

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH
BEFORE DR. A. L. SAINI, ACCOUNTANT MEMBER And
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.194/RJT/2024

**Assessment Year: (2013-14)
(Physical Hearing)**

Yasmeen Waseem Parmar, Bawa No Delo, Opp. Old Post Office, Nagarpara Main Road, O/s. Khambhaliya Gate, Jamnagar, Gujarat-361001	Vs.	Principal Commissioner of Income Tax, Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIJPH3607F		
(Assessee)		(Respondent)

Assessee by	Shri Dushyant Maharshi, AR
Respondent by	Shri Sanjay Punglia, CIT DR
Date of Hearing	25/11/2024
Date of Pronouncement	21/02/2025

आदेश / ORDER

PER DR. A. L. SAINI, AM:

By way of this appeal, the assessee has challenged the correctness of the order dated 11.03.2024 passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2013-14. Grievances raised by the assessee, are as follows:

"1.Hon'ble Pr. CIT, Jamnagar has erred in law and in facts in setting-aside the order passed by the assessing officer under section 147 r.w.s. 144B of the Income-tax Act, 1961, by invoking the provisions of section 263 of the Income-tax Act, 1961, even when the order as passed by the assessing officer was neither erroneous nor prejudicial to the interests of the revenue.

2.Hon'ble Pr. CIT, Jamnagar erred in law and in facts by setting-aside the order passed by the assessing officer under section 147 r.w.s. 144B of the Income-tax Act, 1961, even when the assessment order was passed by the assessing officer

under section 143(3) of the Act, after conducting necessary enquiries and after due application of mind regarding share of assessee, the deduction u/s. 54B & Valuation report given by Govt. valuer

3. Hon'ble Pr. CIT, Jamnagar erred in law and in facts by not providing the sufficient opportunity of being heard and passed an order u/s. 263 without considering the adjournment application by the assessee.

4. The relevant material facts, as culled out from the material on record, are as follows. During the revision proceedings, under section 263 of the Income tax Act, 1961, the Learned Principal Commissioner of Income-Tax (in short "Ld PCIT"), has observed that assessee has not filed return of income for the assessment year (AY) 2013-14, u/s 139(1) of the Income-tax Act, 1961 (for short 'the Act'). The assessment was re-opened for the reason that the assessee along with 24 co-owners have sold an immovable property for a sale consideration of Rs. 2,09,00,000/-. The market value / jantri value of this property is Rs. 7,28,53,600/-. In response to notice u/s 148 of the Act, the assessee has filed return of income, declaring total income at Rs.3,468/- and capital loss of Rs. 20,66,730/-. The reopened assessment was completed u/s 147 r.w.s 144B of the Act, on 28.03.2022, by accepting the returned income.

5. Later on, the Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), has exercised his jurisdiction, under section 263 of the Income-tax Act, 1961. The Ld PCIT, on perusal of case records, noticed that while passing the order u/s 147 r.w.s 144 r.w.s 144B of the Act, dated 28.03.2022, the assessing officer had failed to consider the following:

(i) Applicability of provisions of section 50C of the Act.

(ii).Sale consideration should be taken at Rs. 67,53,857/- (being share @9.27%), as against Rs. 50,63,325/- (share @6.95%), taken by the assessee.

(iii) As per the DVO, Rajkot's report dated 27.10.2023, the purchase cost should be taken at Rs. 84,357/-, as on 01/04/1981, as against Rs. 59,43,320/-, taken by the assessee for working out the indexed cost of purchase.

(iv) Deduction / exemption u/s 54B of the Act, is not allowable to the assessee.

6. In view of the above, the Id PCIT was of the view that the order passed by the assessing officer u/s 147 r.w.s 144 r.w.s 144B of the Act dated 28.03.2022, is *prima facie* erroneous and prejudicial to the interest of revenue within the meaning of the provisions of section 263 of the Act, on this issue.

7. Therefore, during the revision proceedings u/s 263 of the Act, the Ld. PCIT issued a show-cause notice to the assessee, which is reproduced below:

“Please refer to the above.

2. In this case, it is observed that you have not filed your return of income for AY 2013-14 u/s 139(1) of the Income-tax Act, 1961 (for short 'the Act'). The assessment was reopened for the reason that you along with 24 co-owners have sold an immovable property for a sale consideration of Rs. 2,09,00,000/-. The market value / Jantri value of the property is Rs. 7,28,53,600/-. Your share in the aforesaid property is 9.27% i.e. Rs. 67,53,528/- (9.27% of Rs. 7,28,53,600/-). Accordingly, a notice u/s 148 of the Act was issued on 31/03/2021. In response to notice u/s 148 of the Act, you have filed return of income on 26/02/2022 declaring total income of Rs 3,468/- and claiming capital loss of Rs. 20,66,730/-. The return is filed after a period of 11 months which is very much beyond the time allowed in notice u/s 148 of the Act. The reopened assessment was completed u/s 147 rws 144 rws 144B of the Act on 28/03/2022 accepting the returned income.

3.1. During reopened assessment proceeding, vide letter dtd 23/03/2022, you have submitted revised working of capital gain computation considering the jantri value as sales consideration of Rs 50,63,325/- (@6.95% of 7,28,53,600) and after deducting indexed cost of purchase (Rs 35,19,278) and deduction u/s 54B of the Act (Rs 27,13,863) resulting in capital loss of Rs 11,69,816/-. Further it is seen that you have sold the agriculture land which is situated within 5 kms of the Jamnagar Municipal Corporation limit which is confirmed by you in submission dated 23/03/2022.

3.2. In respect to claim of deduction / exemption u/s 548 of the Act, neither you have filed original return of income u/s 139(1) of the Act nor filed return within the time allowed in notice u/s 148 of the Act. Therefore, you are not eligible for exemption u/s 54B of the Act. The relevant portion of section 139(1) is reproduced below:

"Provided also that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals. whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of clause (38) of section 10 or section 10A or section 10B or section 10BA or section 54 or section 54B or section 54D or section 54EC or section 54F or section 54G or section 54GA or section 54GB or Chapter VI-A exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed"

Therefore, the claim of exemption u/s 54B is not allowable to you and the same should have been disallowed.

3.3. Further, you have claimed your share in the property @6.95% in the property under consideration. However, on verification of the sale deed No. 3986/2012, it is seen that you along with 5 other legal heirs of late Shri Allarakha Ibrahim (share 55.6%) listed at Sr No. 3 to 8 as sellers. Therefore, your share in the property under consideration works out at @9.27% (being 55.6/6). Therefore, your contention of your share in the property @6.95% is not tenable Accordingly, the assessing officer should have taken your share @9.27 i.e. sale consideration at Rs 67,53,857/- (7,28,57,143 x 9.27%) as against Rs 50,63,325/- (@6.95) taken by you in the working of capital gain/loss submitted vide letter dtd 23/03/2022. It is pertinent to mention here that Sh. Samad Hamirka and Sh. Mahmedhusen Allarkha Hamirka have disclosed their share in the impugned property @9.27% during the course of assessment proceedings for the AY 2013-14 in their respective cases

3.4. Further, it is seen that you have taken the value of the property at Rs. 59,43,320/- as on 01/04/981 as per valuation report of the registered valuer. In this regard, it is seen that in the case of Ms. Hasina Alarakha Hamir, one of the co-sellers with you, the assessing officer has made a reference to the Departmental Valuation Officer (DVO) for determining of the fair market value of the property as on 01/04/1981. The DVO, Income-tax Department, Rajkot vide report dtd 27/10/2023 has submitted the fair market value (estimated value) of the property under consideration as on 01/04/1981 at Rs 84,357/-. Accordingly, the assessing officer should have taken the purchase value of Rs 84,357/- as on

01/04/1981 and accordingly the assessing officer should have worked out the indexed cost of purchase of the property under consideration, which the assessing officer has not done in the order passed u/s 147 rws 144 rws 144B of the Act dated 28/03/2022 for the AY under consideration.

4. In view of the above facts, it is seen that while passing the order u/s 147 rws 144 rws 144B of the Act dated 28/03/2022 the assessing officer failed to consider the following:

- (i) Sale consideration should be taken at Rs 67,53,857/- (being share @9.27%) as against Rs 50,63,325/- (share @6.95%) taken by you
- (ii) As per the DVO, Rajkot's report dtd 27/10/2023, the purchase cost should be taken at Rs 84,357/- as on 01/04/1981 as against Rs 59,43,320/- taken by you for working out the indexed cost of purchase
- (iii) Deduction/exemption u/s 54B of the Act is not allowable to you and it should be disallowed

5. Therefore, the order passed by the assessing officer is prima facie erroneous and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act, 1961 on this issues as discussed above. Therefore, I intend to revise the order passed by the assessing officer u/s 147 rws 144B of the Act dated 28/03/2022 for the AY under consideration.

6. Under the circumstances, you are requested to show cause as to why the order u/s 147 rws 144 rws 144B of the Act dated 28/03/22 for the AY 2013-14 should not be revised u/s 263 of the Income-tax Act. You may submit your written submissions to this office either through e-proceedings module of your e-filing account on the website <https://www.incometax.gov.in> or e-mail to Jamnagar.pcit@incometax.gov.in or by any other postal modes / personal appearance or through your authorized representative latest by 05/03/2024 at 11:00 am, failing which it may be presumed that you have no submission to make and revision order will be passed, based on the details and materials available on record.””

8. In response, to the notice of Ld. PCIT, the assessee has sought adjournment and requested the ld PCIT to allow some time to submit the reply. However, Ld. PCIT did not wait for the reply of the assessee and held that assessment order passed by Assessing Officer u/s 147 of the Act is erroneous in so far it is prejudicial to the interest of the Revenue. Therefore, Ld. PCIT set-aside the assessment order to the extent of the issues mentioned above and directed the Assessing Officer to pass the assessment order afresh, after giving reasonable opportunity of being heard to the assessee.

10. Aggrieved by the order of Ld. PCIT, the assessee is in appeal before us.

11. In sum and substance, the Ld. Counsel for the assessee, argued that order passed by assessing officer is not erroneous or Prejudicial to the interest of revenue. The ld. PCIT, has not considered the fact that assessment order has been passed by assessing officer after considering all the relevant documents / evidences. The ld. PCIT, has not believed the valuation made by Government approved valuer and revision proceedings are initiated on the basis of report of DVO in case of Co- Owner, which is not acceptable.

12. On the other hand, the Ld. D.R. for the Revenue, has primarily reiterated the stand taken by the ld. PCIT, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld PCIT and other materials brought on record. We note that assessee is an individual and agriculturist. During the year under consideration, assessee did not have any income chargeable to tax and hence assessee has not filed return of income. During the year under consideration, assessee had along with 24 co-owners, vide deed no. 3986/2012 on 17/04/2012 had jointly sold an immovable property, at Nagar Sim, R S No. 1155, Paiki 2, Jamnagar for total sales consideration of Rs. 2,09,00,000/- wherein assessee's share is 6.95% i.e. amounting to Rs. 14,52,550/-.

However, the market value/ Jantri value of the property as determined by Sub registrar, Zone-2, Jamnagar is of Rs. 7,28,53,600/-. The assessee's share in property on the basis of Jantri Value was 6.95% and sales consideration of Rs. 50,63,325/-. The immovable property under consideration was land sold by assessee which was received in inheritance from Assessee's late father Alarakha Ibrahim's share in the said property. Share of Alarakha Ibrahim in the property was 55.60% which is further divided into parts to assessee and other legal heirs. Further as per the provisions of Muslim Personal Law (Shariat) Application Act, 1937 for inheritance of property, female receives half than the male's share in family's property and hence accordingly assessee's share comes to 6.95% (55.60% x 1/8). The property was sold for the sales consideration amounting to Rs. 2,09,00,000/- and out of which assessee's share is Rs. 14,52,550/- (i.e. 2,09,00,000 x 6.95%). Further, in respect of cost of acquisition of property, valuation report provided by government valuer dated 14/02/2022 was considered. Hence, brief working of capital gain is as under:

Particulars	Amount
Sale Consideration 2,09,00,000 X 6.95%	14,52,550/-
Less: Cost of Acquisition Indexed cost of acquisition Valuation as on 01.04.1981 = 59,43,320 (As per Govt. approved Valuer's Report) Indexed cost of purchase (59,43,320 X 852/100) = 5,06,37,086 5,06,37,086 X 6.95%	35,19,280/-
Less: Exemption u/s. 54B of the Act Purchase of Agricultural Land	27,13,863/-
Taxable Income	-47,80,593/-

Further, on the basis of Jantri Value calculated by Stamp Duty Valuation Officer, the assessee has incurred loss. The working of capital gain on the basis of Jantri Value is as under:

Particulars	Amount
Sale Consideration 7,28,53,600 X 6.95%	50,63,325/-
Less: Cost of Acquisition Indexed cost of acquisition Valuation as on 01.04.1981 = 59,43,320 (As per Govt. approved Valuer's Report) Indexed cost of purchase (59,43,320 X 852/100) = 5,06,37,086 5,06,37,086 X 6.95%	35,19,280/-
Less: Exemption u/s. 54B of the Act Purchase of Agricultural Land	27,13,863/-
Taxable Income	-11,69,818/-

14..We find that from the proceeds of the sale, assessee had purchased an agricultural land located at Lalpur and claimed an exemption u/s 54B of the Act. The said lands were purchased by assessee on 17/04/2012. Thus, condition prescribed by section 54B for purchase of agricultural land within period of 2 years from the date of transfer of property is also satisfied. Details of lands purchased is as under:

Purchase Deed No.	Revenue Survey No.	Purchase Consideration paid (in Rs.)	Stamp duty paid (in Rs.)	Registration Charges	Total	Assessee Share (1/6 th)
4014/2012	761/4	31,55,000	18,74,000	31,780	50,60,780	8,43,463
4011/2012	761/3	17,35,000	10,31,000	17,570	27,83,570	4,63,928
4002/2012	762/1	14,21,000	10,94,000	14,460	25,29,460	4,21,577
4038/2012	761/1	18,42,000	8,44,000	18,720	29,54,720	4,92,453
4006/2012	761/2	18,42,000	10,94,000	18,650	29,54,650	4,92,442
						27,13,863

Further, it is submitted by Id Counsel that the share of assessee in the property is considered on the basis of Muslim Personal Law (Shariat) Application Act, 1937, wherein female members of the family are entitled to receive half than the male member's share in the property. Thus, on the basis of Muslim Personal Law (Shariat) Application Act, 1937, assessee's share in the property is 6.95% ($55.6 \times 1/8$) out of total share of his father @ 55.6% in the whole property.

15. We find that about the above facts, the assessing officer, during the assessment proceedings, has conducted enough enquiry that is, in assessee's case adequate inquiry has been already done with regard to all the issues mentioned above and documentary evidences like Sale and Purchase Deed, working of capital gain, etc, were furnished to assessing officer, vide submission by assessee on 05/03/2022 and 23/03/2022. By way of these written submissions, the assessee submitted before the assessing officer, the following documents and evidences:

- (a). Copy of return of income, computation and Acknowledgement
- (b). Copy of Bank Statement for FY 2012-13
- (c) Copy of Sale Deed dated 17/04/2012
- (d) Copy of Valuation Report for cost of acquisition.
- (e). Copy of deed for purchase of agricultural land for Exemption u/s. 54B.
- (f). Working of Capital Gain on the basis of Jantri Value.

The assessing officer had considered above documentary evidences, taken plausible view for nil income and passed the assessment order. Therefore, there was no error in assessment order nor the assessment order is prejudicial to interest to revenue, as there was no taxable income during the year. Hence, order passed by the assessing officer, cannot be treated as erroneous order or prejudicial to the interest of the revenue.

16. It is well settled law that when an assessing officer adopts plausible view, which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue. According to us, the present order of assessing officer passed u/s 147 dated 28.03.2022 of the Act cannot be termed as **erroneous** since enquiry was, in fact, carried out by assessing officer on the issue, on which the Id. PCIT has found fault with and has taken a plausible view. Thus, we note that the assessing officer enquired during assessment proceedings and the assessee had filed details before him. So, we find that the assessing officer's action cannot be termed "**erroneous**". Since not only enquiry was carried out by the assessing officer on the issue under consideration and based on the evidence gathered he has taken a plausible view, which at any rate cannot be called as an un-sustainable view.

17. Our view is fortified by the precedents laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of

the Revenue. In the following circumstances, the order of the assessing officer can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the assessing officer has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the assessing officer can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue "**unless the view taken by the Assessing Officer is unsustainable in law**". Therefore, we are of the considered opinion that assessing officer's order cannot be termed as *erroneous as well as prejudicial to the interest of the revenue* and therefore, jurisdictional condition precedent as prescribed by statute for invoking revisional jurisdiction

is absent and therefore, we are inclined to quash the impugned order dated 11-03-2024 of the ld. PCIT.

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

Order is pronounced on 21/02/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 21/02/2025