

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD****BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER****ITA No.343/Ahd/2020
Assessment Year: 2013-14**

Smt. Jitendrakumari Dilavarsinhji vs. Principle Commissioner of
Jadeja, Income Tax -2, Ahmedabad.
C/o. R.K. Shukla & Co.,
201, Opera Tower,
Jawahar Road,
Opp. Galaxy Hotel,
Rajkot.
[PAN – AAZPJ 5325 Q]
(Appellant) (Respondent)

Appellant by : Shri Deepak Rindani, AR
Revenue by : Shri Vijay Kumar Jaiswal, CIT DR

Date of hearing : 01.09.2022
Date of pronouncement : 21.09.2022

ORDER**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the assessee against the order dated 20.03.2020 passed by the PCIT-2, Ahmedabad for the Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal:

"1. The Honorable Pr. Commissioner of Income Tax-2, Ahmedabad erred in passing order under section 263 of the Act holding Assessment Order passed by the Assessing Officer as erroneous in so far as it is prejudicial to the interest of revenue and set aside and AO is directed to pass fresh Assessment Order."

3. The return of income was filed on 30.09.2013 declaring total income of Rs.1,60,88,630/-. Subsequently the case was reopened under Section 147 of the Income Tax Act, 1961 and notice under Section 148 of the Act was issued. In response to the notice issued under Section 148 of the Act, the assessee filed return of income on 07.05.2016 declaring the income as per original return of income filed on 30.09.2013. The Assessing Officer made addition on account of short working of

capital gain amounting to Rs.18,63,319/-. The assessment was completed on 29.09.2017 determining total income of Rs.1,79,51,950/-. The PCIT observed that the assessee has received ancestral property from her father late Shri Madansinhji Daulatsinhji Jadeja. After death of assessee's father she received the said land which has been sold for developing the plots of land (total 467 plots were developed out of which 131 were sold for Rs.3,07,55,000/-). As the sale value was less than the value determined by Stamp Valuation Authority, the assessee was asked by the Assessing officer to show cause as to why the deemed value as per Stamp Valuation Authorities should not be considered as sale value. The case was subsequently referred to DVO. The DVO determined the value of property at Rs.3,24,32,214/- as sale value. Thus, the addition of Rs.18,63,319/- was made on account of such capital gain not offered for tax. The PCIT held that post valuation report determined the value of plot at Rs.44,83,680/- considering the total plot area at 112092 sq. meters. As regards second valuation report, the value of land was determined at Rs.1625/- per sq. meter specifying the total area of 112092.42 sq. meter and describing that the net saleable area is 54384.25 sq. meters only. Thus, the PCIT held that the Assessing Officer has not correctly verified the different valuation adopted by the assessee in different areas for the same land and, therefore, set aside the assessment order and directed the Assessing Officer to pass fresh assessment order after properly ascertaining the correct facts on the said issues.

4. Being aggrieved by the order under Section 263 of the Act passed by the PCIT, the assessee is before us.

5. The Ld. AR submitted that the Assessing Officer in the reopening proceedings has issued notice under Section 142(1) of the Act thereby specifically calling the details of immovable properties sold during the year under consideration and asking for the working of the capital gain for which the assessee has replied to the Assessing Officer on 22.07.2017 thereby stating the details along with copy of DVO order describing indexed case of acquisition as well as expenses and the land valuation. The Assessing Officer, after verifying the details, has made addition on the very same ground on which the PCIT has issued notice under Section 263 of the Act. Thus, the PCIT cannot review the order of the Assessing Officer unless and until it is prejudicial

to the interest of the Revenue. Ld. AR further submitted that the PCIT has misread the valuation report as the prior and subsequent years' rate were properly taken while determining the present areas in respect of LTCTG and land valuation by the DVO.

6. The Ld. DR submitted that the notice under Section 142(1) of the Act issued by the Assessing officer during the assessment proceedings is only a query but not the actual enquiry and thus, the Assessing Officer has not taken into account the land valuation properly. The Ld. DR further submitted that the wrong calculation of the assessee has not been verified by the Assessing Officer. The Assessing officer has not referred the case of the assessee to the DVO for review. Thus the Ld. DR relied upon the order passed by the PCIT under Section 263 of the act.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer in notice under Section 142(1) of the Act has asked the query not in general but specifically asked the details about the land purchased and sold along with sale deed and purchase deed. The reply of the assessee clearly shows that the assessee has given all the details in response to DVO's calculation related to land and the indexation thereto. In fact, the Assessing Officer in reopening has categorically made finding and made addition to the extent of Rs.18,63,319/- on account of short working of LTCG. The DVO's report was authenticated and accepted by the Revenue. This is not a case of lack of enquiry or no enquiry at all. Besides this, the PCIT has given his own observation which amounts to review and change of opinion or review while exercising Section 263 is not permitted by the Income Tax Statute. Thus, the PCIT was not right in exercising Section 263 in assessee's case. The appeal of the assessee is thus allowed.

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

Order pronounced in the open Court on this 21st day of September, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 21st day of September, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*