

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

आयकर अपील सं./ITA No.607/SRT/2024

(Assessment Year: 2018-19)

(Physical Hearing)

Shivsagar Jagdhari Yadav, 11, Maheshwari Society, Opp – Bhagya Laxmi Society, Piplod, Surat - 395002	Vs.	The PCIT – 1, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGPY4572P		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Ravi Kant Gupta, CIT-DR
Date of Hearing	10/02/2025
Date of Pronouncement	10/02/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') dated 28.03.2024 by the Principal Commissioner of Income Tax, Surat-1 [in short, 'PCIT'] for the assessment year (AY) 2018-19.

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

"1) The Ld. Pr. Commissioner of Income-tax, Surat-1 has erred in law, on facts and circumstances of the case to revise appellant's assessment order u/s 263 of the Act, ignoring the fact and law that order of the Id. AO dated 12.04.2021 u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act is neither erroneous nor prejudicial to the interest of the revenue.

2. The appellant craves leaves to add, amend, alter or delete the said grounds of appeal."

3. Facts of the case in brief are that the case was selected for limited scrutiny under CASS for the following reasons: “(i) property sold at a consideration (shown in ITR) less than value as per stamp authority (u/s 50C or any other relevant section), (ii) low capital gains with respect to sale consideration and (iii) purchase value of property less than the value as per stamp authority (u/s 56(2) or any other relevant section) (business ITR)”. The Assessing Officer (in short, ‘AO’) issued notices u/s 143(2) and 142(1) of the Act. After issue of several notices u/s 142(1), assessee made submission on 17.11.2020 which was not readable. Hence, another notice u/s 142(1) was issued, requesting assessee to submit readable documents. It is not clear from assessment order that assessee submitted any further details. However, the AO accepted the returned income in his order passed u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act.

3.1 Subsequently, the PCIT, Surat-1, Surat called for the assessment records and found that the assessee (donee) received 3551 square meters of non-agricultural land as gift from Shri Yogeshbhai Durga Prasad Thakkar (HUF), who was not a relative as per the definition in section 56 of the Act. The gift deed was duly registered with the Sub-Registrar-1, Athwa, Surat vide Registration No.19556, dated 26.09.2007. It was noticed from the said deed that Rs.8,35,200/- was paid by the donee as stamp duty for registering the gift deed. Considering the amount of stamp duty paid, value of the impugned non-agricultural land comes to Rs.1,17,44,898/-. Since the assessee donee received

non-agricultural land as gift from a non-relative without any consideration, provisions of section 56(2)(x)(b) of the Act are attracted. It was also observed that the gift deed was executed through a General Power of Attorney (GPA) executed by the donor in favour of the donee. Therefore, the assessee was both the donor and the donee. The AO had raised a query as to why provisions of section 56(2) should not be invoked. There was no reply of the assessee. However, AO passed the assessment order without making any addition on the issues picked up for selecting the case for scrutiny. The AO also failed to conduct inquiries and apply mind and correct provision of the Act u/s 56(2)(x) with regard to the immovable property acquired by the assessee without any consideration as gift from a non-relative. Therefore, amount of Rs.1,70,44,898/- should have been treated as income of assessee from other sources and added to the total income. Short levy of tax including interest on the above amount was Rs.84,19,091/-. The PCIT issued show cause notice which is at page 7 to 9 of the revision order u/s 263 of the Act. The reply is at page 10 and 11 of the said order. The assessee contended that the land in question is under dispute in the court of law and hence provisions of section 56(2)(x)(b) are not applicable. After considering the reply of assessee, the PCIT has noted various facts at para 4.1 of the revision order and observed that while finalizing the assessment proceedings, the AO did not make inquiry about the details of the gift deed and GPA. The facts noted by the PCIT in para 4.1 were not brought on record by AO during assessment proceedings. Hence,

AO passed the order without making any inquiry and without application of mind and law. The assessee has acknowledged the property as gift and this position has been consistently maintained even before the Hon'ble Civil Court. Hence, the income derived from gift is taxable. The AO clearly placed the gift deed on record but has not taken note of the fact that assessee did not reply to the specific query regarding application of section 56(2)(x) of the Act. The onus was on the AO to verify the facts and application of relevant provisions of the Act. In absence of reply by the assessee, the AO should have made addition u/s 56(2)(x) of the Act, which he failed to do. Hence, the order of AO was erroneous in so far as prejudicial to the interests of revenue within the meaning of section 263 of the Act. The PCIT has extracted provisions of section 263 of the Act and relied upon various decisions of Hon'ble Supreme Court and High Court i.e., Malabar Industries Ltd. vs. CIT, 243 ITR 83 (SC), CIT vs. Paville Projects Ltd., 149 taxman.com 115 (SC), CIT vs. Nagesh Knitwears Pvt. Ltd., 345 ITR 135 (Delhi) and Gee Veen Enterprises vs. Addl. CIT, 99 ITR 375 (Delhi) and held that assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of revenue. The PCIT directed the AO to pass fresh assessment order after taking into consideration the issues and facts discussed in the revision order u/s 263 of the Act.

4. Aggrieved, the assessee filed appeal before the Tribunal. The case was initially posted for hearing on 21.10.2024. The case was adjourned to 10.12.2024 and on the said date, it was represented by Shri Mandeep

Gheewala, CA. On his request, the case was adjourned to 10.02.2025. However, none attended on behalf of the assessee nor any request for adjournment was submitted. The appellant also did not file any written submission along with supporting documents / evidence in support of the grounds of appeal taken up before the Tribunal. Hence, no useful purpose would be served by prolonging the proceedings before us.

5. On the other hand, the learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) for the revenue supported the order of the PCIT.

6. We have heard both the parties and perused the materials available on record. We have also deliberated upon decisions relied upon by the PCIT and relevant provisions of law. The assessee filed the return which was selected for limited scrutiny, the reasons of which are discussed in the facts of the case. The AO called for various details but assessee was mostly non-compliant. The assessee submitted some details which were not legible due to which another notice u/s 142(1) was issued. However, without receiving the reply, AO passed the order accepting the returned income. The PCIT has elaborately discussed the facts of the case and held that provisions of section 56(2)(x)(b) of the Act was clearly applicable and Rs.1,70,44,898/- should have been added to the total income of the assessee. Failure to make the said addition has resulted in short levy of tax and interest of Rs.84,19,091/-. The appellant has not filed any written submission or details to controvert the finding of the PCIT. We find

that both the conditions of section 263 i.e., (i) the order being erroneous and (ii) the order also being prejudicial to the interests of revenue are duly satisfied in the instant case. Hence, the PCIT was within jurisdiction to invoke provisions of section 263 of the Act and the revision order u/s 263 of the Act does not require any interference. Hence, the grounds are dismissed.

7. It has also been held in a number of cases that dismissal of appeal is an inherent power which every Tribunal possesses. The Hon'ble Bombay High Court in case of M/s Chemipol vs. UOI, Central Excise Appeal No.62 of 2009, referred to the decision in case of Sundarlal vs. Nandramdas, AIR 1958 MP 206 where it was observed that though the Act does not give any power of dismissal, it is axiomatic that no Court or Tribunal is supposed continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every Tribunal possesses. This was approved in Dr. P. Nalla Thampy vs. Shankar, 1984 (Supp) SCC 631. In New India Assurance vs. Srinivasan, (2000) 3 SCC 242, it was held that every Court or judicial body or authority which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called of for hearing and the party is not present, the Court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. The Hon'ble Supreme Court in case of CIT vs. B. N. Bhattacharjee & Ors., (1979) 10 CTR 354

(SC) observed that preferring an appeal means effectively pursuing it. Following the above authoritative precedents, the appeal is also liable to be dismissed.

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

Order is pronounced on 10/02/2025 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 10/02/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat