IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.200/PUN/2021
निर्धारण वर्ष / Assessment Year: 2016-17

Sanjay Amrutrao Satav (HUF), Amrut Palace Bungalow, Gat No.12 Bhavadi Road Wagholi, Near Bhairavnath Mandir, Taluka Haveli, Pune- 412207. PAN : AAYHS1085F	Vs.	ITO, Ward- 12(4), Pune.
Appellant		Respondent

Assessee by : Smt. Pooja Rander
Revenue by : Shri Sardar Singh Meena

Date of hearing : 29.06.2022
Date of pronouncement : 30.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of ld. Pr. Commissioner of Income Tax- 4, Pune ['the Pr.CIT'] dated 31.03.2021 passed u/s 263 of the Income Tax Act, 1961 for the assessment year 2016-17.

2. The appellant raised the following grounds of appeal :-

"1. In the facts and circumstances of the case and in law, in the absence of conditions precedent for assumption of jurisdiction u/s 263 of the I.T. Act 1961 the impugned order passed by the learned Pr.CIT being bad in law, null and void arbitrary, baseless, devoid of merits and without jurisdiction the same may please be annulled.

2. In the facts and circumstances of the case and in law, the learned Pr.CIT has failed to appreciate that the agricultural land transferred by the appellant as stock in trade of his business being not a capital asset within the meaning and provisions of Section 2[14] of the I.T. Act 1961, upon its sale no capital gains had arisen and hence all the observations and conclusions drawn by the learned Pr.CIT in this behalf being bad in law, null and void arbitrary, baseless, devoid of merits the same may please be vacated and the impugned revision order may pleas be annulled.

3. The learned Pr.CIT has grossly erred in holding that impugned Capital Gains had arisen on the date of conversion of the Capital gains and hence the deduction claimed by the appellant assessee u/s 54B was barred by limitation, by completely ignoring the provisions of Section 45[2] of the I,T. Act 1961. It may please held that the long term Capital Gains arising on transfer of agriculture land are exempt from taxation and conclusions in this behalf drawn by the learned Pr.CIT may please be vacated.

4. It may please be held that the provisions of Section 54 to 54GB of the I.T. Act 1961 are the deductions prescribed for calculation of Capital Gains and the same are not provisions of exemptions as has been erroneously held by the learned Pr.CIT. It may please be held that the deduction provisions are required to be liberally construed and the interpretation which results in to absurdity is to be rejected. In the circumstances the deduction claimed by the appellant assessee u/s 54B may please be allowed to the appellant.

5. It may please be held that the impugned land converted by the appellant assessee as his stock in trade was an agriculture land on the date of its conversion. In the circumstance the observation of the learned Pr.CIT [by placing reliance on the letter dt. 15/02/2019 filed by Talathi Wagholi] that the said land was not put to agriculture use after FY 2011-12 onwards is irrelevant and therefore deserves to be vacated with all consequential reliefs.

6. The learned Pr.CIT has failed to appreciate that since the appellant has converted his agriculture land to stock in trade on 16/11/2011, the amended provisions of Section 2[14][iii][b][III] of the I.T. Act 1961 were inapplicable and the impugned land was an agriculture land not amounting to Capital asset giving rise to any taxable Capital gains as on the date of conversion. In the circumstances it may please be held that the appellant had rightly

claimed the deduction u/s 54B of the I.T. Act 1961 with all consequential reliefs.

7. The learned Pr.CIT has failed to appreciate that in view of provisions of Section 45(2] of the I.T. Act 1961, the capital gains on sale of impugned agriculture land introduced by the appellant as stock in trade of his business had become chargeable to income tax during previous year relevant to A.Y.2014-15 and hence in view of the amended provision of Section 54B w.e.f. 01/04/2013 the Capital Gains were rightly claimed as exempt u/s 54B of the I.T. Act 1961 and the same may please be allowed to the appellant assessee with all the consequential reliefs.

8. Since the learned Assessing Officer after conducting all the necessary and proper enquiries in the matter of taxation of capital gains, has framed the impugned assessment order, the learned Pr.CIT had no jurisdiction to invoke the provisions of Section 263 of the I.T. Act 1961 and hence the impugned order passed by the learned Pr.CIT being without jurisdiction the same may please be vacated.

9. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

10. Any other equitable and just order that may be deemed fit and proper by your honour may please be passed in the matter."

3. Briefly, the facts of the case are as under :

The appellant is HUF engaged in the business developers and promoters of land. The return of income for the assessment year 2016-17 was filed on 17.10.2016 declaring total income of Rs.6,45,270/-. The assessment, against the said return of income, was completed by the Income Tax Officer, Ward- 12(4), Pune ('the Assessing Officer') vide order dated 28.12.2018 passed u/s 143(3) of the Act at total income of Rs.1,92,17,316/-.

4. Subsequently, on examination of the assessment record, the ld. Pr.CIT formed an opinion that the claim for deduction u/s 54B of the Act of Rs.1,27,85,612/- came to be allowed by the Assessing Officer without verification and enquiries. The ld. Pr.CIT, on perusal of assessment record, it is observed that exemption u/s 54B in purchase of another agricultural land was made and allowed by Assessing Officer. Accordingly, he concluded that the assessee had not invested the entire sale consideration in purchase of new agricultural land, therefore, he concluded that the Assessing Officer, without carrying out the verification and enquiries, allowed this claim. Accordingly, the ld. Pr.CIT issued a show-cause notice u/s 263 of the Act on 22.08.2019 calling upon the assessee to show-cause as to why the assessment order should not be treated as erroneous and prejudicial to the interest of the revenue. In response to the said show-cause notice, the assessee had filed reply dated 27.01.2021 stating that the assessee had complied with the provisions of section 54B of the Act by investing the sale consideration before the due date of filing of the return of income stated that the land sold was not a capital asset as the agricultural land was not situated within the areas of 8 kilometres from the end

of the municipal limits of Pune. It was submitted that the assessment order cannot be termed as "erroneous" as the Assessing Officer had allowed the claim of deduction u/s 54B of the Act after due verification of the claim. The assessment order cannot be termed as "prejudicial to the interest of the revenue" as the order was passed in accordance with law. It is further contended that there is no material on record to show that the assessment order passed is erroneous. However, the ld. Pr.CIT on consideration of these submissions made by the assessee held that the Assessing Officer had failed to examine the claim for deduction u/s 54B without verification as to the date of transfer of original asset and the nature of purchase of land etc. and, therefore held that the assessment order passed is erroneous and prejudicial to the interests of the revenue. Accordingly, the ld. Pr.CIT set aside the assessment with a direction to the Assessing Officer to re-do the same after due verification.

5. Being aggrieved, the appellant is in the present appeal before us.

6. The ld. AR for the assessee submits that the issue of eligibility of deduction u/s 54B claimed by the appellant was examined by the

Assessing Officer during the course of assessment proceedings. It is submitted that the investments made upto 31.03.2015 were duly reflected in the Balance Sheet and the balance investments was made before the due date of filing of the return of income for the assessment year 2016-17. It is further submitted that the Balance Sheet as on 31.03.2015 was already filed before the Assessing Officer reflecting the re-investment of the sale consideration in purchase of another agricultural land and the claim was allowed by the Assessing Officer on being satisfied with the fulfilment of the conditions prescribed u/s 54B of the Act. It is further submitted that when the assessment order was passed after due enquiry on the issue, on being satisfied with the conditions of exemption allowed the claim and the assessment order cannot be termed as "erroneous" and "prejudicial to the interests of the revenue". It is further contended that there is no material on record to show that the appellant is not entitled for exemption u/s 54B of the Act. The power of revision cannot be exercised in order to carry out roving/fishing enquiry.

7. Without prejudice to the above, it is submitted that the land sold is not a capital asset within the meaning and the provisions of

section 2(14) of the Act as the said lands were situated at the distance of more than 8 kilometres from the boundaries of Pune Municipal Corporation. Furthermore, on date of conversation of said land into stock in trade, the property was undoubtedly agricultural land. It was further submitted that during the course of assessment proceedings, the assessee vide letter dated 07.06.2018, 04.12.2018, 19.12.2018 and 21.12.2018 filed full details of working of capital gains and details of investments in purchase of new agricultural land along with copies of purchase deed and the reinvestment had been made within the prescribed time lime u/s 54B of the Act. The copies of the relevant 7/12 extract of the land was filed showing that the land was used for agricultural purpose more than the immediately preceding two years from the date of transfer. It was further submitted that the copies of the sale deed under which the appellant purchased new lands were also filed before the Assessing Officer including the copies of the extract of 7/12 extract. It is further submitted that the lands purchased were immediately used for agricultural purposes. The Assessing Officer allowed the claim on examination of the above details of the claim

took a plausible view and, therefore, the order of revision cannot be maintained.

8. On the other hand, ld. CIT-DR placed reliance on the order of the ld. Pr.CIT.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of the revision exercised by the ld. Pr.CIT u/s 263 of the Act in respect of claim for deduction u/s 54B allowed by the Assessing Officer. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible view, the assessment order cannot be termed as an "erroneous". We may examine the

facts of the present case to find out whether the Assessing Officer had carried out necessary enquiries and verification while allowing the claim of the assessee for deduction u/s 54B of the Act. We had examined the assessment record found that the Assessing Officer had called for the details of purchase and sale of the immovable transactions and examined the claim u/s 54B vide its notice dated 03.03.2015 u/s 142(1) and the assessee had filed a detailed reply explaining the nature of transactions. From the order of the assessment, it is clear that the Assessing Officer accepted the claim of the appellant by observing as under :-

> *"In support of the same, the assessee has filed copy of valuation report for claimed cost of acquisition & copy of Index-II in respect of investments of agricultural land claimed u/s 54B of the Act. The same has been kept on record."*

From this very observation it cannot be said that the Assessing Officer had not examined the claim, therefore, the assessment order cannot be said to be erroneous for want of enquiry on the claim.

10. The courts have made a distinction between "lack of enquiry" and "inadequate enquiry". If there was enquiry even an inadequate that would be itself give no occasion to the Commissioner to exercise the power of revision u/s 263 as held by the Hon'ble

Bombay High Court in the case of CIT vs. Gabriel India Ltd., 203 ITR 108 (Bombay) and followed by the Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd., 332 ITR 167 (Delhi) and in the case of CIT vs. Anil Kumar Sharma, 335 ITR 83 (Delhi). The relevant paragraphs of the decision of the Hon'ble Delhi High Court in the case of Sunbeam Auto Ltd. (supra) are extracted hereunder :-

> *"We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open. In Gabriel India Ltd.'s case (supra), law on this aspect was discussed in the following manner :*
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> *". . . From a reading of sub-section (1) of section 263, it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by the Income-tax Officer is 'erroneous insofar as it is prejudicial to the*

> *interests of the revenue'. It is not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in sub-section (1). The consideration of the Commissioner as to whether an order is erroneous insofar as it is prejudicial to the interests of the revenue must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. [See : Parashuram Pottery Works Co. Ltd. v. ITO[1977] 106 ITR 1 (SC) at page 10]. ....."*

11. Further, we find that the ld. Pr.CIT had not brought on record any material to show that the claim made for deduction u/s 54B is not allowable to the assessee. The power of revision u/s 263 cannot be exercised with a view to initiate a roving and fishing enquiry in the matters which we have already concluded. In this regard, the observation made by the Hon'ble Supreme Court in the case of Parashuram Pottery Works Co. Ltd. vs. ITO, 106 ITR 1 (SC) is reproduced hereunder :-

> *"From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a 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 judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to*

be erroneous. Cases may 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 estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. . . . 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." .....

12. Since in the light of the above circumstances, we are of the considered opinion that the Assessing Officer had allowed the claim for deduction u/s 54B of the Act after due verification and examination of the details filed before the Assessing Officer and it cannot be said that there is total lack of enquiry on the part of the Assessing Officer while allowing the claim of the assessee. Therefore, the assessment order cannot be termed as "erroneous". There is no material on record indicating that the appellant had not satisfied the conditions laid down under the provisions of the Act for claiming exemption u/s 54B of the Act. Therefore, the assessment order cannot be branded as "erroneous" and "prejudicial to the interests of the revenue". Thus, the ld. Pr.CIT is not justified

in exercising the power of revision u/s 263 of the Act and order passed u/s 263 by the ld. Pr.CIT is hereby set-aside. Accordingly, the grounds of appeal raised by the assessee stand allowed.

13. In the result, the appeal filed by the assesses stands allowed.

Order pronounced on this 30th day of June, 2022.

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 30th June, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-4, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.