

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.143/Ahd/2022
Assessment Year : 2013-14

Bhaskar Ambalal Patel 137-138, Balaji Nagar VIP Road Karelibaug Vadodara 390 022. Gujarat. PAN : ACQPP 8062 M	Vs	The Pr.CIT-I (Central)-Surat at Broda.
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(Applicant)		(Respondent)
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Assessee by :	Shri Hemant Suthar, AR
Revenue by :	Shri Prathvi Raj Meena, CIT-DR

सुनवाई की तारीख /Date of Hearing : 08/01/2025
घोषणा की तारीख /Date of Pronouncement: 27/02/2025

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The above appeal has been filed by the assessee against order passed by the Ld.Pr.Commissioner of Income (Central), Surat at Vadod [hereinafter referred to as "ld.Pr.CIT"] dated 28.03.2022 in exercise of revisionary power under section 263 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2013-14.

2. The grounds raised by the assessee are as under:

"1. The Ld. Pr. CIT (Central), Surat has erred in law and in facts in holding that the assessment order passed by the Ld. A.O. u/s. 153A r.w.s. 143(3) dated 13.12.2019 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 to verify and consider the taxation of income represented

by the difference in the value assessable for levy of stamp duty (Rs.1,74,96,000/-) and the consideration paid (Rs. 38,96,000/-) in the purchase of immovable property. The order of the Pr. CIT being erroneous in law and in facts is prayed to be cancelled revoked.

2. The Ld. Pr. CIT has further erred in law and in facts in holding that the order passed by the Ld. A.O. u/s. 153A r.w.s. 143(3) dated 13.12.2019 is erroneous and prejudicial to the interest of the revenue and directing to revise the assessment order to verify and consider the taxation of income represented by the amount of Rs.69,98,400/- paid as premium to the District Collector as undisclosed investment. The order of the Pr. CIT being erroneous in law and in facts is prayed to be cancelled/ revoked.

3. The Ld. Pr. CIT has further erred in law and in facts in completely disregarding the submission of the appellant that the impugned assessment order sought to be revised u/s. 263 is passed u/s. 153 A r.w.s. 143(3) having a scope of assessment of undisclosed income on the basis of incriminating documents / material. In absence of any material / document in relation to the claim of expenses directed to be re-verified, no incriminating material or document is found and as such, such verification being beyond the scope of impugned assessment, the assessment order cannot be said to be erroneous and consequently, no prejudice can be said to have been caused.

4. The Ld. Pr. CIT (Central), Surat has further erred in law and in facts in not considering the alternate submission of the appellant that even assuming, while not admitting, that the appellant had purchased the property at a consideration lower than the assessable value for the purpose of stamp duty, the same could not have been taxed in absence of any enabling provision as introduced by Sec. 56(2)(vii)(b) by the Finance Act 2013 effective from 1.04.2014.

5. The Ld. Pr. CIT (Central), Surat 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 153Ar.w.s. 143(3) and consequently u/s. 263 of the I.T. Act. 1961.”

3. A perusal of the order of the ld.Pr.CIT reveals that from the records of the assessment framed in the case of the assessee under section 153A of the Act, consequent to search action undertaken, he found that the AO had failed to make inquiries pertaining to an investment made by the assessee in purchase of a land which was neither disclosed in his return of income nor in his books of accounts. The ld.Pr.CIT noted the records to reveal that the assessee had purchased agriculture land for a consideration of Rs.38,96,000/- and paid stamp duty of Rs.8,57,500/-. He also noted that the assessee to

have paid a premium amount of Rs.69,98,400/- on behalf of the seller for the conversion of the land from new tenure to old tenure. He further noted that while the sale consideration paid by the assessee for the land was Rs.38.96 lakhs, however, by reverse calculation based on the stamp duty value of the property, the consideration/ fair market value of the property came to Rs.1,74,96,000/- .Noting that no inquiry/verification had been made by the AO with regard to the investment made by the assessee in such property, which was neither disclosed in the books of accounts of the assessee nor in the return filed by the assessee, the Id.Pr.CIT *prima facie* found the assessment order erroneous so as to cause prejudice to the Revenue and assumed revisionary jurisdiction by issuing notice under section 263 of the Act.

4. The order of the Id.Pr.CIT further reveals that the assessee stated to the Id.Pr.CIT that the assessment order was not erroneous for the reason that the scope of an assessment framed under section 153A of the Act for the impugned year was limited, confined to incriminating material found during the search, and since the issue relating to the investment in the property noted by the Id.Pr.CIT did not arise from any material found during the search, the AO could not have considered or made any inquiry with respect to this matter, while framing the assessment under section 153A of the Act. That therefore, there was no error in the order of the AO for not making any inquiry on the issue of investment made in the agriculture land of the assessee during the impugned year. The assessee also contended that the Id.Pr.CIT was seeking to invoke provisions of section 56(2)(vii)(b) of the Act by pointing out that the stamp duty value/ fair value of the property purchased by the assessee was far more than the actual consideration paid by the assessee, and the difference ought to have been added in the hands of the assessee. He contended before the

ld.Pr.CIT that the provisions of section 56(2)(vii)(b) of the Act for the impugned assessment year i.e. Asst.Year 2013-14, contained no provision for treating short consideration paid for purchase of immovable property as income of the assessee; that as per the existing provision applicable to the impugned assessment year, only if an immovable property was found to have been purchased for no consideration that the provision could be attracted.

5. The ld.Pr.CIT found no merit in both the contentions of the assessee. He held that the interpretation of the provisions of section 153A of the Act by the assessee that in the assessment years where the assessment was unabated, addition could be made only on the basis of the incriminating material during the search, was incorrect. The ld.Pr.CIT noted that as per the provisions of law, all assessments for six years prior to the year in which the search was conducted were open for assessments, *de hors* any incriminating material found during the search. Even otherwise, he stated that the information available with the AO that the assessee had made investment in agriculture land, which was not disclosed either in the return of income filed by the assessee or its books of accounts, tantamounted to incriminating material. He further distinguished all the case laws referred to by the assessee before it, including that of jurisdictional High Court in the case of Pr.CIT Vs. Saumya Construction P.Ltd., 81 taxmann.com 292 (Guj) wherein the Hon'ble jurisdictional High Court had categorically held that search assessments carried out under section 153A of the Act for six years prior to the year in which search conducted have to be passed only on the basis of incriminating material found during the search, for these years, where the assessments are unabated, distinguishing the said case on facts.

6. As for the contention of the assessee that the provisions of section 56(2)(vii)(b) were not attracted in the impugned year, the ld.Pr.CIT stated that the error noted by him was not in relation to the transaction being hit by the provisions of section 56(2)(vii)(b) of the Act, but on the contrary, the error was in relation to the source of investment in the property not being inquired into by the AO, which would fall within the purview of section 69 of the Act dealing with unexplained source of investments being deemed to be income .

Thus stating and finding so, the ld.Pr.CIT concluded that non-inquiry by the AO on the issue of investment made by the assessee in agricultural land during the year tantamounted to error causing prejudice to the Revenue, and accordingly, he cancelled the assessment order passed, directing the AO to pass assessment order *de novo* in accordance with law after taking into consideration the issue discussed by him.

7. Before us the contention of the ld.counsel for the assessee was that the ld.Pr.CIT had grossly erred in rejecting the assessee's arguments that the assessment framed by the AO in the impugned year under section 153A of the Act could have been made only on the basis of incriminating material found during search on the assessee since the assessment was unabated. In this regard, he pointed out that the interpretation of the provisions of section 153A of the Act by the ld.Pr.CIT that the assessment for all six years prior to the year in which search was conducted were open and not restricted in any manner to incriminating material found during search, stood rejected by the Hon'ble Apex Court in its order passed in the case of Pr.CIT Vs. Abhisar Buildwell P.Ltd., (2023) 149 taxmann.com 399 (SC). He pointed out that the Hon'ble Apex Court had summarized its

finding on search assessment to be framed under section 153A of the Act in the following manner:

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns;

and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

8. He, therefore, stated that the Id.Pr.CIT's contention that the AO could have been considered all material while framing the assessment under section 153A of the Act of the impugned year, was incorrect. He further pointed out that the Id.Pr.CIT had held that the material/information now in the possession of the AO of the assessee having made investment in the immovable property, which were not disclosed either in the return of income or books of accounts tantamount to incriminating material, is also incorrect. Referring to the decision both Hon'ble Apex Court in the case of Abhisar Buildwell P.Ltd.(supra)

as reproduced above, he contended that the Hon'ble Apex Court has categorically held in the said decision that it is only the incriminating material found during the search, which is to be considered while framing the assessment for the six years prior to the year in which the search was conducted and the assessment of which are unabated. He contended that there is no dispute about the fact that the information in the possession of the AO was not gathered during the search conducted on the assessee. Therefore, going by the proposition of law laid down by the Hon'ble Apex Court in the case of *Abhisar Buildwell P.Ltd.(supra)* the said information could not be treated as incriminating material at all for framing the assessment for the impugned year under section 153A of the Act.

The ld.DR was unable to controvert the factual/legal contentions of the assessee. However, he relied on the order of the ld.Pr.CIT.

9. Having heard contentions of both the parties, we are in agreement with the ld.counsel for the assessee that the order passed under section 263 of the Act by the ld.Pr.CIT is not sustainable in law for the reason that clearly there is no error in the order of the AO, which has been passed in accordance with law interpreted by the Hon'ble Apex Court in the case of *Abhisar Buildwell P.Ltd.(supra)*.

Admittedly The Hon'ble Apex Court in *Abhisar Buildwell P.Ltd.(supra)* has settled the proposition of law that search assessment framed under section 153A of the Act are to be restricted to incriminating material found during the search for those years (out of the block of six years prior to the year in which search was conducted) where the assessments are unabated. In the present case, it's a fact on record that search action took place on the case on

31.1.2018. The impugned assessment before us is Asst.Year 2013-14. There is no dispute with regard to the fact that the assessment for the impugned year was unabated. Further the issue, with regards to which the Id.Pr.CIT has found the assessment order erroneous, with regard to the source of investment in the immovable property not having been inquired into by the AO, admittedly has not arisen from any evidences or documents found during the search. There is no such contention or fact put-forth either by the Id.Pr.CIT or even Id.DR before us. Therefore, it is clear that applying the ratio laid down by the Hon'ble Apex Court in *Abhisar Buildwell P.Ltd.(supra)* this issue could not have been considered by the AO during the assessment proceedings. There is no doubt, therefore that non-inquiry by the AO in the issue of investment made by the assessee in the immovable property caused no error in the order of the AO, since it was beyond his scope of inquiry or investigation, which could have been conducted as per the Hon'ble Apex Court's decision in *Abhisar Buildwell P.Ltd.(supra)*.

In view of the same, we have no hesitation in setting aside the order of the Id.Pr.CIT finding the error noted by him, to be not an error at all.

10. In the result, the appeal of the assessee is accordingly allowed.

Order pronounced in the Court on 27th February, 2025 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad,dated 27/02/2025