

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRIR.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA Nos.415/CHD/2018

निर्धारणवर्ष / Assessment Year : 2013-14

Sh Lalit Kumar Bansal, 1708, Phase 3B2, Mohali	बनाम	Pr. CIT-2, Chandigarh
स्थायीलेखासं./PAN NO: AAXPB4546P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितकीओरसे/Assessee by : Shri R.K. Gupta, CA. &
Shri Akshun Gupta, CA
राजस्वकीओरसे/ Revenue by : Smt. C. Chandrakanta, CIT

सुनवाईकीतारीख/Date of Hearing : 12.04.2021
उदघोषणाकीतारीख/Date of Pronouncement : 08.07.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 27.03.2018 passed by Pr. Commissioner of Income Tax-, Chandigarh [for short 'the PCIT'] u/s 263 of the Act, whereby the Ld. PCIT has cancelled the assessment order passed u/s 143(3) of the Income Tax Act, 1961 [for short 'the Act'] pertaining to the assessment year 2013-14 and directed the AO to pass an order afresh.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring taxable income of Rs.2,46,15,310/- under the heads, income from house

property, profit and gains from business or profession and income from other sources. The return was processed u/s 143(1) of the Act. Since the case was selected for scrutiny, AO issued notices u/s 143(2) and 142(1) of the Act were issued. In response thereof, the authorized representative of the assessee appeared before the AO and furnished the details and documents called for. The AO after examining the documents and accepting the returned income passed assessment order u/s 143(3) of the Act.

3. Subsequently, the Ld. PCIT issued notice u/s 263 directing the assessee to show cause as to why the assessment framed u/s 143(3) of the Act for the Assessment Year should not be cancelled by invoking the provisions of section 263 of the Act on the grounds that the AO has accepted the claim of the assessee u/s 54B of the Act, amounting to Rs. 1,29,36,124/- and u/s 54F amounting to Rs. 54,96,205/- in respect of capital gain arising from the sale of agricultural land valued at 2,00,22,267/- without conducting any enquiry and that as per Form 26AS, the assessee received payment on account of contract whereas no income had been reflected on this account. Further, the AO has accepted the contentions of the assessee without making any enquiry. Therefore, the assessment order is erroneous and prejudicial to the interest of the revenue. In response thereof, the Ld. assessee filed detailed reply to justify the claim of deduction u/s 54B, 54 F and further to justify the fair market value adopted. As regards contract receipts as per Form AS

26, the assessee contended that the same have been disclosed and duly reflected in the profit and loss account of the proprietary Firm of the assessee M/s Mahak Enterprises. However, the Ld. PCIT rejecting the contentions of the assessee cancelled the assessment order holding the same erroneous and prejudicial to interest of the revenue and directed the AO to pass assessment order afresh in accordance with law after affording opportunity of being heard to the assessee.

4. Against the impugned order passed by the Ld. PCIT, the assessee has preferred the present appeal by raising the following grounds:

1. *That on the facts and circumstances of the case, the Learned Pr. Commissioner of Income Tax, Chandigarh, was not justified in holding that the assessment order passed by Assessing Officer is erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income Tax and cancelling the aforesaid order and in directing the Assessing Officer to reframe the assessment.*
2. *That on the facts and circumstances of the case, the Learned Pr. Commissioner of Income Tax, Chandigarh has not appreciated that the Assessing Officer has examined the issue and completed the assessment and thus the assessment order passed by Assessing Officer is not erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income Tax.*
3. *That on the facts and circumstances of the case, the Assessing Officer having adopted one course permissible in law and having taken a particular view while acting in his competent jurisdiction; it was not open to Pr. CIT merely to disagree with his findings and in directing the Assessing Officer to reframe the assessment.*
4. *That on the facts and circumstances of the case, the learned Pr CIT has erred to observe that lands were not used for agricultural purposes by the assessee or his parents in two years immediately preceding the date of transfer and accordingly deduction u/s 54B is not available.*
5. *That on the facts and circumstances of the case, the learned Pr CIT has erred to observe that lands transferred were not Long-Term Assets and accordingly deduction u/s 54F is not available.*

6. *That on the facts and circumstances of the case, the learned Pr CIT has erred to observe that the FMV of the lands transferred remained unexamined.*
7. *That on the facts and circumstances of the case, the impugned order is beyond the scope of section 263 of the Act.*
8. *That the impugned assessment order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence*
9. *That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.*

5. Before us, the Ld. Counsel for the assessee submitted that the assessee engaged in the business as builder and developer, had converted the capital asset i.e., agricultural land into stock in trade on 31.03.2007. The assessee developed the said land and constructed flats and other units thereon. During the financial year 2012-13 the assessee sold the said flats and invested the sale proceeds in agricultural land for claiming deduction u/s 54B and purchase and constructed residential house to claim deduction/s 54F of the Act. The Ld. Counsel further contended that during the assessment proceedings the AO made specific query with regard to the immovable assets held by the assessee. The Ld. Counsel invited out attention to question No 11 and 12 raised by the AO vide letter dated 27.04.2015 i.e., during assessment proceedings. In response to the said letter, the AR of the assessee furnished the details called for and discussed the case. The AO after examining and verifying the same and hearing the AR accepted the claim of the assessee. The Ld. Counsel further submitted that the computation

statement for AY 2011-12 and 2012-13 along with assessment orders passed u/s 143(3) are placed at pages 67 to 75 and 76 to 84 respectively in the paper book. The facts of the present case are similar to the facts of the cases pertaining to the assessment years 2011-12 and 2012-13 and the AO had accepted the returned income and passed the assessment orders. The capital assets were converted into stock in trade on 31.03.2007. Indexation of the capital asset was done in terms of section 45(2) of the Act in accordance with the ratio laid down by the Hon'ble Karnataka High Court in the case of *CIT and another vs. Rudra Industrial Commercial corporation (2011)79CCH 0072 (Kar)* wherein it has been held that entitlement of assessee for claiming deduction u/s 54(1) and 54(2) of the Act would be seen in the year in which the deemed transfer is to be taxed. The Ld. counsel further relied on the decision of the Pune Bench of the Tribunal in the case of *Mahindra Rajnikant Zaveri vs. Income Tax Officer(2017) 51CCH 0028 (Jaipur Trib)*, wherein the Tribunal taking into consideration the CBDT Circular No 791 dated 02.06.2000 and appreciating the impossibility of the assessee being able to invest the amount held that period of 6 months for the purposes of investment in specified assets must be reckoned from the date of receipt of consideration. The Ld. Counsel further placing reliance on the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. M/s Escorts Ltd. ITA No. 14/1999* dated 01.02.2011 submitted that the impugned order is void being contrary to the law of consistency.

6. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. PCIT submitted that since the AO had not conducted enquiries or verification which should have been made in terms of clause (a) of Explanation 2 to section 263 of the Act, the Ld. PCIT has rightly exercised the revisional jurisdiction and directed the AO to pass assessment order afresh. The Ld. DR pointed out that the AO has not made specific query with regard to the deduction u/s 54B and 54F of the Act.

7. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the Ld. Counsel for the assessee. The first point raised by the Ld. counsel is that the since the AO has passed the assessment order u/s 143(3) of the Act after examining the relevant documents and seeking explanations from the assessee, the Ld. PCIT has wrongly held that the AO has passed the assessment order without making enquiries or verification which should have been made. As pointed out by the Ld. Counsel, the assessee has furnished the details and documents in response to the query raised vide notice dated 27.04.2015. Hence, in our considered view, this is not a case where the AO has passed the assessment order without any enquiry, but the AO has taken one of the possible views taking into consideration the facts and circumstances of the case and the submissions made in the light of the cases relied upon by the assessee.

8. The second issue raised against the impugned order is that the department has accepted the return of the assessee in the assessment years 2011-12 and 2012-13 in which the similar issues were involved. The assessee has demonstrated the same by furnishing copies of computations and assessment orders passed u/s 143(3) of the Act. Further, the assessee has also placed on record the copy of notice issued by the AO u/s 142 of the Act issued during the assessment proceedings for the assessment year 2018-19, copy of reply to the said notice and the copy of assessment order passed by the AO u/s 143(3) read with sections 143(3A) & 143(3B) of the Act for the assessment year 2018-19 to demonstrate the consistent stand of the revenue in the previous years and the subsequent year. Perusal of the said documents reveal that the department has accepted the plea of the assessee in the assessment years 2011-12, 2012-13 and 2018-19. The Ld. PCIT has not pointed out any material change in the facts of the present case. In the case of *CIT vs. M/s Escorts Ltd* (supra) the Hon'ble Delhi High Court has dismissed the appeal of the department and upheld the findings of the Tribunal holding as under: -

“13. Therefore, in our opinion, given the fact that the assessee had been engaged in these transactions in the preceding assessment years, CIT could have had no occasion to take recourse to revisional powers under section 263 of the Act on the fundamental aspects of the transactions in issue on which a view had been taken and,

not shown to us as having been challenged. The arguments of Ms. Bansal that the CIT only sought to treat the price difference as the cost incurred by the assessee towards retention of legal ownership in the units; is premised on the transaction being different from that what the assessee claimed them to be in the earlier assessment years- a position which decidedly remained unchanged. Such an approach is against the principle of consistency. The department has not shown any special circumstances warranting deviation from the said principle.”

9. In the said case, the Ld. CIT exercising the powers u/s 263 of the Act, set aside assessment order and directed the AO to reframe assessment order for the reason that carry forward of capital loss claimed by the assessee has wrongly been allowed. In the first appeal the Tribunal set aside the revisional order passed by the Ld. CIT. In further appeal by the department, the Hon'ble High court upheld the finding of the Tribunal holding that the action of the Ld. CIT is against the principle of consistency. In the present case also the Ld. PCIT has passed the impugned order without taking into consideration the stand of the assessee in preceding assessment years 2011-12 and 2012-13 and the subsequent year 2018-19.

10. So far as the issue regarding claim of deduction u/s 54B & 54F of the Act is concerned, as per the decision of the Pune Bench of the Tribunal in the case of *DCIT vs. Sh. Ramdas Haribhau Kakade* (supra), assessee's entitlement for claiming deduction u/s 54B(1) and 54(B)(2) of the Act would be seen in the year in which the deemed transfer is to

be taxed in the hands of the assessee. Further, the Pune Bench of the Tribunal in the case *Mahendra Rajnikant Zaveri* (supra), in the light of the CBDT Circular No 791 dated 02.06.2000 and taking into consideration the impossibility of the assessee being able to invest the amount, has held that the period of 6 months for the purposes of investment in specified assets must be reckoned from the date of receipt of consideration. So, we are of the considered view that since the AO had taken a possible view after hearing the assessee in the light of the cases relied upon by the assessee, the Ld. PCIT has wrongly exercise the jurisdiction u/s 263 of the Act and set aside the assessment order.

11. Further as per the settled law u/s 263 of the Act, the CIT has power to examine an assessment order to ascertain as to whether it is erroneous and prejudicial to the interest of the revenue. Section 263 of the Act does not confer jurisdiction to rectify each and every mistake in the assessment order. Therefore, the assessment order can be revised only where the order is erroneous as well as prejudicial to the interest of the revenue and not for rectification of mistakes in the order.

12. So far as the applicability of clause (a) of Explanation 2 to section 263 of the Act is concerned, as pointed out by the Ld. counsel, the Delhi Bench of the Tribunal has held in the case of *Brahma Centre Development Pvt. Ltd ITA No. 434 & 4342/Del/2019*, has held that Explanation 2 to section 263 of the Act is prospective in nature, therefore not applicable to the present case.

13. In the light of the facts of this case and the cases discussed above, we are of the considered view that in the present case, since the AO had passed the assessment order after making enquiries and had taken a possible view consistent with the stand of the department in assessee's own cases for the preceding assessment years 2012-13 and 2011-12 and subsequent assessment year 2018-19, the Ld. PCIT has wrongly invoked the jurisdiction u/s 263 of the Act, wrongly holding the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue. Hence, we allow the appeal of the assessee and set aside the impugned order passed by the Ld. PCIT.

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

Order pronounced on 8th July, 2021.

Sd/-

(N.K. SAINI)

उपाध्यक्ष /Vice President

Sd/-

(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

Dated : 08/07/2021

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar