

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

(through web-based video conferencing platform)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.94/Ahd/2021
Assessment Years : 2011-12

Mrs. Binal Parixit Patel, C/o. Ketan H. Shah, Advocate, 512, Times Square-I, Opp. Ram Baug Bungalow, Thaltej Shilaj Road, Thaltej, Ahmedabad PAN : BFGPP 8427 L	Vs	Principal Commissioner of Income-tax, Ahmedabad-3
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Ketan Shah, AR and Shri Aman Shah, AR
Revenue by :		Shri Vinod Tanwani, CIT-DR

सुनवाई की तारीख/Date of Hearing : 19/07/2021
घोषणा की तारीख /Date of Pronouncement: 12/10/2021

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The present appeal is directed at the instance of the assessee against the order of the learned Principal Commissioner of Income Tax, Ahmedabad-3, Ahmedabad ("PCIT" in short) dated 29.03.2021, passed for Assessment Year 2011-12. The assessee has taken eight grounds of appeal which are argumentative in nature. In brief, her grievances revolve around a single issue namely the learned PCIT has erred in taking cognizance under Section 263 of the Income-tax Act, 1961 ("the Act" in short) and setting aside the assessment order dated 24.12.2018 directing the Assessing Officer to pass a fresh assessment order.

2. With the assistance of learned representatives, we have gone through the record carefully. A very short issue has been raised in this appeal, i.e.

whether the learned Commissioner, while exercising the powers under Section 263 of the Act, can take up a new issue out of re-assessment order/proceedings inspite of the fact that no addition was made by the Assessing Officer on the point for which assessment was reopened.

3. The assessee has originally filed her return of income on 07.07.2012 declaring Nil income. It was processed under Section 143(1) of the Act. Thereafter, the Assessing Officer got an information and he reopened the assessment by issuance of notice under Section 148 of the Act. The reasons for the reopening, as recorded by the Assessing Officer, read as under:-

*“RECORDING OF REASONS FOR INITIATING PROCEEDINGS
U/S 148 OF THE I.T.ACT*

*Name of Assessee : Binal Parixitbhai Patel
Address of the assessee : 16, Abhishree Residency-IV
Ambali, Taluka Dascroi,
Ahmedabad-380059.*

*PAN : BFGPP8427L
AY : 2011-12*

The status of the assessee is an "Individual". The assessee has e-filed return of income for A.Y. 2011-12 on 07.07.2012 declaring Nil total income vide Ack. No.406146280070712. The case pertains to this Ward.

As per the information received from the ITO, Ward-5(3)(2), Ahmedabad, during the course of assessment proceedings in the case of M/s. Nami Parixit Metal Industries for A.Y. 2011-12, it has been found that the partner of the firm viz. Binal Parixitbhai Patel (the assessee) has transferred her capital asset i.e. open plot of N.A. industrial land situated at Survey No.152(1) of mouje Khoda, Taluka Sanand, Dist Ahmedabad to the said firm M/s. Nami Parixit Metal Industries by way of capital contribution. As per the information received, the said firm has recorded the value in its books. Therefore, provisions of Sec.45(3) of the IT Act were applicable in the case of the assessee. The assessee was, therefore, required to compute the gains arising from such transfer adopting the value as per revaluation done and as

per the provisions laid down in Sec.45(3) of the IX Act and offer the capital gain for taxation.

2. *Vide letter dated 07.03.2018 emailed to the ITO, Ward-5(3)(2), Ahmedabad, assessment records of M/s. Nami Parixit Metal Industries for A.Y. 2011-12 were called for which have been forwarded by the concerned AO. On scrutiny of the said case records, copy of partner's capital accounts (including assessee's capital a/c.), return of income and the Computation of Income for A.Y. 2011-12 of the assessee are also found placed on record. On verification of the capital a/c. of the assessee in the books of the said firm, it is noticed that Rs.1,42,50,000/- has been credited in the assessee's partner's capital account on a/c. of transfer of the capital asset i.e. open plot of non-agricultural industrial land at Survey No.152(1) of Sanand taluka being her share in the said capital asset. On verification of ITR and Computation of Income for the A.Y. 2011-12, it is noticed that the assessee has not computed any gain arising from such transfer and offered the resultant capital gain for taxation.*

3. *In view of above facts, I have reason to believe that the capital gain of the assets transferred and valued of Rs.1,42,50,000/- being assessee's share in the said capital asset revalued, has escaped assessment for A.Y.2011-12 in the case of Binal Parixitbhai Patel, PAN BFGPPB427L and this is a fit case for re-opening the assessment for A.Y. 2011-12.*

*Sd/-
(B.S. RAO)*

Income Tax Officer

Ward-3(1)(2), Ahmedabad."

Date : 09.03.2018

4. The learned Assessing Officer has passed the assessment order on 24.12.2018 under Section 144 r.w.s. 147 of the Act. He accepted the returned income at Nil. This is a brief assessment order and the relevant part reads as under:-

"2. The notice u/s 148 of the Act dated 26.03.2018 has been issued and duly served upon. Thereafter, a notice u/s 142(1) of the Act was issued on 07.08.2018 & 05.09.2018 requesting the assessee to submit details pertaining to the reasons for scrutiny selection. In response to the above notices, the assessee filed the written submission dated 01.11.2018 and 17.12.2018 reply which was perused and placed on record.

3. In response to notice u/s 148 of the I.T. Act dated 26.03.2018, assessee filed her return of income on 30.04.2018 but the same was not e-verified by the assessee. Therefore, on the basis of information available on the records and written submission furnished by the assessee, the assessment is being made u/s 144 of the I.T. Act i.e. best judgment assessment by this order.

4. Subject to above remarks and discussion, total income of the assessee is computed as under:-

	Rs,.
Total income as per return of income	NIL
Assessed Income	NIL

Assessed u/s 144 r.w.s. 147 of the I.T. Act. Calculate tax, charge interest u/s 234B & 234C as applicable, give credit for prepaid taxes after due verification and issue demand notice / refund accordingly.”

5. The learned Commissioner perused the record and formed an opinion that this assessment order is erroneous and prejudicial to the interest of the Revenue. He sought to revise this order though specific show-cause notice issued under Section 263 of the Act has not been placed before us; but, the perusal of the impugned order would indicate that the reasons for which it was sought to be treated as erroneous and required to be revised by exercising the powers under Section 263 of the Act. The relevant part of the discussion reads as under:-

“2. On verification of return of income filed by the assessee for A.Y. 2011-12 in response to the notice u/s.148 of the Act, it is noticed that the Assessee has sold shares amounting to Rs.86.13,138/- and have declared the cost of acquisition after indexation at Rs.7,22,791/-. The assessee has thus-worked out Long-term Capital Gain (LTCG) from this transaction at Rs.78,90,347/-. Further, on verification, it is noticed that the assessee has claimed the deduction u/s.54/54B/54D/54EC/54F/54G/54GA of the Act of Rs.73,59,067/- and the balance LTCG amount of Rs.5,31,280/- has been set off against business loss of Rs.6,19,329/-.

3. On further verification of re-assessment records, it is noticed that no details and supporting documentary evidences in respect of the above

transactions are found on record. It is further noticed that neither the assessee has disclosed the particular section of the I.T. Act under which the exemption/deduction has been claimed out of the LTCCG derived nor the Assessing Officer has verified the sale of shares and huge LTCCG exemption claimed by the assessee. The Assessing Officer was required to collect details and evidences from the assessee and if further required, to conduct third party enquiries and verify the genuineness of the sale of shares, deduction claimed and set off of LTCCG against business loss, claimed by the assessee. The AO should have allowed the deduction / exemption and set off of LTCCG against business losses only after deriving conclusions on the basis of details and evidences collected as a result of any investigation. However, while passing the re-assessment order, no details/supporting evidences was collected and investigation was carried out by the Assessing Officer. Thus, the Assessing Officer has failed to verify the correctness of the cost of acquisition and its indexation value claimed at Rs.7,22,791/-, deduction claimed of Rs.73,59,067/- and also the set off of balance LTCCG of Rs.5,31,280/- against business loss.

4. Therefore, in view of the Explanation 2(a) of section 263 of the Act, the order passed by the Assessing Officer u/s 144 r.w.s 147 dated 24.12.2018 has become erroneous in so far as it is prejudicial to the interest of revenue and requires to be revised u/s 263 of the Act. In view of the above mentioned facts, a show cause notice was issued to the assessee dtd.08.01.2021 vide DIN No. ITBA/COM/S/91/2020-21/1029737951(1) on 13.01.2021. Assessee was requested to furnish the following details:

- (i) Documentary evidence of exemption claimed of Rs.73,59,067/- in the return of income filed u/s.148 of the Act.
- (n) Documentary evidence of the indexed cost of acquisition claimed by you at Rs.7,22,791/-.

The above show cause notice was sent to the assessee by mail on 13.01.2021. Compliance was called for by 18.01.2021. However, no response has been received from the assessee till the date of passing this order, and hence it is presumed that the assessee has no explanation to offer in this regard.

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7. In the present case, the Assessing Officer has failed to verify the exemption claimed of Rs.73,59,067/- in the return of income filed in response

to notice u/s.148 as well as the cost of acquisition after indexation claimed at Rs.7,22,791/- with relevant documentary evidences. Such lack on the part of the AO has made the assessment order erroneous and prejudicial to the interest of revenue. It is for the Assessing Officer to examine and to apply the correct position applicable as per law. There is absolute failure on the part of the Assessing Officer in this regard and it is such failure which calls for revision of the assessment order u/s.263 of the Act."

6. A perusal of the reasons extracted supra, it would reveal that the learned Assessing Officer sought to reopen the assessment on account of escapement of capital gain arising from sale of an industrial plot. In other words, according to the Assessing Officer, she has transferred an industrial plot to M/s. Nami Parixit Metal Industries and the capital gain arose on account of such transfer has not been taxed. However, no addition on this issue was made by the Assessing Officer. The learned Commissioner did not find any error in the findings of the learned Assessing Officer for not taxing the capital gain arose to the assessee on account of transfer of industrial plot bearing No.152(1) of Mouje Khoda, Tal. Sanand, Dist. Ahmedabad. He took up altogether a new issue, i.e. Long Term Capital Gain arose to the assessee on account of sale of shares and claiming deduction under Section 54/54B/54D/54EC/54F/54G/54GA etc, as discernable from the facts discussed by the learned Commissioner in paragraph nos. 2-4 of the impugned order extracted supra.

7. It is pertinent to observe that Section 147 of the Act contains following expression:-

"If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which come to his notice subsequently in the course of proceedings....."

In these lines, expression used “*and also any other income*” which came to the notice of the Assessing Officer during the re-assessment proceedings has been construed by the Hon’ble jurisdictional High Court as well as Hon’ble Delhi and Bombay High Courts in the cases of CIT Vs. Mohmed Junded Dadani (2013) 355 ITR 172 (Guj); Ranbaxy Laboratories Ltd. Vs. CIT, 336 ITR 136 (Del) and CIT Vs. Jet Airways (I) Ltd 331 ITR 236 (Bom.). All the three Hon’ble Courts are unanimous in concluding that the expression “and also” would give an indication that any other point exhibiting escapement of income comes to the notice of the Assessing Officer during reassessment proceedings would only be entertained if addition is being made on the point for which assessment is being reopened. In other words, if no addition is being made on the point for which assessment has been reopened, then any other point exhibiting the escapement of income comes to the notice of the Assessing Officer will not be entertained.

8. In the present case, the Assessing Officer did not make any addition on the issue for which the assessment was reopened - meaning thereby the reassessment proceedings become final. The learned Commissioner cannot explore any other issue under Section 263 which even cannot be explored by the Assessing Officer in reassessment proceedings; because, on the original point on which assessment was reopened, no addition was made. The jurisdiction of the learned Commissioner is confined to the issues on which an assessment is reopened and examined by the Assessing Officer. The other issues can only be entertained if addition is being made on the issue for which the assessment was reopened. We can make it very clear that if the Assessing Officer has made any addition on account of Long Term Capital Gain earned by the assessee for transfer of industrial plot, then other points could also be examined. Similarly, learned Commissioner could also be found out a fault of the Assessing Officer qua the issue of transfer of

industrial plot. If that aspect was considered by the learned Commissioner as erroneous and prejudicial to the interest of the Revenue; thereafter other aspects on the issue of share transactions would also be examined; but in the absence of any addition on the first point, no other issue can be entertained, even under revisional jurisdiction under Section 263 of the Act. We, therefore, allow this appeal and quash the impugned order passed under Section 263 of the Act.

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

Order pronounced in the Court on 12th October 2021 at Ahmedabad.

Sd/-

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad, Dated 12/10/2021

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad