

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.345/PUN/2021
निर्धारण वर्ष / Assessment Year: 2015-16

Mrs. Minakshi Shivkumar Bansal, Building No.A-3, Flat No.702, Oxford Village Wanworie, Pune- 411040. PAN : ABLPB1124E	Vs.	Pr. CIT- 6, Pune.
Appellant		Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri B. Koteswara Rao

Date of hearing : 28.01.2022
Date of pronouncement : 07.03.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Pr. Commissioner of Income Tax- 6, Pune [‘PCIT’ for short] passed u/s 263 of the Income Tax Act, 1961 dated 11.03.2020 for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

“1. *The Ld. Principal Commissioner of Income Tax has erred in holding that the assessment completed u/s 143(3) dated 30-10-2015 is erroneous in as much as it is prejudicial to the interest of the revenue.*

2. *The Ld. Principal Commissioner of Income Tax has erred in holding that the Assessing Officer has passed the assessment order without making inquiries and without proper verification of the facts and the Assessing Officer has not applied his mind before accepting the claim of the assessee for adopting the value of the property as per the valuation report, for making additions u/s 56(2)(vii)(b) of the Act.*

The Ld. Principal Commissioner of Income Tax failed to appreciate that in this case the Assessing Officer has issued a show cause notice dated 12-07-2017, along with the questionnaire. As per Question No. (6) of the questionnaire the Assessing Officer has required the assessee to explain with the documentary evidence the purchase consideration of the property being less than the value as per the stamp authorities. In response to the above query the assessee has submitted a valuation report from Mr. V. M. Wadgaonkar, the registered valuer. After considering the facts and by applying the provisions of section 56(2)(vii)(b) of the Income Tax Act as per detailed discussion in Para 4 to 4.4 of the assessment order, the Assessing Officer has made an addition of Rs.8,81,750/- to the income of the assessee u/s 56(2)(vii)(b) of the Act.

In view of the above the assessment order passed in this case cannot be regarded as erroneous and prejudicial to the interest of the revenue.

3. *The Ld. Principal Commissioner of Income Tax has failed to appreciate that the land purchased by the assessee in this case was agricultural land. Accordingly the provisions of section 56(2)(vii)(b) are not applicable in this case.*

In view of the above the assessment order passed in this case cannot be regarded as erroneous and prejudicial to the interest of the revenue.

4. *The appellant craves leave to add to or amend/modify or delete any or all of the above grounds of appeal.”*

3. Briefly, the facts of the case are as under :

The appellant is an individual deriving income from business of logistic providers. The return of income for the assessment year 2015-16 was filed on 30.10.2015 declaring total income of

Rs.91,24,850/-. Against the said return of income, the assessment was completed by The Deputy Commissioner of Income Tax, Circle- 14, Pune ('the Assessing Officer') vide order dated 30.10.2017 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.1,00,06,600/- after making the addition of Rs.8,81,750/- u/s 56(2)(vii)(b) of the Act in respect of purchase of land bearing Survey No.130, Mouza Lawa, P.H. No.4, Khate Kramank 99, Village Lawa, Tahsil- Nagpur, Dist- Nagpur.

4. Subsequently, on reviewing the assessment record, the ld. PCIT formed an opinion that the assessment order passed by the Assessing Officer is erroneous for the reason that the Assessing Officer had accepted the valuation report of the property situated at Survey No.130, Mouza Lawa, P.H. No.4, Khate Kramank 99, Village Lawa, Tahsil- Nagpur, Dist- Nagpur purchased by the assessee for a consideration of Rs.25,00,000/-. According to learned PCIT, the Assessing Officer ought not to have accepted the value of the property of Rs.33,81,750/- as against the stamp duty value of the said property of Rs.96,60,000/- thereby the income of Rs.62,77,250/- was not brought to tax. The ld. PCIT was of the

opinion that the Assessing Officer ought not to have accepted the valuation report of the registered valuer, as per which market value of the property in question was of Rs.33,81,750/- without referring the matter either to the DVO or causing enquiry as to the fair market value of the property. Thus, according to the Id. PCIT, the Assessing Officer had not applied his mind on the valuation report submitted by the appellant nor had adhered to the procedure prescribed u/s 50C of the Act. Accordingly, Id. PCIT held that order passed by the Assessing Officer u/s 143(3) of the Act on 30.10.2017 is considered to be erroneous and prejudicial to the interests of the revenue. Accordingly, a show-cause notice u/s 263 of the Act was issued on 12.09.2019 calling upon the appellant to show-cause as to why the assessment order should not be set-aside. In response to the said show-cause notice, the appellant filed a detail explanation vide his letter dated 14.11.2019 contending that the Assessing Officer had examined the issue of valuation of property in question and had chosen to make addition of Rs.8,81,750/- under the provisions of section 56(2)(vii)(b) of the Act based on the valuation report furnished by the appellant. Thus, it was contended

that it cannot be said that the Assessing Officer made the assessment without any application of mind. In support of this, reliance placed on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd., 203 ITR 108 (Bom.-HC) and the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Arvind Jewellers, 259 ITR 502 (Guj.-HC).

5. On due consideration of the above submissions, the ld. PCIT held that while completing the assessment, the Assessing Officer had accepted the value as per the valuer report of Rs.33,81,750/- as against the value of stamp duty purpose of Rs.96,60,000/- without application of mind on the provisions of section 50C r.w.s. 56(2)(vii)(b) of the Act. The ld. PCIT further held that the Assessing Officer should have made reference to the DVO as stipulated under the provisions of section 50C, without accepting the valuation report furnished by the appellant. According to the ld. PCIT, this amounts to error in the assessment order amenable to jurisdiction u/s 263 of the Act. Accordingly, ld. PCIT set-aside the assessment order with direction to the Assessing Officer to re-do the

assessment after giving reasonable opportunity of being heard to the assessee.

6. Being aggrieved by the revision order u/s 263, the appellant is before us in the present appeal.

7. The ld. AR for the assessee contended that the assessment order cannot be termed as “erroneous and prejudicial to the interests of the revenue”, inasmuch as, the Assessing Officer had passed the assessment order after due application of mind on the issue sought to be revised by the ld. PCIT. Without prejudice to this argument, it is contended that the land in question purchased by the assessee is agricultural land which does not come within the ambit of capital asset as defined under clause (d) of sub-section 56(2)(vii)(b) of the Act. He also submitted that the Tribunal at the time of adjudicating the validity of jurisdiction u/s 263 can also deal with the merits of the issue sought to be revised by the PCIT. The ld. AR also placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Mubarak Gafur Korabu vs. ITO, 117 taxmann.com 828 (Pune-Trib.) and the decision of Jaipur Bench of the Tribunal in the case of Yogesh Maheshwari vs. DCIT, 125 taxmann.com 273

(Jaipur – Trib.) in support of the proposition that the agricultural land cannot come within the purview of section 56(2)(vii)(b) of the Act.

8. On the other hand, ld. CIT-DR vehemently opposed the plea of the appellant, the lands in question are agricultural lands, which does not come within the ambit of section 56(2)(vii)(b). He submitted that this plea was taken for the first time before Tribunal and cannot be entertained as the assessee himself had admitted before the Assessing Officer as well as the ld. PCIT the lands in question are subject to provisions of section 56(2)(vii)(b) of the Act. Without prejudice to the above argument, it is submitted that the lands in question are not agricultural lands, it is open lands and, therefore, the ratio of the decision of the Co-ordinate Bench of this Tribunal in the case of Mubarak Gafur Korabu (supra) and the decision of Jaipur Bench of the Tribunal in the case of Yogesh Maheshwari (supra) have no application to the facts of the present case. In support of this contention that the lands in question are not agricultural lands, he placed reliance on the contents of the valuation report furnished by the assessee himself and the

submissions made before the ld. PCIT. Thus, he strongly supported the order of revision passed by the ld. PCIT u/s 263 and prayed for its sustenance.

9. We heard the rival submissions and perused the material on record. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous". Therefore, the issue which is required to be examined by us is whether the Assessing Officer carried out enquiry or verification on the issue of applicability of provisions of section 56(2)(vii)(b) in respect of

purchase of lands situated at Survey No.130, Mouza Lawa, P.H. No.4, Khate Kramank 99, Village Lawa, Tahsil- Nagpur, Dist- Nagpur during the course of assessment proceedings or not?. In the present case, no doubt, the Assessing Officer had examined the issue of applicability of section 56(2)(vii)(b) in respect of purchase of subject-lands, but merely accepted the valuation report furnished by the appellant without adhering to the provisions of section 50C of the Act. The Assessing Officer without going into the correctness of the valuation report merely accepted the valuation report furnished by the appellant. When the assessee objects the value as per the stamp duty valuation purpose, the only option available with the Assessing Officer is to refer the matter to the DVO as stipulated u/s 50C of the Act. In-fact, the Hon'ble Jurisdictional High Court in the case of CIT vs. PrabhuSteelIndustriesLtd., 36 taxmann.com 393 (Bombay) has clearly held that where the assessee objects the value adopted for stamp duty purpose, the only course available with the Assessing Officer is to refer the matter to the DVO. In the present case, the Assessing Officer without complying with the requirements of law

had simply accepted the valuation report as furnished by the appellant. The Assessing Officer not following the mandatory provisions of law would render the assessment order erroneous which is amenable to the jurisdiction u/s 263 of the Act. The contention of the ld. AR that it is an agricultural land does not come within the purview of section 56(2)(vii)(b) cannot be accepted for the reasons that :-

- (i) The issue whether the lands in question are agricultural was not pleaded either before the Assessing Officer or during the course of proceedings u/s 263 of the Act before the ld. PCIT.
- (ii) In-fact, the assessee himself had admitted before the Assessing Officer that the applicability of the provisions of section 56(2)(vii)(b) by submitting the valuation report. Thus, it does not form part of the record as it stands at the time of examination by the ld. PCIT.
- (iii) The revision proceedings are adversarial proceedings to an assessee. Therefore, an issue concluded against the assessee in the original assessment proceedings cannot be allowed to be agitated in the revision proceedings.

10. Therefore, without delving into the issue whether the agricultural lands come within the purview of section 56(2)(vii)(b),

suffice to hold that the decision of the Co-ordinate Bench of this Tribunal in the case Mubarak Gafur Korabu (supra) and the decision of Jaipur Bench of the Tribunal in the case of Yogesh Maheshwari (supra) do not come to the rescue of the assessee. In the light of the above discussion, we are of the considered opinion that the Id. PCIT was justified in assuming the jurisdiction u/s 263 of the Act by setting aside the assessment order. Thus, the issue raised in the grounds of appeal stands dismissed.

11. In the result, the appeal filed the assessee stands dismissed.

Order pronounced on this 07th day of March, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07th March, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-6, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.