

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 70/Ahd/2021
Assessment Year 2011-12**

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| Bimal Keshavlal Patel "Shivtej" Opp. Union Bank, Dharnidhar Char Rasta, Vasna, Ahmedabad 380007 & Gaurang R. Sanghavi Sanghavi & Co. CA's, Prasham Building 4 th Floor, Kastgruba Road, Rajkot-360001 PAN: AEAPP9517M (Appellant) | Vs | The Pr. CIT-1, Ahmedabad (Respondent) |
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**Appellant by : Shri Gaurang Sanghavi, A.R.
Respondent by : Shri A.P.Singh, CIT/D.R.**

Date of hearing : 02-08-2022
Date of pronouncement : 05-08-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee challenging the order dated 12.03.2021 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Ld.

Principal Commissioner of Income Tax-1, Ahmedabad relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case is that the assessee is an individual, deriving income from other sources. For the Assessment Year 2011-12, the assessee filed its Return of Income manually on 31.03.2012, declaring total income of Rs. 56,00,004/ The assessee purchased an immovable property vide sale deed No. 6279 dated 01.04.2010 jointly with one Shri Asit Bharatbhai Shah for a total consideration of Rs. 81,00,000/- and the stamp duty valuation was Rs. 96,69,600/-. The entire sale consideration of Rs. 81,00,000/- was paid by Shri Asit Bharatbhai Shah (co-owner).

2.1. The assessee case was reopened u/s. 147 on the ground that the assessee has not filed Return of Income for the Assessment Year 2011-12 wherein the assessee purchased the immovable property worth of Rs. 81,00,000/-. Thus, the Assessing Officer has reason to believe that assessee's income escaped for the assessment with the tune of Rs. 81,00,000/- and assessment was reopened. In response to the 148 notice, the assessee e-filed its Return of Income on 07.06.2018 declaring sale consideration total income of Rs. 56,00,004/-. The assessee was issued with various notices u/s. 142(1) of the Act. The assessee replied that he is the co-owner of the immovable property purchased along with Shri Asit Bharatbhai Shah who has paid the entire sale consideration, which has been reflected in the registered sale deed. Further the bank statement of Shri Asit Bharatbhai Shah was also produced.

2.2. After going through the same, the assessing officer accepted the returned income and completed the reassessment vide order dated 21.12.2018. Subsequently, the Ld. PCIT issued a show cause notice dated 09.02.2021 that the reassessment order passed by the Assessing Officer was without examining the applicability of provisions of Section 56(2)(vii)(b) of the Act. Therefore the same is erroneous as well as pre-judicial to the interest of Revenue, within the meaning of Section 263 of the Act. The assessee replied that the provisions of Section 56(2)(vii)(b) does not arise in this case since the sale deed executed was cancelled vide Cancellation Deed dated 26.02.2013 due to defects in the title of the immovable property. Pursuant to cancellation deed the amount of Rs. 81,00,000/- was returned back by the original landlord. Thus the reassessment order neither erroneous nor pre judicial to the interest of Revenue and no question invoking provisions of Section 56(2)(vii)(b) of the Act, therefore requested to drop the revision proceeding. The assessee also produced before the Ld. PCIT the copy of the Cancellation Deed dated 26.02.2013.

2.3 However, the Ld. Pr.CIT passed the impugned order which reads as follows:

4.1 The reply filed by the assessee has been perused. The submissions of the assessee may be acceptable subject to detailed examination and cross verification of relevant documents, if his contentions are found duly substantiated. Therefore, the same may be examined by the Assessing Officer and necessary enquiries and verification may be conducted so as to draw appropriate inferences in accordance with correct legal provisions. Accordingly, by virtue of the powers vested in me u/s. 263 of the Act, I hereby set aside the order passed u/s. 143(3) r.w.s 147 of the Act on 21.12.2018 and direct the Assessing Officer to pass a fresh assessment order after carrying out necessary

examination to verify the contentions of the assessee in the light of relevant evidences and draw appropriate inferences in accordance with correct legal provisions.

2.4. The Id. Counsel Mr. Gaurang Sanghavi appearing for the assessee submitted that the Ld. PCIT has clearly mentions in his revision order, that the submissions of the assessee may be acceptable subject to detailed examination and cross verification of relevant documents, if his contentions are found duly substantiated. Therefore the same may be examined by the A.O. by conducting necessary enquiries and verification to draw appropriate inferences in accordance with correct legal provisions. Thus, Ld. PCIT set aside the assessment order passed by the A.O. The assessee has produced before the Ld. PCIT copy of the Cancellation Deed dated 26.02.2013 and cancellation of the sale transactions on the ground of defects in the title deed of the immovable property. Thus the entire sale consideration was returned back by the original owner of the immovable land. Thus there is no question of applicability of provisions of Section 56(2)(vii)(b) of the Act. The assessee also produced copy of cancellation deed before the Assessing Officer while passing the reassessment order dated 21.12.2018. Therefore the assessing officer has not invoked the provisions of Section 56(2)(vii)(b) of the Act. Thus the order passed by the A.O. is neither erroneous nor prejudicial to the interest of the Revenue. Therefore the revision order is liable to be quashed.

3. Per contra, the Ld. D.R. Shri A.P. Singh appearing for the Revenue supported the Revision order passed by the Ld. PCIT.

4. We have given our thoughtful consideration and perused the materials available on record. The assessee filed its original Return of Income manually on 31.03.2012 and pursuant to 148 notice the assessee filed his Return of Income by e-filing on 07.06.2018 and also disclosed the purchase of immovable property. Later the sale transaction itself was cancelled vide Cancellation Deed dated 26.02.2013. The Assessing Officer after considering the above transaction and submissions of the assessee, accepted the Returned Income filed by the assessee and passed the reassessment order on 21.12.2018. The Ld. PCIT in his 263 order has concluded that the submission of the assessee may be acceptable and requires to be examined and verified by the Assessing Officer. Thus he set aside the assessment order. The question to be decided now is whether the reassessment order passed by the A.O. is an erroneous order and prejudicial to the interest of Revenue or not? In our considered view, the order is not an erroneous order, since the Sale Deed itself got cancelled vide Cancellation Deed dated 26.02.2013 and the entire sale consideration of Rs. 81,00,000/- was repaid to the assessee. Thus the question of invoking Section 56(2)(vii)(b) does not arise in the facts of the present case of the assessee. Further the Ld. PCIT has not pointed out what is the error in the reassessment order passed by the Ld. A.O. and how it is prejudicial to the Interest of Revenue whereas the Ld. PCIT in his conclusion, accepts the submission of

the assessee, cancellation of Sale Deed, etc., but require further examination and verification. This cannot be a ground to invoke Revision proceedings u/s. 263 of the Act.

4.1. The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT reported in 243 ITR 83 held as follows:

"A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

4.2. Thus respectfully following the above Supreme Court ruling, the reassessment order passed by the Assessing Officer is neither erroneous nor pre judicial to the interest of Revenue for invoking Section 56(2)(vii)(b) of the Act for the reason that the sale deed was cancelled vide Cancellation Deed dated 26.02.2013. Therefore the invocation of Revision proceedings by the Ld. PCIT is unjustifiable and the same is hereby quashed.

5. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 05-08-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 05/08/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद