

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
(Virtual Hearing)  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 167/Hyd/2021  
(निर्धारण वर्ष / Assessment Year: 2015-16)

Ahmed Alam Khan, Hyderabad [PAN No. AEUPK2295K]	Vs. Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Sashank Dundu, AR  
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 24/01/2024  
घोषणा की तारीख/Pronouncement on: 26/03/2024

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 18/05/2020 passed by the learned Pr.Commissioner of Income Tax-2, Hyderabad ("Ld. PCIT") under section 263 Income Tax Act, 1961 ('the Act') in the case of Ahmed Alam Khan ("the assessee") for the assessment year 2015-16, assessee preferred this appeal.

2. It could be seen from the record that there is a delay of 258 days in preferring this appeal and the reason attributed for the delay in filing the appeal to the pandemic. As a matter of fact, though the learned DR does not concede to condone the delay, there is no denial of the fact that the Hon'ble Supreme Court in the Suo Motu proceedings in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 held that in cases, where the limitation would have expired during the period between 15/03/2020 and 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01/03/2022, and in the event of actual balance period of limitation remaining with effect from 01/03/2022 is greater than 90 days, that longer period shall apply. The limitation period applicable to this appeal is covered by the above decision and, therefore, this appeal shall be treated as filed within the period of limitation. We, therefore, now shall proceed to hear the appeal on merits.

3. Assessee is an individual claiming to have been deriving income from salary, capital gains and income from other sources. For the assessment year 2015-16, he filed the return of income on 21/09/2016 declaring an income of Rs. 65,21,520/-. The return was selected for the limited scrutiny to examine the sale consideration of property in ITR, which is less than the sale consideration reported from Form 26QB and large deduction claimed under section 54B, 54C, 54G and 54GA of the Act. During the assessment proceedings, learned Assessing Officer by way of notice under section 143(2) of the Act, asked information relating to the sale consideration for computing capital gains and also about the correctness of capital gains claimed. Assessee claims to have submitted

the information and finally, by order dated 29/12/2017 learned Assessing Officer recorded that the assessee furnished copies of acknowledgement of return of income in ITR-3, copy of the balance sheet, P&L Account and computation statement for the year ended 31/03/2015 and various details during the hearing and after examination and verification of details and particulars produced, the assessment was completed by accepting the return of income filed by the assessee.

4. Subsequently, on a perusal of record, learned PCIT was of the opinion that the property sold cannot be considered as a residential house to which deduction under section 54 of the Act, is eligible since the said property is only a shed of 400 Sft. on an open plot admeasuring 1861 sq. yds.; that there is no evidence of any assessment number or any electricity service connection number or any HMWSS connection number for the purpose of drinking and sewage supply mentioned in the registered document for the said residential property, the assessee has not purchased or invested in new house within the time allowed by law; that only panchayat approval for construction of house has been considered by learned Assessing Officer without there being any approved plan or any documentary evidence of the building constructed; that the claim of assessee that the construction has been carried out by M/s. Sky Bridge Constructions has been accepted without bringing on record evidences as called for by the learned Assessing Officer; that assessee advanced a loan to one of the partners of M/s. Sky Bridge Constructions before 31/03/2013, as per the confirmation of the partner vide his letter dated 14/12/2017; that the assessee projected as if the said loan is an advance for the construction of the house which prima facie is an afterthought and

such advance given more than one year before the sale of said asset which was under consideration could not have been considered as advance for reinvestment purpose; and that the claim of reinvestment was not supported with any evidences i.e. plan of the building, photographs of interior, though asked by learned Assessing Officer vide letter dated 21/12/2017. On this premise, learned PCIT proposed to treat the deduction of Rs. 6,55,38,794/- framed under section 54 of the Act as an escapement and to bring the same as long term capital gains.

5. After considering the written submissions dated 04/03/2020, learned PCIT passed the impugned order under section 263 of the Act, holding that the property sold cannot be considered as a residential house property, since there is no reference to any municipal assessment number or any electricity service connection number or any HMWSS connection number for the purpose of drinking and sewage supply mentioned in the registered document for the said residential property on the sale of which exemption under section 54 of the Act explained by the assessee; that assessee failed to deposit the whole or part of the proceeds in any capital gains deposit scheme before the due date of filing return; that panchayat approval given for construction of house should not have been considered without there being any approved plan or any documentary evidence of the building constructed, and no evidence furnished to prove the genuineness of the fact that construction was carried out by M/s. Sky Bridge Constructions; that the assessee advanced a loan to one of the partners of M/s. Sky Bridge Constructions and projected the same as an advance for construction of the house, which prima facie is an afterthought.

6. On this premise, learned PCIT held that the assessment order is not only erroneous, but also prejudicial to the interest of Revenue and accordingly set it aside to the file of the learned Assessing Officer with a direction to pass a fresh order in the light of the observations made in the order under section 263 of the Act, after affording an opportunity of being heard to the assessee.

7. Aggrieved by such an order, assessee preferred this appeal before us contending that the learned Assessing Officer made the correct assessment of income after making a thorough enquiry and perusal of the material produced by the assessee to show that the property that was sold was a residential property with municipal number, electricity connection and eligible for deduction under section 54 of the Act and, therefore, merely because learned PCIT entertains another opinion, it is not open for the learned PCIT to say that the learned Assessing Officer passed the order without making any enquiries, thereby resulting in the under assessment in respect of taxing of capital gains on conversion of capital asset into stock in trades and capital gains on sale of land. Further according to the learned AR, there is no non-application of mind on the part of the learned Assessing Officer inasmuch as the learned Assessing Officer raised a specific query as to whether the property sold under sale deed dated 11/04/2014 happens to be a residential house or an open plot of land and also whether construction of the new house was commenced earlier to the sale or after the sale.

8. Learned AR further submitted that during the course of assessment proceedings, the learned Assessing Officer made every sort of enquiry, and the assessee furnished all the material to the satisfaction of the learned

Assessing Officer and it is only after considering such submissions and material, the learned Assessing Officer had taken a legally probable view and, therefore, the same cannot be interfered with. Learned AR drew our attention to the notices dated 04/07/2017 and 03/08/2017 under section 143(2) of the Act and also the notices dated 29/09/2017 and 21/12/2017 whereunder various types of information was sought and also the replies made by the assessee and the documents like the copy of the sale deed dated 07/04/2014 executed by the assessee and the sale deeds dated 30/03/2005 in favour of the assessee in respect of the property that was sold.

9. Per contra, learned DR vehemently contended that the learned Assessing Officer did not make any enquiry on the aspect of sold property. In respect of the acquisition of new property, learned DR supported the impugned order stating that no panchayat approval is shown for the construction of such house and even according to the assessee, the assessee advanced a loan to one of the partners of M/s. Sky Bridge Constructions amounting to Rs. 5,69,40,000/- before 31/03/2013 and projected the same as an advance for the construction of the house and only inference that would flow from this conduct of the assessee is that it is only an afterthought and violation of section 54/54F of the Act since the loan was advanced before 31/03/2013 which is more than one year before the sale of the old asset on 07/04/2014. Learned DR submits that there is a lapse on the part of the learned Assessing Officer in not verifying all these facts and, therefore, learned PCIT rightly exercised the jurisdiction under section 263 of the Act.

10. We have gone through the record in the light of the submissions made on either side. It could be seen from the assessment order that this case was selected for limited scrutiny to examine (1) sale consideration of property in ITR is less than sale consideration reported in Form 26QB (Form 26QB and Schedule CG of ITR), and (2) large deduction claimed under section 54B, 54C, 54G and 54GA (schedule CG of ITR).

11. Learned Assessing Officer by way of notice dated 04/07/2017 to the assessee, requiring details as to the sale consideration for computing the capital gains by issuing notices and obtained the copy of the sale deed dated 07/04/2014 by the assessee, copies of the sale deeds dated 30/03/2005 in favour of the assessee, bank statement etc. along with reply. Learned Assessing Officer, by way of notice dated 29/09/2017 further required and obtained the details as to the long term capital gains during the year along with the computation statement and also on the aspect of eligibility for claiming deduction under section 54 of the Act along with supporting documents.

12. The details required and obtained by the learned Assessing Officer by way of these notices clearly show that the learned Assessing Officer caused sufficient enquiry on the aspect of the sale of residential house. Further, it is not in dispute that the assessee furnished the copy of sale deed executed by him in favour of Mr. P. Teja Raju and also the copies of the sale deeds under which he acquired such property. Copies of the sale deeds are available in the paper book. The sale deed dated 07/04/2014 clearly describes the property covered under it as the house bearing Nos. 8-2-293/82/A/783 and 8-2-293/82/A/783/1 on the Plot No. 783, admeasuring 1861 Sq. yards equivalent to 1556 sq. mts., together with the

total plinth area of 400 sft., in the layout of The Jubilee Hills Co-operative House Building Society Limited, situated at Road No. 39, Jubilee Hills, Hyderabad, in Sy. No. 403/1 (New 120) of Shaikpet Village and Sy. No. 102/1 of Hakimpet Village, Golconda Mandal, Hyderabad District. This property was purchased by the assessee under two sale deeds dated 30/03/2005 where it is similarly described as house bearing MCH No. 8-2-293/82/A/783 and 8-2-293/82/A/783/1 on the Plot No. 783, admeasuring 1196 Sq. yards and 665 Sq. yards respectively in the layout of The Jubilee Hills Co-operative House Building Society Limited, situated at Road No. 39, Jubilee Hills, Hyderabad, in Sy. No. 403/1 (New 120) of Shaikpet Village and Sy. No. 102/1 of Hakimpet Village, Golconda Mandal, Hyderabad District.

13. No intervening facts between the sale deeds dated 30/05/2005 and 07/04/2014 were brought on record by the learned CIT(A) to reach a different conclusion that what was sold by the assessee was not what he acquired. At no point of time, the factual position obtaining the sale deeds 30/05/2015 was in dispute nor is it the case of the Revenue that the assessee brought in any changes in the physical features of the property subsequent thereto. On his enquiries and perusal of the sale deeds, the learned Assessing Officer satisfied himself with the state of affairs obtaining through those documents. For that matter, learned CIT(A) also did not cause any enquiry as to the event subsequent to the sale deeds dated 30/05/2005 to entertain any doubt about such physical features.

14. Apart from this, by way of notice dated 21/12/2017, learned Assessing Officer also required information relating to the investment of capital gains in purchase/construction of new property in terms of section 54 of the Act, whether or not the long term capital gains was deposited in



any notified capital gains scheme, full details of construction of new property, namely, amount spent for construction of new property, date of commencement of construction, details of completion, approval of concerned authorities for such construction like clear plan of entire property, type of construction as to whether residential or commercial etc., photographs of the new property showcasing both the interiors and exteriors of the property constructed, confirmation from M/s. Sky Bride Constructions about the payment made by the assessee specifying the nature of payment, date of payment, mode of payment, status of construction activity carried out.

15. By way of reply, the assessee submitted that no other residential house was available as on the date of investment and submitted the copy of plan approved by Gram Panchayat, work order for construction and the details of payments made for construction of the new property. Assessee also submitted that photographs of the new house were enclosed. So also, the copy of confirmation letter from M/s. Skybridge Construction regarding the payment and construction work undertaken by them. Apart from this, the assessee maintained that the Inspector attached to the O/o. DCIT, Circle-2(2), inspected the new building, taken photographs and submitted a report and in fact it was submitted so before the learned PCIT by letter dated 04/03/2020.

16. There is nothing on record to show that the learned Assessing Officer did not make adequate enquiries on the aspects selected for limited scrutiny because a perusal of the information required under the notice dated 04/07/2017, 29/09/2017 and 21/12/2017 and the replies submitted by the assessee along with the documents like sale deeds, bank

statement, confirmation letters and also the report of the Inspector attached to the O/o. DCIT, Circle-2(2), who inspected the new building and took photographs leave no doubt in our mind as to the adequacy of the enquiry that was caused by the learned Assessing Officer.

17. In these circumstances, we do not find any substance in the impugned revision order to conclude that the assessment order is erroneous. In order to invoke the jurisdiction under section 263 of the Act, the twin conditions of error in the order and also prejudice to the interest of Revenue must be established independently. Since we do not find the assessment order to be erroneous, for failure of that condition, the impugned order cannot be sustained. Grounds of appeal are accordingly allowed.

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

Order pronounced in the open court on this the 26<sup>th</sup> day of March, 2024.

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 26/03/2024

TNMM

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Ahmed Alam Khan, C/o. M. Anandam & Co., Chartered Accountants,  
Flat No. 7A, Surya Towers, S.P. Road, Secunderabad.
2. Dy. Commissioner of Income Tax, Circle-2(2), Hyderabad.
3. Pr.CIT-2, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD