authority valued on the date of agreement i.e. 27/12/2007 was Rs. 32,40,442/-. The Assessing Officer accepted such contention but failed to appreciate that the impugned proviso to Section 50C, which was made applicable from 01/04/2017. The Id. Pr.CIT also referred both the proviso to Section 50C and was of the view that the land was transferred on 18/10/2014 relevant to F.Y. 2014-15/A.Y. 2015-16. Proviso to Section 50C relied by the assessee are effective from A.Y. 2017-18, thus the contention of assessee was required to be rejected and to apply the provisions of Section 50C for computing correct capital gain. The Id. Pr.CIT also worked out the capital gain in his show cause notice and also worked out the consequential short levy of tax of Rs. 21,32,502/-. The Id. Pr.CIT, thus recorded that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue.

3. The assessee filed his reply on 18/03/2014. The contents of reply are recoded in para 5.2 of impugned order. The assessee in its reply submitted that the order passed by the Assessing Officer cannot be termed as erroneous or prejudicial to the interest of revenue. The order is passed after making detailed enquiry on the

point in issue. The Assessing Officer verified the issue by issuing show cause notice dated 12/03/2022 and after considering the reply of assessee decided not to make any addition as the same is outside the purview of Section 263 of the Act. The Assessing Officer applied his mind to the point in issue, which cannot be termed as erroneous. The assessee further submitted that alongwith his reply, he had furnished all relevant documents including the jantri value and the actual amount received vide his reply dated 14/03/2022. Once the Assessing Officer concurred with the submission, it cannot be concluded that decision of Assessing Officer is without due enquiry or consideration identifying as erroneous. The assessee specifically stated that he entered into registered agreement to sell on 27/12/2007 which registered on 03/04/2008 with respect to impugned land by fixing sale consideration at Rs. 32,40,442/- and part payment was received through proper banking channel at the time of execution of agreement. However, the sale deed was registered on 10/10/2014, this fact is clearly mentioned in the sale deed that at the time of agreement to sell on 27/12/2007, the assessee agreed to sell the land at Rs. 40 per Vaar/per yard, the assessee sold 81011 square yard of land as per agreement to sell and received part consideration at the time of execution of agreement to sell. The assessee by referring proviso to Section 50 and the details of part payment was paid by way of cheque in registered agreement to sale, submitted that from the facts and the evidences furnished by him, it is clear that proviso to Section 50C of the Act that value adopted or assessable by the Stamp Valuation Authority on the date of agreement to sale is applicable in his case i.e. sale consideration on the date of agreement to sale is to be considered. On the observation of Id. Pr.CIT in his show cause

notice that proviso to Section 50C is applicable from 01/04/2017, the assessee submitted that as per various decisions of Surat Tribunal, Ahmedabad Tribunal and Mumbai Tribunal, it is held that proviso to Section 50C is squarely applicable in his case and for the purpose of Section 50C, the sale consideration in the agreement to sell has to be considered. In support of his contention, the assessee relied upon the decision of Surat Tribunal in Girdharbhai Haribhai Gajera Vs ITO (2023) 149 taxmann.com 463 (Surat Trib), Ramesh Govind Patel Vs ITO (2020) 118 taxmann.com 201, and Maria Fernandes Cheryl Vs ITO (International Taxation) (2021) 123 taxmann.com 252.

4. The reply of assessee was not accepted by the Id. PCIT. The Id. PCIT by referring his earlier contention as taken in show cause notice held that the Assessing Officer has passed assessment order without proper verification or enquiry and his application of mind and failed to make the addition of the total income of assessee. The Id. Pr.CIT by referring Section 263 of the Act held that proviso to Section 50C of the Act was inserted by the Finance Act, 2016 which are effective from A.Y. 2017-18 and the contention of assessee was liable to be rejected. The Id. Pr.CIT set aside the assessment order dated 16/03/2022 and directed to pass the order afresh after taking into consideration the issues as may have already been considered together with the issue discussed by him after giving opportunity to the assessee. Aggrieved by the order of Id. Pr.CIT, the assessee has filed present appeal before this Tribunal.
5. We have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits

that the order passed by Assessing Officer (AO) is neither erroneous nor prejudicial to the interest of revenue. The case of assessee was reopened on the same issue which is identified by the Id PCIT in his show cause notice. The AO during assessment issued specific show cause notice for seeking explanation of the assessee as to why the asset was sold at the rate lower than the valuation of Stamp valuation authority, vide notice dated 12.03.2022. The assessee filed his reply vide reply dated 14.03.2022 and explained that the assessee entered in agreement to sale with the purchaser and executed registered agreement to sale on 27.12.2007 and part payment of consideration was paid through account payee cheque at the time of execution of agreement to sale. The assessee also furnished require evidence to substantiate his contention and also explained the scope of proviso to section 50C and submitted that from the facts and the evidences furnished by him, it is clear that proviso to Section 50C of the Act about value adopted or assessable by the Stamp Valuation Authority on the date of agreement to sell is applicable in his case i.e. sale consideration on the date of agreement to sell is to be considered. The AO verified the issue and after considering the reply of assessee decided not to make any addition. The AO applied his mind to the point at issue which cannot be termed as erroneous. The assessee further submitted that alongwith his reply, he has furnished all relevant documents including the jantri value and the actual amount received vide his reply dated 14/03/2022. Once the AO concurred with the submission, it cannot be concluded that his decision is without due enquiry or consideration identifying as erroneous. The Id AR of the assessee submits that in a series of decisions, various bench of Tribunal held that the proviso to section 50C inserted by Finance

Act 2016 w.e.f. 01.04.2017 has retrospective effect. Thus, the AO has taken a legally sustainable view which cannot be termed as erroneous. If the AO has not discussed the issue in detail, it is not under the control of the assessee and he cannot be dragged repeatedly on the same issue. The Id AR of the assessee submits that the twin condition for invoking jurisdiction is not full filled in the present case, hence, the order passed by Id PCIT is liable to be quashed. To support his submissions, the Id AR of the assessee relied on the following decisions;

- Girdharbhai Haribhai Gajera Vs ITO (2023) 149 taxmann.com 463 (Surat Trib),
- Ramesh Govind Patel Vs ITO (2020) 118 taxmann.com 201,
- Maria Fernandes Cheryl Vs ITO (International Taxation) (2021) 123 taxmann.com 252.
- Dharamshibhai Sonani Vs ACIT (2016) 75 taxmann.com 141(Ahmedabad Trib),
- Rahul G Patel Vs DCIT (2018) 97 taxmann.com 598 (Ahmedabad Trib),
- ITO Vs Meelendra Deependra Singh (2024) 164 taxmann.com 8 (Mumbai-Trib),
- CIT Vs Ganpat Ram Bishnoi (2006) 152 TAXMAN 242 (Raj).

6. On the other hand, the Id CIT-DR for the revenue supported the order of Id PCIT. The Id CIT-DR for the revenue submits that the assessment order is cryptic and does not disclosed the investigation carried out by the AO. There was no application of mind on the facts and on the law applicable on the facts of the present case. The Id PCIT in his finding has categorically held that AO has passed assessment order without proper verification or enquiry and his application of mind and failed to make the addition of the total income of assessee. Proviso to Section 50C of the Act was inserted by the Finance Act, 2016 which is effective from A.Y. 2017-18 and the contention of assessee was liable to be rejected. To

support his submissions, the Id CIT-DR of the revenue has relied on the decision in PCIT Vs Ms Sangeeta (2024) 168 taxmann.com 276 (Delhi),

7. We have considered the rival submissions of the parties and have gone through the order of Id PCIT passed under section 263, which is impugned before us. We have also seen the contents of assessment order dated 15.03.2022. We find that case of assessee was reopened on the basis of information that the assessee has transferred land of R.S. No. 937/2/1 being non-agricultural land at Dumas, vide sale deed dated 18/10/2014 for a consideration of Rs. 32,40,442/-. The Stamp Valuation Authority valued the land for the purpose of registration of transaction at Rs. 1.35 crore. The Assessing Officer after recording reasons under Section 147 of the Act and issued notice under section 148 to the assessee. The Assessing Officer recorded that after considering the reply of assessee, he accepted the returned income in the assessment order dated 16/03/2022. We find that the basis of reopening as well as revising the assessment order is identical. Therefore, first we shall examine, whether the assessment order passed by the AO is erroneous and / legally sustainable order or not. Before, AO the assessee filed detailed objections vide objection dated 19.12.2021. In the objections the assessee specifically raised his plea that section 50C is not applicable in his case. Further, vide reply dated 14.03.2022, in response to the show cause notice dated 28.02.2022, the assessee again raised specific plea by referring first and second proviso to section 50C that the assessee has entered in agreement to sell on 27/12/2007 in fixing the amount of consideration. Part payment of consideration is mentioned in the agreement to sell which was paid by account payee cheque on 27/12/2007, such fact is clearly mentioned in the sale deed. The assessee

contended that as per proviso to Section 50C, the value adopted or assessed or assessable by Stamp Valuation Authority on the date of agreement to sell is applicable in his case i.e. the sale consideration for the purpose of Section 50C is Rs. 3240442/- as per agreement to sell dated 27/12/2008 and not the value assessed by the Stamp Valuation Authority. The Assessing Officer accepted such contention of assessee and no addition is made in reassessment order dated 16/03/2022. No doubt, no such fact is mentioned in detail in the assessment order. The Id. Pr.CIT in his show cause notice identified the similar issue, which was the basis of reopening. We find that Mumbai Tribunal in Dharamshibhai Somani Vs ACIT (supra) held that insertion of proviso to Section 50C by Finance Act, 2016 with effect from 01/04/2017 has retrospective effect. We also find that the Mumbai Tribunal in Maria Fernandes Cheryl Vs ITO (supra) held that amendment made in the scheme of Section 50C (1) by inserting third proviso thereto by enhancing tolerance band for variation between the stated sale consideration viz a viz stamp duty valuation from 5 Percent to 10 Percent are effective from the date on which Section 50C, itself was introduced i.e. 01/04/2003. We further find that the Ahmedabad Tribunal in case of Ramesh Govindbhai Patel Vs ITO (supra) also held that when agreement to sell fixing the amount of consideration and the date of registration of property is different, value adopted by Stamp Valuation Authority on date of agreement was to be taken for the purpose of computing full value of consideration of such transfer. We find that the assessee entered into registered agreement to sell on 27/12/2007 for transfer of land in fixing the sale consideration and part payment thereof by way of cheque is clearly mentioned on the registered agreement to sell. Thus, in view

of aforesaid factual and legal discussion, we find that the assessment order is not erroneous. The Assessing Officer has taken a legally sustainable view on the issue on which the assessment was reopened. We further find that once the Assessing Officer has taken a legally sustainable view, the revision on the same issue by Id. Pr.CIT is nothing but a change of opinion. Thus, we find that the revision order passed by Id. Pr.CIT does not fulfill the requirement of twin condition of Section 263 of the Act. Hence, the same is quashed. So far as reliance in case laws by the Id. CIT-Dr in PCIT Vs Sangeeta Jain (supra) is concerned, we find that facts of this case is different. The Assessing Officer has not verified the record before passing the assessment order in said case. However, in the present case, the Assessing Officer has specifically examined the issue by issuing specific show cause notice dated 12/03/2022 which was duly responded by assessee and on consideration thereof, no further addition was made. In the result, ground of appeal raised by the assessee are allowed

8. In the result, this appeal of assessee is allowed.

Order announced in open court on 30th January, 2025.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/01/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat