आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 31/CHD/2021
Assessment Year : 2015-16

Shri Surjeet Singh, # 321, Industrial Area, Phase-9, Mohali.	बनाम VS	The Pr.CIT, Chandigarh-1.
स्थायी लेखा सं./PAN /TAN No: ADNPS7862E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT-DR
तारीख/Date of Hearing : 22.06.2022
उदघोषणा की तारीख/Date of Pronouncement : 04.08.2022

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee wherein the correctness of the order dated 23.03.2021 of ld. PCIT Chandigarh pertaining to 2015-16 assessment year is assailed on the following grounds :

1. *That the Ld. Principal Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 19.05.2017 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his competence.*
2. *That the Ld. Principal Commissioner of Income Tax has erred in failing to consider the various replies and submissions placed on record in proceedings before her in the correct perspective which is arbitrary and unjustified.*
3. *That the assessment order having been passed by the Assessing Officer after due application of mind and taking into consideration the various*

replies, material on record and books of account, the action resorted to by the Principal Commissioner of Income Tax is unwarranted and uncalled for.

4. *That the Ld. Principal Commissioner of Income Tax has failed to carry out any enquiry during the course of revisionary proceedings in respect of the issues being raised by her which is mandatory and as such the order passed by her is arbitrary and unjustified.*
5. *That the issues in respect of investment in house property u/s 54F and 54EC was scrutinised by the Assessing Officer in depth and as such revising the order passed by the Assessing Officer is arbitrary and unjustified*
6. *That the order of Commissioner of Income tax is erroneous, arbitrary, opposed to the facts of the case and is unsustainable in law.*

2. Briefly the facts are that the Assessing Officer passed an order u/s 143(3) dated 19.05.2017 wherein addition was made in regard to a Long Term Capital Gain where certain discrepancy in sale proceeds of SCF sold was noticed by the Assessing Officer. This order is set aside by the ld. PCIT by an order u/s 263 dated 19.05.2017.

3. Assessee is aggrieved.

4. The ld. AR inviting attention to the assessment order dated 19.05.2017 passed u/s 143(3) of the Income Tax Act submitted that the issues raised by the ld. PCIT stood fully enquired into by the AO. The reason for selection under CASS for the specific purpose has been noticed by both the authorities i.e. AO and the ld. PCIT in their respective orders. The AO has called forth for all necessary information, examined the same faulted the assessee and only then passed the order. The AO considering the facts scrutinized the relevant provisions and required the assessee to explain and justify the

claim of deduction u/s 54, 54F and 54EC etc. and the calculations made were cross checked and thereafter he made an addition. The assessee acknowledged that a mistake had been made in including a portion of the sale proceeds and corrected it. Referring to the record, it was submitted that the AO has taken cognizance of the fact that the assessee had sold the specific SCF for a specific amount which is not in dispute. The bifurcation of the sale proceeds has been considered by him. 67% of the sale proceeds, it was submitted, were attributed to the commercial portion of the property and 33% of the sale proceeds were attributed to the residential part. This has been enquired into by the AO. It was submitted that the ground and first floor of the SCOs are for commercial user of the property and on the second floor residential user is permitted. It was submitted that after examining the issue at length, the AO has taken note of the deduction claimed u/s 54F, 54EC and u/s 54. This fact, it was submitted, has been noticed by the ld. PCIT also in the impugned order. Referring to the order under challenge, it was submitted, that the fact that the specific case was subjected to limited scrutiny under CASS for the specific reasons has also been noticed by the ld. PCIT. The reasons as per record of the AO as well as the ld. PCIT were the same. These have been extracted in this order for completeness:

"1. Sale of Property Mismatch
2. Mismatch in income/Capital gain on sale of land or building
3. Deduction claimed under the head Capital Gains

4.1 Despite the evidences to the contrary, it was submitted, the ld. PCIT has wrongly held that the AO had accepted the version of the assessee without verification and allowed deduction u/s 54, 54F and 54EC. Carrying the Bench through the impugned order and the record specifically Show Cause Notice to the assessee through the ITBA Portal. (Vide DIN & Notice No. ITBA/REV/REV1/2020-21/10313867091(1) dated 0.03.2021) and the reply made available on behalf of the assessee, it was submitted that the order passed by the ld. PCIT is an order not sustainable in law. The order of the Assessing Officer, it was submitted, was passed after due enquiries and no fault/error has been pointed out therein except for suspicions of the ld. PCIT.

4.2 Before elaborating these issues, ld. AR submitted that at the outset, apart from these arguments, the challenge to specific paras 5.3 and 5.4 of the order was also made on the grounds that on these issues, no notice was issued to the assessee by the ld. PCIT. As a result of this, it was submitted that there was no opportunity provided to the assessee to make a representation on the issues. Such an act, it was submitted, is contrary to the settled legal position.

4.2.1 On merits, it was submitted that these issues also stood enquired into and considered by the AO. Calculation error also stood addressed by the AO and on the timelines qua 54EC, the view taken by the AO it was submitted, is well settled legally in assessee's favour. Hence is covered in assessee's favour as the AO took a possible view which is not shown to be incorrect. Thus, the objections of the ld. PCIT even on merits has no legal foot hold. However, maintaining the primary objection that on this issue, the ld. PCIT did not issue any Show Cause Notice, hence, the authority cannot proceed arbitrarily.

4.3 Reverting back to the Show Cause Notice dated 10.03.2021 extracted in the impugned order itself the ld. AR assailed the same relying on the reply of the assessee extracted in para 3.1 at pages 3 to 7 also extract in the impugned order.

4.4 While referring to the same, it was submitted that the allegation that the new asset purchased by the assessee was not registered with the appropriate state revenue authority it was argued that it was not relevant issue for consideration. The PCIT's Show Cause Notice required the assessee to explain that why without registration of the new asset, the transaction should not be considered to be incomplete. The said objection, it was submitted, has been explained to be addressed in the reply extracted in the order itself and the inference has been

submitted to be not relevant or sustainable. It has been stated that the asset was already in the possession of the assessee and hence Section 53A of the Transfer of Property Act did not apply. It was also submitted that it was argued that this fact was specifically enquired into by the AO in the course of the assessment proceedings while examining the deductions claimed. It was submitted that this reply of the assessee before the PCIT had been filed alongwith documentary evidence in the shape of Agreement to sell, bank statements, receipt of amount by the buyer etc. Relying on the same, it was argued that the assessing officer after due application of mind, allowed the deduction claimed. It was submitted that it had also been argued that there is no requirement in law that the agreement to sell has to be registered for the purpose of claiming deduction u/s 54/54F etc.

4.5 Reliance in the written submissions before ld. PCIT it was submitted, had been placed on the case of **Anil Bishnoi reported in 167 ITD 381.** Reliance was also placed on **Sanjeev Lal Vs CIT (2014) 365 ITR 389 (S.C).** These submissions re-iterated in the order are heavily relied upon by the assessee. Referring to this decision extracted in page 4 of the impugned order, it was submitted that the assessee had submitted that in the said case, the Hon'ble Supreme Court observed that *though in normal circumstances by executing an agreement to sell in respect of immovable*

property, a right in personam is created in favour of the transferee/vendee and when such a right is created, the vendor is restrained to sell the said property to someone else because the transferee has got a legitimate right to enforce specific performance of said agreement to sell. In normal circumstances, it cannot be said that entire property have been sold at the time when agreement to sell is entered into. However, looking at the provisions of section 2(47) of the Income-tax Act, 1961, 'transfer' in relation to the capital asset is complete if a right in a property is extinguished by executing an agreement to sell, the capital asset can be deemed to have been transferred. The Hon'ble Supreme Court thus held that the transfer was complete on the execution of agreement to sell and that the assessee was entitled to claim of deduction u/s 54 in respect of purchase of new residential house subsequent to such transfer through agreement to sell." Referring to pages 4 to 7 of the impugned order, it was submitted that before the ld. PCIT, the assessee had also placed reliance upon decision of the Hon'ble Supreme Court in the case of **T.R. Ardvinda Reddy (1979) 120 ITR 46 (S.C)**; decision of Hon'ble Bombay High Court in the case of **Dr. Laxmichand Narpal Nagda (1995) 211 ITR 804 (Bom)** and decision of ITAT Bangalore Bench in the case of **Shri Bassheer Noorullah Khan (ITA 575/Bang/2019)** to support the case that the AO took a view which had judicial sanction. It was submitted that copy of this decision has been placed by the assessee in its first Paper Book at Sr.No. 6 available at specific pages 28 to 36. Copies of the

other decisions have been separately filed in the Paper Book. Attention again was invited to the copy of the reply dated 22.03.2021 available at Paper Book pages 20-22 also. Reliance had also been placed upon the decision of the Hon'ble Supreme Court in the case of **CIT Vs Podar Cement Pvt. Ltd. (1997) 226 ITR 625.** The decision in the case of **Balbir Singh Maini (2017) 86 txman.com 94 (S.C)** it was submitted, has also been considered therein and has been distinguished on facts. Reliance was also placed upon decision of Hon'ble High court of Madhya Pradesh, Indore bench rendered in the case of **CIT Vs Ajitsingh Khajanch** reported in 163 taxman 426 (MP) and **Smt. Shashi Varma v. CIT** [1997] 224 ITR 106. Reliance was also placed on **CIT vs. Gabriel (India)** Ltd. reported in (1993) 203-ITR-108 and the decision of the Apex Court in the case of **Malabar Industrial Co. Ltd. vs. CIT** reported in (2000) 243-ITR-83 and decision of the Hon'ble Supreme Court in the case of **CIT vs. Max India Ltd.** 295 ITR 282 (S.C). Reliance, it was submitted, is also placed on a judgement in the case of **Hari Iron Trading Co. vs. CIT** reported in (2003) 263 ITR 437 (P&H). It was submitted that all facts had been enquired into by the AO. However, the assessee has no control over how the assessment order is drafted. Referring to the decisions cited, it was submitted that it has often been observed that generally the issues which are accepted, they do not find any mention in

the assessment order and only such points are taken note of by the AO on which the assessee's explanation is rejected and additions/ disallowances are made. Accordingly, non discussion in the order on the issues examined and agreed with is of no consequence as has often been held by Courts.

4.6 Addressing the facts, it was highlighted that the assessee has also made the following submissions on facts:

> *"As regards the second ground mentioned for exercising the power of revision under section 263 it has been mentioned "Further, this asset was already in your possession, hence, Section 53A of the Transfer of Property Act also does not apply.", It may be submitted that the seller Smt. Gurmeet Kaur . wife of the assessee was the Registered owner of the property, H.No. 2120 Phase VII . Mohali. The family was residing under the same roof and section 2(47) speaks of the situation where the possession is already with the purchaser too and in that case if the purchaser is allowed to retain the possession, the condition as stipulated under section 2(47) of the Income Tax Act .1961 is fulfilled.* ***In view of the above mentioned submissions and authoritative pronouncements by the Hon'ble Supreme Court as well as the various High Courts under section 263 of the Income Tax Act, 1961 and the facts and evidence placed on record, it is prayed that the show cause notice under reply be withdrawn. Encl a copy of judgment page 1-9- Shri Basheer Noorullah Khan Vs CIT."***
>
> ***(emphasis supplied)***

4.6.1 On the basis of the above arguments, the following findings arrived at by the ld. PCIT were assailed. The relevant extract from the impugned order reads as under :

> *5.1 Deduction under section 54F and not 54: The perusal of the Assessment record shows that as per the revised income tax Computation filed during assessment proceedings the assessee offered 67% of the property as commercial and 33% as residential. The assessee in the revised computation claimed index cost for 67% at Rs. 27,06,063/- and for 33% at Rs. 13,42,654/-. Thus, the total indexed cost of the property was taken at Rs. 40,48,717/-. The property sold was SCF and in the notification for collector rate the SCF have been marked as commercial properties. The AO thus accepted the bifurcation of the property as commercial and residential without verification. The property is therefore, commercial property and the assessee is therefore eligible for deduction as per*

provisions of section 54F of the IT. Act and not u/s 54 of the IT. Act, 1961. The AO thus accepted the version of the assessee without any verification and the order is therefore erroneous in so far as it is prejudicial to the interest of Revenue.

4.6.2 It was argued that the legal position as available in the cases referred at Sr.No. 1 and 2 of the case law Paper Book is Kawaljit Singh Vs Kulwant Kaur C.R.No. 8440 of 2014 of the Hon'ble Punjab & Haryana High Court and Smt.Meenu Bansal Vs PCIT (ITA No. 627/CHD/2017) would address the fact of SCF being part commercial and part residential.

4.7 Addressing the finding recorded in para 5.2 it was submitted that the ld. PCIT has sought to draw strength from the decision of the Apex Court in the case of **McDowell and Company Limited, 154 ITR 148.** It was his submission that the said decision in the facts of the present case had no play at all. The following finding of the ld. PCIT was assailed:

"5.2 Deduction under Section 54F: The assessee has claimed that the capital gain has been invested partly in purchase of property and partly in purchase of specified bonds. On the basis of purchase of property he has claimed deduction under section 54F. Perusal of the facts show that the investment in property has been shown by purchasing the very asset which is in the name of the wife. A simple agreement has been entered into which is not even registered The assessee furnished the agreement of sale with his wife for house no. 2120 phase-VII, Mohali and claimed that a sum of Rs. 2,35,00,000/- was paid as sale consideration. It is clear from the perusal of the sale agreement ***that the assessee was already resident of the property and the agreement has been entered into merely*** *for the purpose of reducing the tax liability without any actual purchase of property. The landmark decision of the Hon'ble Supreme Court in the case of* ***McDowall and Company Limited, 154 ITR 148 is squarely applicable in this case…"***

(emphasis supplied)

4.7.1 It was his submission that there is no bar as per law for the assessee to purchase a property where he already is residing. The attempt to rope in McDowell & Company (cited supra) is patently inapplicable. Addressing the facts of the present case, it was submitted that the assessee's action is fully supported by the decision of the Apex Court in the case of **Sanjeev Lal** (cited supra) which has been relied upon before the ld. PCIT also. Thus, the occasion to refer to McDowell & Company Ltd. case, it was submitted, was completely unwarranted on facts. The ld. PCIT at page 12 in the continuing para 5.2 it was submitted, has also noticed the following facts :

> *".....In the case under consideration the assessee was already a resident of the property being husband of the owner, thus there is no question of any further other activity as per which part performance of enforcing the contract can be seen to be apparent. The AO has not examined any of this issues. The order passed by the AO is therefore erroneous on this issue and is also prejudicial to the interest of Revenue."*

4.7.2 These observations, it was submitted, are biased and arbitrary. No violation of any relevant provision of law is quoted or referred to requiring the assessee to respond. These observations it was submitted, proceed on presumptions and prejudices.

4.8 Addressing the finding arrived at in para 5.3, it was submitted that it is given without issuing any Show Cause

Notice to the assessee. Moreover, it is contrary to facts and again proceeds on presumptions. The Revised Computation filed during the assessment proceedings, it was submitted, is an admitted fact. Infact, there is no error let alone an error which can be termed as prejudicial to the interests of the Revenue. Accordingly, para 5.3 of the impugned order, it was submitted, deserves to be quashed.

4.9 Addressing para 5.4 of the impugned order, it was submitted, maintaining the challenge on the ground that on this issue also, no Show Cause Notice was issued to the assessee. Even otherwise, it was submitted that so called error pointed out without putting the assessee to notice on merits is not maintainable in law. Carrying the Bench through the relevant para, the finding was assailed. For the sake of completeness, said para is extracted hereunder:

> *5.4 Deduction under section 54EC: The perusal of the assessment record 4hows that the assessee has sold the commercial property on 23-12-2014 and made investment in Capital Bonds on 30-06-2015. As per provisions of section 54EC the investment in Capital Bonds is to be made within a period of six months from the date of sale. It's apparent that the assessee has failed to meet this condition. The deduction under section 54EC was thus not admissible to the assessee, The AO has failed to examine this issue. The order passed by the AO is therefore erroneous on this issue and is also prejudicial to the interest of Revenue."*

4.9.1 Maintaining the primary objection that no Show Cause Notice was issued on this issue to the assessee, it was argued that even otherwise, the view taken by the AO after carrying

out enquiries is a view which is as per settled legal position was the correct view. Accordingly, relying upon **Alkaben B. Patel vs. ITO43 Taxmann.com 333(Ahm), Dr. (Smt.) Sujatha Ramesh vs. CBDT 87 Taxmann.com 228 (Kar); and Kartick Chandra Modal vs. PCIT113 Taxmann.com 586 (Kol)** it was submitted that there is no infirmity in the view taken by the AO.

4.10 Accordingly, on a reading of the impugned order alongwith the assessment order itself, it was submitted that the conclusion drawn that the AO has not adequately enquired into the matter, it was submitted, is completely contrary to the facts on record. In view thereof, it was his prayer that the following general conclusion on the basis of these facts noticed in the impugned order, may be set aside as the Revisionary Powers on the facts of the present case have been arbitrarily exercised:

> *7. In view of the above facts and discussions, I am satisfied that the assessment order passed by the Assessing Officer on 19.05.2017 is not only erroneous it is also prejudicial to the interests of the revenue and has been issued without making proper enquiries. Therefore, the said order passed on 19.05.2017 is set aside to the files of the assessing officer to pass fresh order after making necessary enquiries/investigations in the light of the discussions made above and after giving due opportunity to the assessee of being heard.*

4.11 Inviting attention to the observations and directions made in the impugned order when seen alongwith the assessment order, it was his submission that the impugned order deserves to be set aside. It was reiterated that the Objection is not only on account of the fact that the issue addressed in the Show

Cause Notice stood fully considered by the AO and on the remaining issues, no Show Cause Notice was issued to the assessee. It was further submitted that a reading of the aforesaid order would show that the issues were specifically enquired into by the AO. For the said purpose, attention was invited to the reply of the assessee extracted in the assessment order itself which would show that the AO was aware that it was SCF which was being sold. The AO, it was submitted, was aware of the fact that deduction u/s 54, 54F and 54EC had been claimed; the AO did take note of the fact that 67% of the sale proceeds were attributed to the commercial part and 33% to the residential part in the SCF and the deductions claimed u/s 54; 54F and 54EC, accordingly were taken into consideration. Referring to the assessment order passed, it was reiterated that it would be evident that in the calculation of the assessee, there was some error and the assessee did accept the mistake and filed a revised return and the addition of Rs.25 lacs stood made by the AO. In the said backdrop, attention was invited to Paper Book No.1 wherein at pages 1-2, the reply of the assessee before the AO in the 143(3) proceedings specifically paras 3 and 5 of the same were highlighted :

> *"3. The assessee owns share in H. No, 2120 Phase -VII Mohali and is a self occupied house. The assessee purchased share in SCF 103 Phase 7 Mohali,which was purchased during the year from the sale proceeds of sector*

18, Chandigarh. No other assets other than capital gain bonds are also admitted.

4. *x x x x*

5. *The mistake in return is admitted. It was the mistake on the part of the undersigned and was due to oversight. The copy of original computation sheet is also appended herewith for your kind perusal. Copy of the revised computation sheet is also appended herewith for your kind perusal.*

4.11.1 Attention was invited to the revised computation of total income filed by the assessee which is available at pages 3-4 which would show that 67% of the sale proceeds were attributed to the commercial and 33% to residential portion of the property. The computation was refilled separately again which was stated to be final position thereon after the addition of Rs. 25 lacs was made. Attention was invited to another reply filed before AO in the 143(3) proceedings which is available at page 5-6 wherein in para 3, the assessee specifically made known to the AO that the case of the assessee's wife Smt. Gurmeet Kaur who was the seller of 2020, Phase-VII Mohali against which deduction u/s 54, 54EC; and 54F had been claimed was also at the relevant point of time undergoing the scrutiny assessment proceedings. For ready reference, the specific reply sent to the AO accepting the calculation mistake and justifying the deductions claimed u/s 54EC; 54 and 54F were highlighted. Specific para 1 and 3 of the aforesaid reply filed before the AO on query and relied upon is extracted hereunder for completeness :

"1. The property was sold for a total consideration of Rs. 3,32,00,000/- .The property sold was a ***SCF(Shop cum Flat)*** *bearing number 8 Sector 18C Chandigarh.* ***The*** *Ground floor can* ***be used for commercial activities and the upper two*** *storeys* ***can only be used for*** *residential* ***purposes****.* ***Keeping this thing in mind the sale price was*** *also split* ***in two portions one for commercial part(67%)*** *as RS. 22244000 was taken and shown as such in the return. For the second portion (upper Floor)* ***inadvertently the sale*** *price of* ***the*** *upper portion was missed to be fed in the return but the cost price was proportionately taken. The mistake is regretted.* ***Copy of the sale . deed is appended herewith for your kind perusal****. The copy of the return filed originally is also appended herewith for your kind perusal. Copy of computation is also appended herewith for your kind perusal."*

2. x x x x

"3. ***Deduction has been claimed under the head capital gain*** *on account of purchase of part of H.No. 2120 Phase-VII Mohali for Rs. 2.35 Crore, The* ***registration has not been made so far but the possession of the*** *property* ***has been*** *handed over to the assessee* ***and the sale is complete in view*** *of the provisions of* ***section 2(47) of the income Tax Act****. The assessee had purchased the capital gains* ***bonds for Rs. 50*** *lakhs and* ***has claimed exemption under section 54EC****. Since the assessee had sold asset* ***being Shop cum Flat the sale proceeds has been*** *bifurcated in two portions* ***2/3rd for*** *commercial property* ***and l/3rd for residential*** *portion and* ***similarly the*** *purchase* ***value of the*** *property* ***been bifurcated for claiming deduction under section 54 and 54F of the*** *Income* ***Tax Act.*** *The case of* ***Gurmeet Kaur the*** *seller of* ***H. No. 2120 Phase 7 Mohali ,against which*** *deduction under section 54 and 54F is being claimed is also under scrutiny / assessment.*

(emphasis supplied)

4.11.2 Referring to page 6 of the Paper Book, it was submitted that copy of the computation of Smt. Gurmeet Kaur was also filed before the AO with the following covering letter :

Copy ***of her computation sheet is also appended herewith for your kind*** *perusal. Copy of the purchase deed of the house by* ***Smt. Gurmeet Kaur as a token*** *of proof that she was the owner of the house is also appended herewith for your kind perusal."*

(emphasis supplied)

4.11.3 Computation of the assessee's wife Smt. Gurmeet Kaur, it was submitted, is available at pages 7 to 9 which supports the aforesaid claim. It was submitted by the ld. AR that at this

point of time, the assessee is also in possession of the copy of the assessment order passed u/s 143(3) dated 30.05.2017 passed in the case of assessee's wife Smt. Gurmeet Kaur for the specific year under consideration. Copy of this order passed u/s 143(3) proceedings is available at pages 53 to 534.

4.11.4 Accordingly, it was his submission that the present case is a case where full and proper enquiries have been carried out by the AO and only thereafter the Assessing Officer has passed the order making the addition. Attention was also invited to the reply of the assessee to the AO at pages 10-11 which would show that the assessee supported the deduction u/s 54 and 54F. The AO passing the order considered the claim supported by Agreement to Sell dated 19.01.2015. He saw that in pursuance thereto, payments were made by specific cheques, copy of the bank statements appended were seen, possession of the property, it was submitted, was received and the entire sales consideration stood paid up. Thus, in terms of the provisions of Section 2(47) of the Act, the transfer was complete. Photo copy of the REC Bonds purchased within a period of six calendar months was relied upon. For ready reference, the said reply is also extracted hereunder for completeness :

1. The valuation adopted for SCF number 8,sector 18-C Chandigarh was based on the estimate given by the approved valuer. The report of the valuer has also been obtained and is appended herewith for your kind perusal.

2. The purchase of property on which deduction under section 54 and 54F has been claimed is also evidenced by way of an agreement to sell, it would be seen that the payment to the seller was made through account payees cheque which has been debited to the bank account of the assessee in account Number 214301000003080 on 19.01.2015. The copy of the bank statement has already been placed on the file. The possession of the property was received on the date of agreement itself as the entire amount of sales consideration was paid up front. The transaction is thus complete as per provisions of section 2(47) of the Income Tax Act. It is submitted that the assessee did not have any other residential property at the time of sale of SCF under consideration and nor own any other residential property till now.

3 The bank account with Union Bank of India was closed on 06.12.2013. The bank certificate to this affect is appended herewith for your kind perusal.

4. Photocopy of the REC bands purchased is appended herewith. It may be mentioned that period of six months would mean that the bonds are to be purchased within a period of six calendar months from the end of the month in which the original asset is sold. Judgment of Mumbai Tribunal in which the issue has been discussed at length is appended herewith. This judgment follows the rule laid down by the Hon'ble Supreme Court of India and also on the general clauses Act. The assessee had issued the cheque for purchase f bonds on 21.06.2015 within period of six months. The cheque was presented late by the Bond issuing^ Corporation. There was no fault or callousness on the part of the assessee. Photocopy of the cheque is appended herewith. The facts of the present case are identical to the facts of the case cited ."

4.11.5 Copy of Agreement to Sell dated 19.01.2015 at pages 12 to 14 of the Paper Book affirming the transaction was also relied upon by the assessee before the AO. In these circumstances, it was his submission that full and proper enquiries have been made on these facts by the AO. The ld. PCIT, it was submitted, does not dispute this fact as he is aware that enquiries have been made, in these circumstances, where is the occasion to say that the assessment order was passed *"without making proper enquiries"*. The order, it was submitted, is an arbitrary exercise of power. In the facts of the

present case, the AO has applied his mind, asked for the relevant records, he has taken them into consideration, has considered the position of law as supported by the decision of the Apex Court in the case of Sanjeev Lal (cited supra). Reliance was also placed upon decision of the ITAT Bangalore Bench in Basheer Noorullah Khan V CIT (ITA 575/Bang/2019) (Paper Book pages 28 to 36) in Paper Book-1. The decision had also been relied upon even before the ld. PCIT. It was re-iterated that the fact that sale proceeds of SCF were to be bifurcated, the position of law as considered in the order dated 08.10.2018 of ITAT Chandigarh Bench in the case of Meenu Bansal V PCIT (ITA 627/CHD/2017). Decision of the jurisdictional High Court in the case of Kawaljit Singh was also referred to as an illustration that for enabling commercial activity on the First Floor, the owners had to go through conversion requirements, till then it is residential.

4.12 Accordingly, it was his prayer that the impugned order having been passed on suspicions without pointing to any error and not meeting the twin conditions as are necessary for invoking the Revisionary Powers may be quashed.

5. The ld. CIT-DR on the other hand heavily relied upon the impugned order. Addressing the objection of the assessee to the issues on which no Show Cause Notice was alleged to have

been issued to the assessee, he considering the facts in all fairness agreed that on the issues where Show Cause Notice was not issued to the assessee by the PCIT, he would not dispute this fact because it is evident on the face of the record and the records have been seen by him.

5.1 However, on the bifurcation of the sale proceeds as commercial and residential by the assessee as 67% commercial and 33% residential, he submitted that he would rely upon the impugned order.

5.2 Similarly for the claim of calendar six months also, he though relied upon impugned order, however, the fact that no Show Cause Notice was issued thereon also was not disputed by him.

5.3 On the main issue which was stated to be the status of the property, it was his vehement stand that the property has not been sold by the assessee. The claim that it was purchased from wife, it was submitted, is not acceptable to the Revenue as the legal requirements for affecting a valid sale in immovable property were not fulfilled. The Agreement to Sell, it was submitted, is a colourable device wherein the assessee claims to have purchased the property from his wife. The fact that the assessee and his wife have continued to remain staying therein, it was submitted, is a fact not disputed by the assessee also. It

was his vehement argument that this is the main issue in the Show Cause Notice issued by the ld. PCIT to the assessee. It was his submission that by merely signing of the Agreement to Sell, it cannot be said that it is a valid sale in the eyes of law. For the said proposition, heavy reliance was placed upon the decision of the Apex Court in the case of **Suraj Lamp & Industries P.Ltd. V State of Haryana 340 ITR 1(S.C).** It was his submission that the Apex Court very categorically held that an immovable property by sale etc. can legally and lawfully be transferred only by a Registered Deed of Conveyance and not by way of a General Power of Attorney or a Sale Agreement or Power of Attorney etc. It was submitted that title cannot be conveyed by entering into an Agreement to Sell.

5.4 Accordingly, it was his vehement stand that it cannot be recognized as a valid mode of transfer of immovable property. In the facts of the present case, it was his submission that these arguments and this latest decision of the Apex Court fully clinches the issue in favour of the Revenue. Accordingly, it was his prayer that the order of the ld. PCIT may be upheld.

5.5 Attention was also again invited to the Show Cause Notice issued to the assessee by the PCIT. It was his submission that though it has been read by the ld. AR, however, for the purposes of making his point, he would like to invite attention

of the Bench to the same again. Referring to the said Show Cause Notice extracted in the order, it was highlighted that the ld. PCIT specifically referring to the fact that the payments were made for the so called alleged purchase of the property from the assessee's own wife in terms of the Agreement to Sell pointed out that no TDS u/s 194-1A of the Act was deducted by the assessee. The sale was not registered and the assessee was specifically required to explain this fact. Referring to the fact as noticed by the ld. PCIT, it was his submission that the position of law as settled by the Apex Court in the case of **Suraj Lamp & Industries Pvt. Ltd. Vs State of Haryana (2012) 340 ITR 1 (S.C)** fully addresses the issue. In the facts of the said case, the Apex Court considering the various types of transactions entered into by the parties to avoid payment of Stamp Duty and Registration Charges to avoid payment of capital gains on transfer and indulge in investing unaccounted money (black money) and to avoid payment of unearned increases etc. due to Development Authorities on such transfer examined the modus-operandi in such Sale Agreements, General Power of Attorney or transfers by 'Will' etc. in very clear terms. Considering the provisions of **Section 5, 54 and 53A of the Transfer of Property Act, 1882** read with **Section 17 of the Registration Act, 1908** the Apex Court came to the conclusion that by Sale Agreements or GPA or 'Will Transfers' etc., no title or interest in an immovable

property can be said to take effect. The Apex Court, it was submitted, has specifically deemed it appropriate to reiterate in para 16 of the judgement that 'immovable property can be legally and lawfully transferred/conveyed only by a Registered Deed of Conveyance. Accordingly, it was his submission that the impugned order is fully in concurrence with the decision of the Apex Court. In view of these facts and legal position, it was his prayer that dismissing the assessee's appeal, the impugned order may be upheld.

6. The ld. AR in reply submitted that on the non deduction of TDS, the ld. PCIT ultimately has not set aside the impugned order. The explanation of the assessee must have been accepted. Thus, the argument of the ld. CIT-DR it was submitted, is of no relevance. It was also his submission that whether the assessee can be said to have abided by the Agreement to Sell and hence, entitled to claim deduction u/s 54, 54F, 54EC etc. cannot be governed from the prism of fulfilling or non fulfilling of the TDS conditions. It was his vehement submission that whether the property can be said to have been transferred also cannot be decided by the TDS provisions, hence the argument of the ld. CIT-DR on this count, it was submitted, has no relevance.

6.1 It was also his submission that reliance placed by the Revenue on the decision of the Supreme Court in the case of **Suraj Lamp & Industries Pvt. Ltd.** (cited supra) is misplaced as in the facts of the said decision, the Hon'ble Apex Court was seized of the claim of the Development Authorities who were before the Court praying that these Authorities were being deprived of the Stamp Duty and Registration Charges i.e. Development Charges etc. on account of non-Registration of Deed of Conveyance etc. by the parties by GPAs, Will transfers and Agreement to Sell etc. The share of the Authority on "unearned increase" in prices was the issue for consideration. For the said purposes the provisions of the **Transfer of Property Act,** specifically Section 5, 54 and 53A were being examined and in the context of the same, it was submitted, the Stamp Duty and Registration Charges etc. thereon were being considered. Considering the provisions under the Transfer of Property Act, the Hon'ble Apex Court opined that immovable property can be legally and lawfully said to have been transferred only by Registered Deed of Conveyance and even while so holding, the Court was conscious of considering the hardship to a large number of persons in para 17 and 18 of the judgement who had entered into such transactions. Further, in para 19 the Court was pleased to observe that *"our observations are not intended to in any way affect the validity of*

sale agreements and powers of attorney executed in genuine transactions."

6.2 Accordingly, it was his submission that the reliance placed on the said decision by the Revenue to support the impugned order is misplaced.

6.3 It was also his submission that the decision rendered by the Apex Court in the case of **Suraj Lamp & Industries Pvt. Ltd.** (supra) is a decision rendered on a different Statute considering different facts and parameters and is also a decision rendered on 11.10.2011.

6.3.1 Inviting attention to the decision of the Apex Court in the case of **Sanjiv Lal Vs CIT** (cited supra), it was his submission that this decision is the latest in point of time. It was submitted that it has also been rendered on 01.07.2014 and is in the context of the relevant provisions which apply to the facts of the present case as in the facts of this decision, the Hon'ble Apex Court was considering Section 54 of the Income Tax Act read with Section 2(47). The facts and circumstances with the present case, it was submitted, are near identical.

6.4 This decision, it was submitted, has been relied upon before the ld. PCIT and the said decision has neither been distinguished by the ld. PCIT in the order nor has the ld. CIT-

DR led any argument to show how said decision is not applicable.

7. We have heard the rival submissions and perused the material available on record. On a consideration of the facts and circumstances of the present case, we find that the Revisionary Powers exercised by the ld. PCIT cannot be upheld. We have given our serious consideration to the proceedings before the AO which have been tabulated before us by way of a Paper Book and has been referred to extensively in the earlier part of this order. We have also gone through the detailed submissions on facts and law extracted by the ld. PCIT herself in para 3.1 of the reply dated 22.02.2021 in various pages of the impugned order itself. When this detailed reply is read alongwith the Show Cause Notice issued to the assessee and the questions raised by the AO in the course of the assessment proceedings alongwith the replies of the assessee as made available to the AO, we find that the AO has passed the order after making all due and necessary enquiries. We find that the bifurcation of sale proceeds of SCF in commercial and residential proportion has a recognized legal foothold as illustrated by the order of the ITAT relied upon and the decision of the jurisdictional High Court cited. On the contrary, we find no reference to any decision made by the ld. PCIT which supports the suspicions harbored by her. We have seen the

decisions of the Hon'ble Punjab & Haryana High Court in the case of Kawaljit Singh and the order of the Co-ordinate Bench in the case of **Meenu Bansal Vs PCIT** (supra) as an illustration of the fact that between the State Administration namely Estate Officer, U.T. Chandigarh etc. and the Shop-cum-flat owners (SCF), the issues of residential portion and commercial portion were being regularly considered by the Co-ordinate Benches in various cases. Thus, we find that in the claim accepted by the AO after due enquiries, no error on this count is made out. We further find on consideration of facts of the present case that the reliance placed by the Revenue on the decision of the Apex Court in the case of **Suraj Lamp Industries** (supra) is misplaced as the said decision is rendered in the context of the **developmental authorities claim** of being denied development charges etc. by parties avoiding payment of Stamp duty and Registration charges on Deeds of Conveyance of Property. Thus, the grievance being examined was under the relevant provisions of **Transfer of Property Act, 1882** and **Registration Act, 1908** where various parties were resorting to Agreement to Sell; transfer by Will and by GPA were found to be transferring the rights in property. In the facts of the present case, we are not called upon to adjudicate upon the Stamp Duty violation etc., if any under the Transfer Property Act. The issue for consideration before us is whether on facts, the AO can be said

to have passed the order after making due enquiries wherein deductions claimed u/s 54, 54F and 54EC have been allowed on facts or should the order passed by the AO on facts be set aside upholding the impugned order. On a careful consideration of the factual matrix of the present case and the legal position as argued and canvassed before us, we find ourselves unable to uphold the impugned order.

7.1 On the other hand, we find that the decision of the Apex Court in the case of **Sanjeev Lal Vs CIT** (cited supra) more latest in point of time is in the context of the relevant provisions of the Income Tax Act. The said decision has been rendered on 01.07.2014 and is in the context of Section 54 read with Section 2(47) of the Income Tax Act, 1961. On a reading of the impugned order, it is further seen that all these decisions have been cited by the assessee before the CIT(A) and no attempt has been made by the PCIT nor by the ld. CIT-DR to distinguish the applicability of the said decision from the facts of the present case. We further find that roping in the allegation of colourable device by citing the decision of the **Apex Court** in the case of **McDowell & Company** on facts is completely unwarranted and misplaced. We find on going through the impugned order that except for suspicions no valid violation of any law u/s 54; 54F and 54EC has been referred to. We have taken into consideration the decisions of the various Courts including the

Apex Court in the case of Sanjeev Lal (supra) another decision of the Apex Court in the case of **T.R. Arvinda Reddy** (supra) and the Hon'ble Delhi High Court in the case of **Balraj Vs CIT** and the decision of the ITAT in the case of **Shri Bassheer Noorullah Khan (ITA 575/Bang/2019** have all been taken into consideration. Accordingly, we find that the impugned order cannot be sustained.

7.2 Coming to the issues on which no Show Cause Notice was issued to the assessee, we find that legally such an action is not permissible and even otherwise, on merits we find that six month period, as considered by the AO has judicial recognition. We find that the Co-ordinate Benches have held that the term "month" has not been defined in the Income Tax Act and hence resorting to the term as defined in the **General Clauses Act,1897** it has been held that 'a month' *shall mean as reckoned according to the British Calendar*. Accordingly, we find that the view taken by the AO is very much within the four parameters of law.

7.3 We find that merely because there is no discussion or elaborate discussion in the assessment order to the extent considered necessary by the ld. PCIT, we find that the assessee cannot be held liable as the remedy lies within. It is for the Tax Authorities to ensure that the Assessing Officers are well instructed to write the order elaborating the issues enquired

into; the evidences considered to allow the claim and also discussions on how the claim is rejected. The assessee has no role to play as how the assessment orders are written.

7.4 The said issue has many times been addressed by various Courts. Reference may be made to the decision of the jurisdictional High Court in the case of **Hari Iron Trading Co**. (cited supra) where the Court considering the non-discussion on the issues in the assessment order observed "*The assessee had no control over the way the assessment order was drafted".*

7.5 Reference may also be made to the oft quoted decision of the Hon'ble Bombay High Court in **CIT Vs Gabriel India** (cited supra) wherein the Court in very categorical term has held as under :

> *".....An order cannot be termed as erroneous unless it s not in accordance with law. If an Income Tax Officer acting in accordance with law makes certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgement of the Commissioner for that of the Income Tax Officer, who passed the order, unless the decision is held to be erroneous. Cases be visualised where the Income Tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimates himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the Officer concern was on the lower side and left to the Commissioner. He would have estimated the income at a higher figure than the one determined by the Income Tax Officer.* ***That would not vest the Commissioner with power of re-examine the accounts and determine the income himself at a higher figure. This is because the Income Tax Officer has exercised the quasijudicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion****. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself would not be enough to vest the Commissioner with the power of suo moto revision because the first requirement,*

namely, that the order is erroneous, is absent. Similarly if an order is erroneous but not prejudicial to the interest of the Revenue, then the power of suo moto revision can not be exercised. Any and every erroneous order cannot be the subject matter of revision because the second requirement must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute, on an incorrect or incomplete interpretation, a lesser tax than what was just has been imposed."

(emphasis supplied)

7.6 Reference may also be made to the decision of the Apex Court in the case of **CIT Vs Max India** (cited supra). wherein the Hon'ble Supreme Court has made the following observations in the context of section 263 proceeding (extracted from the Head notes of citation):

"The phrase "pre judicial to the interests of the Revenue' in Section 263 of the Income Tax Act, 1961 has to be read in conjunction with the expression "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 on view with which the Commissioner does not agree, it not 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"*

(emphasis supplied)

7.7 On going through the Paper Book filed considering the issues enquired into by the AO and replied to by the assessee, we find that when read alongwith the reply on behalf of the assessee before the ld. PCIT, we find that the appeal of the assessee has to be allowed. The Revisionary Powers cannot be exercised arbitrarily. The twin conditions necessary for exercising the powers in the facts of the present case are found to be missing.

8. The impugned order, accordingly, for the detailed reasons set out herein on facts and law is set aside.

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

Order pronounced on 04th August,2022.

Sd/- Sd/-

(VIKRAM SINGH YADAV) **(DIVA SINGH)**
लेखा सदस्य/ Accountant Member **न्यायिक सदस्य/ Judicial Member**

"Poonam"

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar