



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

&

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.354/RJT/2024

(निर्धारण वर्ष / Assessment Year: (2015-16)

Shri Dhimant Rashiklal Shah Home Maker, Opp. Sahvam Patrol Pump, Saru Section Road, Jamnagar-361008	Vs.	The Pr.CIT-1, Aayakar Bhavan, Taranjali Building, Jamnagar-361008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFUPS2094H		
(Appellant)		(Respondent)

Appellant by : Shri Mehul Ranpura, Ld. AR

Respondent by : Smt. Pallavi, Ld. CIT(DR)

Date of Hearing : 04/08/2025

Date of Pronouncement : 03/11/2025

आदेश / ORDER

**Per, Dinesh Mohan Sinha, JM:**

Captioned appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax[(in short "Ld. Pr.CIT")] u/s. 263 of the Act, vide order dated 22.03.2024.

2. Grounds of appeal raised by the assessee, are as follows:

1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The order passed by Pr. Commissioner of Income-tax, Jamnagar [hereinafter referred as to the "PCIT"] is bad in law, invalid and requires to be quashed, the same may kindly be quashed.

3. The Ld. PCIT erred in law and on facts in arriving at a conclusion to the effect that the assessment order passed by the AO was erroneous as well as prejudicial



*to the interest of the revenue on the ground that the AO had not conducted any inquiry/ verification in respect purchase and sale of immovable properties. The order passed by PCIT requires to be quashed and may kindly be quashed.*

*4. The learned Pr. CIT erred on facts as also in law in setting aside the assessment order dated 30.03.2022 passed u/s. 147 the Income Tax Act, 1961 directing the AO to pass a fresh assessment order. The order passed u/s 263 of the Act by the learned Pr. CIT is totally unjustified on facts as also in law therefore the same may kindly be quashed.*

*5 Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. Brief facts of the case that the assessee has filed return of income for the AY 2015-16 u/s 139(1) of the Income-tax Act, 1961 (for short 'the Act') on 28/09/2015 declaring total income of Rs. 13,64,060/-. The case was reopened on the information that the assessee has made transactions in the penny stock worth Rs. 36,92,450/- during the previous year and claimed exempted income of Rs 36,12,480/- on account of LTCG u/s 10(38) of the Act. Accordingly, assessment was completed u/s 147 rws 144B of the Act on 30/03/2022, total income of the assessee was assessed at Rs 50,56,510/- by making addition of Rs 36,92,450/- u/s 68 of the Act. On perusal of the ITS details, that the assessee has also sold so many properties amounting to Rs.3,28,00,000/- during the previous year.

4. After verification, the Ld.PCIT has observed that the assessee have filed return of income for the AY 2015-16 u/s 139(1) of the Income-tax Act (for short 'the Act') on 28/09/2015 declaring total income of Rs. 13,64,060/-. The assessee case was reopened on the information that the assessee has made transactions in the penny stock worth Rs. 36,92,450/- during the previous year and claimed exempted income of Rs 36,12,480/- on account of LTCG u/s 10(38) of the Act. Accordingly, assessment was completed u/s 147 rws 144B of the Act on 30/03/2022, total income assessed at Rs 50,56,510/- by making addition of Rs 36,92,450/- u/s 68 of the Act. However, the AO has failed to



ask for any details in respect of the same and failed to verify the transactions from the view of taxation of the same. List of properties sold by you are as under:

SOLD IMMOVABLE PROPERTY				
Sr. No.	Transaction code	Transaction Description	Transaction Amount	Transaction date
1.	007	007-Sold Immovable Property value at Rs. 3000000 or more	7500000	19/11/2014
2.	007	007-Sold Immovable Property value at Rs. 3000000 or more	7500000	19/11/2014
3.	007	007-Sold Immovable Property value at Rs. 3000000 or more	8250000	30/01/2015
4.	007	007-Sold Immovable Property value at Rs. 3000000 or more	9000000	23/03/2015
5.	156	156-Sale of Immovable Property Valued at Rs 5,00,000 or more	5,50,000	05/06/2014
		Total	3,28,00,000	

5. Under the above circumstances, A show cause notice was issued asking to why the order u/s 147 rws 144B of the Act dated 30/03/2022 for the AY 2015-16 should not be revised u/s 263 of the Income-tax Act. The assessee was ask to submitted written submissions to the office of the Ld.PCIT through e-proceedings module of e-filing account on the website <https://www.incometax.gov.in> or e-mail to [jamnagar.pcit@incometax.gov.in](mailto:jamnagar.pcit@incometax.gov.in) or by any other postal modes / personal appearance or through authorized representative latest by 14/03/2024 at materials 11:15 am, falling which it may be presumed that the assessee has no submission to make and revision order will be passed, based on the material available on record.

6. In response to the same, the assessee has filed written submissions vide letter dated 19/03/2024, which are as under:

"As per above notice information of properties sold as under:



Sr No.	Date	Amount	Buyer Name	Flat No.
1.	19/11/2014	75,00,000/-	Kalpnaben Pravinbhai Patel	Flat No. 301
2.	19/11/2014	75,00,000/-	Kalpnaben Pravinbhai Patel	Flat No. 201
3.	30/01/2015	82,50,000/-	Ashok Keshavlal Choksi Huf	Flat No. 402
4.	23/03/2015	90,00,000/-	Surendra Ambalal Trivedi	Flat No. 101
5.	05/06/2014	5,50,000/-	Details not belonging to me	

7. The assessee had construction activity as a business venture and constructed residential flats jointly with Divyesh Rashiklal Shah in Ahmedabad. Both have equal share in business. Total sold properties Rs. 3,22,50,000 in F.Y. 2014-15 A.Y. 2015-16, the assessee have share of Rs. 1,61,25,000/- same are match with sales deed and books of account. The assessee has maintained regular books of account and it is audited. Out of above sales TDS @ 1% deducted by the buyers (Ashok Keshavlal Choksi Huf Flat No. 402 and Suresh Ambalal Trivedi Flat No. 101.) TDS entries reflected in 26A5, TDS amount 50% in my PAN Number and 50% in Divyesh Rashiklal Shah PAN Number same is verify in 26AS. Above information were total information of sales, due to equal share, the assessee and business partner (Divyesh Rashiklal Shah) both split sale equally in our books of account and the same detail was filed in the income tax return accordingly.

8. The Ld.PCIT further observed that an amount of Rs. 5,50,000/- was received on 15/03/2024 from property sold. In this connection, the assessee checked all details and documents. The assessee has not sold any property of Rs. 5,50,000/- in the year under consideration. It is possible that wrong information or someone others information reported in assessee pan no. by sub-registrar of property. Therefore, the assessee requested to the Ld.CIT(A) to recollect information form sub-registrar office. That the assessee submitted following document for verification of property sold and business income.

1. Copy of ITR and Computation and 26AS.



2. Copy of Tax Audit Report.
3. Copy of Sale Deed.
4. Copy of Seller Party Account.
5. Copy of Sales Account.

9. It was noted in the assessment order u/s. 263 of the Act, we note that the;

i. That during the re-assessment proceedings, neither the AO has made any inquiry regarding above transactions nor the assessee has submitted any details regarding the same. The AO has not examined this issue thoroughly though the same are available on records. Therefore, the immovable properties sold by the assessee of Rs. 3,28,00,000/-, as discussed above, have not been verified by the AO at the time of passing order u/s 147 rws 144B of the Act dated 30/03/2022.

ii. The AO failed to examine aspects of the assessee's case and the same remained unverified at the time of finalising the assessment order. Such failure on the part of the AO rendered the assessment order passed u/s 147 rws 144B of the Act dated 30/03/2022 for the AY 2015-16 erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act. We also mentioned that Assessing Officer is duty bound to assess the correct income of the assessee in any case. Since these issues in the case of the assessee remained unexplained / unverified, action u/s. 263 of the Act is justified.

iii. That the assessment order dated 30/03/2022 passed by the Assessing Officer u/s 147 rws 144B of the Act in the case of the assessee for the AY 2015-16 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act and set aside the assessment



order to the extent of the issue mentioned and discussed in the foregoing paragraphs.

10. That the assessee has challenge the legality and validity of impugned order dated 22.03.2024 of the Ld.PCIT by filing the appeal before us.

11. During the course of hearing, Ld. AR for the assessee submitted that the assessee filed return declaring in income from the property sold, TDS has been deducted at the @ 1%, and all transactions were disclosed before the AO, as well as placed in the Paper-Book.

12. On the contrary, the Ld. DR for the revenue relied on the order of the PCIT.

13. We have heard both the parties and perused the material available on record. We note that the assessee filed return of income of Rs. 13,64,060/-, the books of account are audited and the same were available before the assessing officer at the time of assessment order. During the course of proceedings, the notices were issued by the AO on 20.06.2021, whereby all details were submitted. However, a show cause notice issued on 25.03.2022 by the NFAC, wherein the details that the assessee was working with the real-estate sector, and currently working as a partner with the three enterprises:

- i. A.P. Enterprises
- ii. Ambience Enterprises
- iii. 2D Enterprises

14. The assessee filed reply to the show cause notice, that the total sold properties Rs.3,22,50,000/- in FY 2014-15, AY 2015-16, the assessee share



of Rs. 1,61,25,000/- same are match with the sales deed and books of account. The assessee maintained regular books of account are audited. Out of above sales TDS @1% deducted by the buyers (Ashok Keshvala Choksi Huf Flat No. 402 and Suresh Ambalal Trivedi Flat No. 101.) TDS entries reflected in 26AS, TDS amount 50% in assessee PAN number and 50% in Divyesh Rashiklal Shah PAN number same is verified in 26AS.

15. We further noted that the assessee submitted entire details related to the properties and also audit report filed before the assessing officer. We further note that according to the audit report in Colum no. 11 in Form 3CD. That assessee is builder, the assessment order also speaks that the assessee has sold many properties details were submitted. The view of the Ld.PCIT that no investigation carried out by the assessing officer about the properties sold during the year, hence, a revision order for setting aside of the assessment order passed considering the said order is erroneous and prejudicial to the interest of revenue. We find that no merit in order of the Ld.PCIT . We further note that during the pendency of this appeal the assessing officer made an assessment order wherein only addition of Rs. 8,29,989/- by disallowance of 20% of the expenditure, therefore, we allow the appeal of the assessee.

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

**Order pronounced in the open court on 03/11/2025.**

Sd/-  
**(Dr. Arjun Lal Saini)**  
**Accountant Member**

Rajkot

दिनांक/ Date: 03/11/2025

**Copy of the Order forwarded to**

1. The Assessee

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Sd/-  
**(Dinesh Mohan Sinha)**  
**Judicial Member**

//True Copy//



2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot