

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 648/Ahd/2024
Assessment Year 2019-20**

Prakash Khatri 1, Vaibhav Tenament, Gayatri Mandir Road, Dessa, Gujarat-385535 PAN: AHWPK4055G (Appellant)	Vs	The PCIT, Ahmedabad-3, Ahmedabad (Respondent)
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**Assessee Represented: Shri S.N. Soparkar, Sr. Adv. &
Shri Parin Shah, A.R.**

Revenue Represented: Shri Sudhendu Das, CIT-DR

Date of hearing : 14-08-2024

Date of pronouncement : 03-09-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against the Revision order dated 06.03.2024 passed by the Principal Commissioner of Income Tax (Appeals)-3, Ahmedabad, arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2019-20.

2. The brief facts of the case is that the assessee is an individual engaged in the business of land trading. For the Asst. Year 2019-20, Assessee filed his Return of Income on 30-09-2019 declaring total income of Rs.23,49,930/- wherein salary income of Rs.25,34,930/, Long Term Capital Gain of Rs.11,46,723/- and Other Sources of Rs.19,542/-. The assessee claimed losses of current year of Rs.11,66,265/- and claiming the refund of Rs.20,58,130/-. During scrutiny assessment, the Assessing Officer made additions u/s. 68 of Rs.15,65,167/- and cash deposit of Rs.93,14,000/- and unsecured loan amounting to Rs.70,74,034/- and demanded tax thereon.

3. On verification of the assessment record, the Ld. PCIT found as per 26AS the assessee sold property of Rs.3,65,00,000/- during the year. However, the A.O. had taken only Rs.2,35,00,000/- while finalizing the assessment order which has resulted into escapement of Rs.1,30,00,000/- and also incorrect calculation of a sum of Rs.83,82,600/- towards cash deposit in bank account. Therefore the assessee was issued a show cause notice as to why not make an addition of Rs.2,13,82,6000/- and revise the assessment order.

3.1. In reply, the assessee submitted that he is director in the company named "Vaibhav Corporation Pvt. Ltd." and the company sold the property for Rs.1,50,00,000/- and not by the assessee. However in Form 26AS it is by mistake the sale transaction is reported in the name of the assessee instead of "Vaibhav Corporation Pvt. Ltd." Further the purchaser of the property made TDS of Rs.1,50,000/- only in the name of "Vaibhav Corporation

Pvt. Ltd.” which is reflecting in Form 26AS and annexed the copy of the Sale Deed. Further after receipt of Revision notice, the assessee made an application with the Sub Registrar Vadodara-3 to provide the details of transaction reflected in Form 26AS in the registration records. In response, the assessee received a reply from Sub Registrar Vadodara-3 dated 02-01-2024 wherein it was mentioned that no sale transaction is booked on 28-03-2019 in the PAN Number of the assessee. The reply received from Sub-Registrar was annexed as Annexure-E. Thus the assessee stated that there is no escapement of income to the extent of Rs.1,30,00,000/- and requested to drop the Revision proceedings.

3.2 However the Ld. PCIT held that the Assessing Officer has not made proper verification of the above details at the time of framing of assessment, which is an erroneous order and prejudicial to the interest of Revenue. Further the claim of the assessee that one of the land of Rs. 1,50,00,000/- in Form 26AS does not pertain to him but pertains to “Vaibhav Corporation Pvt. Ltd.” requires further verification at the end of the AO but he failed to make correct addition u/s. 68 of the Act and failed to consider the cash deposit thereby under assessment of income by Rs.83,82,600/-. Thus the Ld. PCIT set aside the assessment order and directed the Assessing Officer to pass fresh order and compute correct taxable income by giving opportunity of hearing to the assessee.

4. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. Ld. Pr. CIT Ahmedabad-3 erred in law and on facts revising an assessment order which is neither erroneous nor prejudicial to the interest of Revenue.

2. Ld. Pr. CTT erred in law and on facts holding order erroneous and prejudicial to the interest of revenue on the alleged ground that AO failed in correctly work out undisclosed income after considering correct sale value of land as per Form 26AS.
 3. Ld. Pr. CIT erred in law and on facts in revising the order on the alleged ground that AO made addition of Rs.1,71,73,912/- taking value of properties sold during the year @ Rs.2,15,00,000/- instead of Rs.1,65,00,000/-a reflected in Form 26AS which resulted in under assessment of Rs.1,30,00,000/-income.
 4. Ld. Pr. CIT erred in law and on facts not appreciating the fact that sale value of Rs. 1.5 crore was mistakenly shown in 26AS of the appellant that belonged to Vaibhav Corporation & TDS on sale of property was also reflected in the name of Vaibhav Corporation substantiated by response of Sub registrar Vadodara 3(Akota).
 5. Ld. Pr. CIT erred in law and on facts holding order erroneous and prejudicial to the interest of revenue on the alleged ground that though AO made addition of Rs.93,14,000/- cash deposited in the bank account u/s 68 r ws 115BBE while computing tax on total income made addition of only Rs. 9,31,400/-
 6. Ld. Pr. CIT erred in law and on facts directing AO to compute tax on total income of Rs.4,28,43,240/- in place of Rs. 3,44,60,640/- by adding only 10% of cash deposit in the bank is a rectifiable mistake not for revising the order.
 7. Ld. Pr. CIT erred in law and on facts holding the order erroneous on the alleged ground of AO not conducting proper inquiry into sale value of property as reflected in 26AS but not belonging to the appellant is against principles of natural justice.
5. Ld. Senior Counsel Shri S.N. Soparkar appearing for the assessee drawn our attention to the reply filed by the assessee before Ld. PCIT as well as the copy of the Sale Deed dated 27.03.2019 executed for a consideration of Rs.1,50,00,000/- by its director “Vaibhav Corporation Pvt. Ltd.” and not by the assessee. Ld. Counsel further drawn our attention to the Form 26AS in the case of the assessee as well as that of “Vaibhav Corporation Pvt. Ltd.” wherein TDS @ 1% on the sale consideration of Rs.1,50,000/- was made on 28.03.2019 by the buyer of the property. Ld. Counsel also drawn our attention to the reply filed by Sub Registrar,

Vadodara confirming that the assessee has not entered into any transaction of immovable property on 28-03-2019. Thus pleaded the Revision proceedings initiated by the Ld. PCIT is not sustainable in law since there is no escapement of income and the assessment order is not an erroneous order and prejudicial to the interest of Revenue.

6. Per contra Ld. CIT-DR appearing for the Revenue supported the order passed by the Ld. PCIT and requested to uphold the same.

7. We have given our thoughtful consideration and perused the materials available on record. It is clearly stated by the assessee with proper records before Ld. PCIT explaining that the sale of property was done by the “Vaibhav Corporation Pvt. Ltd.” and not by the assessee and relevant Form 26AS that of the company was also produced confirming the TDS @ 1% made by the purchaser of the property. Further from perusal of the Sale Deed, the assessee name is nowhere reflecting in the registered Sale Deed dated 28.03.2019. In addition to this the letter dated 04.01.2024 from Sub Registrar, Vadodara has stated that there was no transaction of the property on 28.03.2019 by the assessee. When such evidences are filed by the assessee before Ld. PCIT, he ought to have dropped the Revision proceedings. However he set aside the issue back to the file of Assessing Officer for verification which in our considered view against the provisions of section 263 of the Act, more so when the assessment order is neither erroneous nor prejudicial to the interest of Revenue. Further incorrect calculation of income is liable to be rectifiable under section 154 of the Act and

not by invoking Revision proceeding u/s. 263 of the Act. Thus the Revision order passed by Ld. PCIT is hereby liable to be quashed.

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

Order pronounced in the open court on 03 -09-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 03/09/2024

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