

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DELHI**

**Before Ms. Suchitra Kamble, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1817/Del/2020 : Asstt. Year: 2015-16**

Rajani Venkata Naga Annavarapu Narayana, A-14, Mangal Co-operative Group Housing Society Ltd., Vasundhara Enclave, Delhi-110096	Vs	PCIT-20, New Delhi
<b>(APPELLANTT</b>		<b>(RESPONDENT)</b>
<b>PAN No. AGBPN4766D</b>		

**Assessee by : Sh. Manoj Kumar, CA**

**Revenue by : Ms. Pramita M. Biswas, CIT DR**

**Date of Hearing: 14.06.2021**

**Date of Pronouncement: 16.06.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. PCIT-20, New Delhi dated 18.03.2020.

2. Following grounds have been raised by the assessee:

*"1. That the Ld. PCIT 20 has erred on facts and in law in invoking the provisions of sec 263 on untenable and illegal grounds. Hence, the order passed under section 263 may be vacated.*

*2. That the Ld PCIT 20 has erred on facts and on law in invoking the provisions of sec 263 as he is not jurisdictional PCIT of the appellant. Hence, the order passed under section 263 may be vacated.*

*3. That the Ld PCIT 20 has erred on facts and in law in invoking the provision of section 263 on account of*

*calculation of capital gain on sale of property ignoring the fact that the case for scrutiny was selected on limited grounds and calculation of capital gain was not part of it. Hence, the order passed under section 263 may be deleted.*

*4. That the Ld PCIT has erred on facts and in law in passing the order under sec 263 ignoring the facts that the issue of capital gain was inquired by the Ld AO and hence this is not a case of erroneous order and hence order passed by Ld PCIT 20 may be quashed.*

*5. That the Ld PCIT 20 has erred on facts and in law in passing the order under sec 263 ignoring the facts that the capital gain has been correctly calculated and hence this Is not a case of prejudice to the revenue and hence order passed by Ld PCIT 20 may be quashed.”*

3. All the grounds of appeal, in substance, relate to the contention that the proceeding initiated and order passed u/s 263 by Id. PCIT is liable to be quashed as it is bad in law, without jurisdiction.

4. The facts of the case are that the return of income for the year under consideration was filed on **21.08.2015** declaring income of **Rs.67,050/-**. The case of the appellant was selected for limited scrutiny. **The issues of limited scrutiny were:-**

**I) Cash deposit**

**II) Purchase of property**

5. The Id. PCIT issued notice dated 31.01.2020 u/s 263 of the Act asking the assessee to furnish reply by **07.02.2020**. The said notice is enclosed in the paper book at page no. 1 & 2. Para 2 to 4 of this notice is reproduced as under for ready reference:

"2. Your case had been selected for "Limited Scrutiny" under CASS on the following reasons:

1. Large cash deposited in saving bank account.
2. Purchase of property.

The assessment was completed u/s 143(3) at total income of Rs.12,32,050/- after making the addition of Rs.11,65,000/- u/s 68 of the Income Tax Act.

3. You have purchased a property, GF-58, Ground Floor, Vardan Apartment Abhay Khand -III, Indirapuram, Ghaziabad on 28/01/2015 for Rs. 66,50,000/-, in which you own 50% share. Also you have sold property having address "C-1/13, Mangal Co- op. Group Housing Society Ltd. Plot No. 16, Vasundhara Enclave Delhi-96 on 24/12/2014 for Rs.1,22,98,000/- in which you hold 50% ownership. The sale proceed was utilized for the purchase of property GF-58, Ground Floor, Vardan Apartment Abhay Khand -III, Indirdpuram, Ghaziabad. In the case of sale of property No. C-1/13, Mangal Co-operative Group/housing Society Ltd., Vasundhara Enclave, Delhi you have shown long term capital gain at Rs.38,01,397/- and the same amount has been claimed as deduction u/s 54 of the Act. On perusal of record, it is noticed that the long term capital gain on sale of this property comes to Rs.49,75,198/- (full value consideration Rs.61,49,000/- which is 50% share, less deduction u/s 48 of the Act of Rs.11,73,801/-) and the claim u/s 54 should be restricted to Rs.38,01,397/- (the 50% share cost of property purchase). Hence, the balance amount of Rs.11,73,801/- should have been brought to tax. The AO has failed to bring to tax capital gain of Rs.11,73,801/-. The above computation is as per figure provided by you during assessment proceeding.

In addition, it is further observed that you have claimed a sum of Rs.4,62,000/- towards repair and white wash of property purchased. This is not admissible as deduction u/s 54.

*You have also claimed cost of improvement of Rs.3,62,667/- and expenditure incurred wholly and exclusively for transfer of property of Rs.1,72,980/-. This is admissible only if evidence of such expense is produced.*

*Similarly expense of Rs.1,33,000/- claimed as Brokerage expense toward purchase of new house is admissible only if evidence of expense is produced. No such evidence have been found in record and to this extent the AO has failed to carry out adequate verification.*

*4. In view of the above, it is apparent that assessment in this case has been completed without verifying aspects. In other words, the order of the AO under discussion is erroneous in so far in the course of assessment proceeding as it is prejudicial to the interest of revenue."*

6. Heard the arguments of both the parties.

7. The primary contention of the Id. AR is that the case of the assessee has been selected for limited scrutiny on two grounds viz. verification of cash deposits, verification of Purchase of property only and expanding the scope of scrutiny by the way of order u/s 263 is legally not valid.

8. On the other hand, the Id. DR argued that the Id. PCIT has got wider powers to examine the entire case to plug the loopholes and leakage of revenue. The written submission of the Id. DR is as under:

*"In this regard, it is humbly submitted that Explanation 2 has been inserted in Section 263 of I.T. Act by Finance Act 2015 w.e.f. 01.06.2015 which is reproduced below:*

*Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—*

*(a) the order is passed without making inquiries or verification which should have been made;*

*(b) the order is passed allowing any relief without inquiring into the claim:*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

*In the above case, it is humbly submitted that the following decision may kindly be considered with regard to validity of proceedings u/s 263 of I.T. Act:*

*1. Hon'ble Supreme Court in the case of Deniel Merchants Pvt. Ltd. vs. ITQ (Appeal No. 2396/2017) dated 29.11.2017. In this group of cases, Hon'ble Supreme Court has dismissed SLPs in cases where AO did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry out thorough and detailed inquiry.*

*2. BSES Raidhani Power Ltd. Vs PCIT [2017] 88 taxmann.com 25 (Delhi)/[2017] 399 ITR 228 (Delhi)*

*Hon'ble Delhi High Court held that non-consideration of larger claim for Rs. 298.93 crores as depreciation and consideration of only a part of it being Rs. 6.45 crore by Assessing Officer, who did not go into issue with respect to whole amount, was an error, that could be corrected under section 263. Commissioner has power to consider all aspects which were subject matter of Assessing Officer's order, if in his opinion, they were erroneous, despite assessee's appeal on that or some other aspect.*

3. *Surya Financial Services Ltd. Vs PCIT (I.T.A. No.2158/DEL/2017) ITAT Delhi Where Hon'ble ITAT Delhi held that when AO fails to carry out adequate enquiry about alleged accommodation entries in the name of the assessee, the Pr. CIT rightly invoked provisions of section 263 of the Act to reopen the assessment.*

4. *Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (3C)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC) where Hon'ble Supreme Court held that where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified.*

5. *Raimandir Estates (P.) Ltd. Vs PCIT 170 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512]*

*where Hon'ble Calcutta High Court held that where assessee with a small amount of authorised share capital, raised a huge sum on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees and Assessing Officer passed assessment order without carrying out requisite enquiry into increase of share capital including premium received by assessee, Commissioner was justified in treating*

*assessment order as erroneous and prejudicial to interest of revenue.*

6. *Raimandir Estates (P.) Ltd. Vs PCIT T2017] 77 taxmann.com 285 (SC)/r20171 245 Taxman 127 (SC)*

*Hon'ble Supreme Court has dismissed SLP against High Court's ruling that where assessee with a small amount of authorised share capital, raised huge sum on account of premium, exercise of revisionary powers by Commissioner opining that this could be a case of money laundering was justified.*

7. *Commissioner of income Tax Mumbai Vs Amitabh Bachan Civil Appeal 5009 of 2016 dated May 11th 2016 (SC)*

*Where Hon'ble Supreme Court admitted the SLP of the Revenue and held that the Commissioner was justified in invoking section 263 in view of the reasons recorded in the show cause notice issued after completion of assessment proceedings since he felt the matter needed further investigation. Making a claim which would prima facie disclose that the expenses in respect of which deduction has been claimed has been incurred and thereafter abandoning/withdrawing the same gives rise to the necessity of further enquiry in the interest of the Revenue."*

9. Heard the arguments of both the parties and perused the material available on record.

10. We have gone through the notice issued by the revenue dated 29.09.2016 wherein the AO mentioned that two issues have been identified for examination which were

- a. Verification of cash deposits
- b. verification of purchase of property

11. From the record, we find that the complete details pertaining to both the issues have been examined by the AO and the replies of the assessee dated 27.10.2017 along with the details of purchase of property and registration document. The entire details of the said two transactions which are the subject matter of scrutiny have been duly provided and examined by the AO and duly accepted after examination and verification.

12. We find that the Id. PCIT has also mentioned at para no. 2 that the case has been selected for limited scrutiny under CASS. On going through order u/s 263, we find that the order u/s 263 passed by the Id. PCIT dwelled into the issue of "re-computation of capital gains" which is beyond the mandate of the limited scrutiny issued by the CBDT. Hence, the directions of the Id. PCIT which are beyond the selection criteria of scope of scrutiny for the instant year cannot be held to be legally valid.

13. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 16/06/2021.

Sd/-

**(Suchitra Kamble)**  
**Judicial Member**

**Dated: 16/06/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**