

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.45/RPR/2021
Assessment Year: 2016-17**

Shri Rajesh Chand Surana,
Opp. Girdhar Bhawan,
Sadar Bazar,
Raipur – 492 001. (C.G.)
[PAN – AKBPS 4179 B]
(Appellant)

vs. Assistant Commissioner of Income
Tax-4(1), Raipur.

(Respondent)

Appellant by : Shri R.B. Doshi, C.A
Respondent by : Shri P.K. Mishra, CIT D.R.

Date of hearing : 30.07.2021
Date of pronouncement : 14.10.2021

ORDER

PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER :

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Principal Commissioner of Income Tax (Central) (PCIT in short), Raipur communicated to assessee on 30.03.2021 passed under section 263 of the Income Tax Act, 1961 (the Act in short) whereby the Assessment Order passed by the Assessing Officer (A.O.) dated 31.08.2018 under section 143(3) of the Act concerning Assessment Year (A.Y.) 2016-17 was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer (A.O.) was directed to pass the assessment order *denovo* after making enquiries on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning A.Y. 2016-17. The assessee has challenged the assumption of jurisdiction by the PCIT under section 263 of the Act on the ground that the

Assessment Order under revision is neither erroneous nor prejudicial to the interest of the revenue.

3. Briefly stated, the assessee filed his return of income for A.Y. 2016-17 in question which was selected for limited scrutiny. The scope of limited scrutiny was to verify the following issues:

- (i) Whether value of consideration for computation of Capital Gains has been correctly shown in the return of income;
- (ii) Whether deduction from Capital Gain has been claimed correctly

4. The assessment was framed under section 143(3) of the Act, wherein, returned income declared by the assessee was assessed as such without any adjustments.

5. Thereafter, the PCIT in exercise of revisionary powers, issued show cause notice dated 23.02.2021 to show cause as to why the impugned assessment so framed under section 143(3) of the Act should not be modified/set aside on the ground that such order is erroneous in so far as it is prejudicial to the interest of the revenue. The assessee responded to the show cause notice and filed reply on the points raised therein. The PCIT, however, not satisfied, alleged that the deduction claimed under section 54F of the Act on Capital Gain arising to the assessee has been allowed to the assessee without making proper enquiries on the point. The PCIT accordingly passed the revisional order and set aside the assessment. The A.O. was directed to make adequate enquiry with reference to allowability of deduction under section 54F of the Act.

6. Aggrieved, the assessee preferred appeal before the Tribunal.

7. We have carefully considered the rival submissions and perused the materials available on record. It is contended on behalf of the assessee that the case was selected under limited scrutiny for this very point and the issue was examined threadbare by the A.O. It was submitted that the assessee received consideration of Rs.2,44,88,918/- on account of transfer of Long Term Capital Asset i.e. sale of ownership land on 20.08.2015 and claimed deduction under section 54F of the Act.

The Capital Gains arising to the assessee stands at Rs.41,85,879/- in respect of his share on sale of co-ownership land. The assessee claimed deduction under section 54F of the Act by utilisation of sale consideration to the extent of deposit of Rs.1.50 Crores in Capital Gain Account Scheme and Rs. 50 Lakhs towards investment made on specified bonds under section 54EC of the Act. In this background, the assessee submitted that in the instant case the investment was made in construction of new residential house property before 20.08.2018 i.e. within three years from the accrual of the Capital Gain under section 54F of the Act. The learned counsel points out from the show cause notice that adverse conclusion has been drawn by the PCIT only on the basis of alleged report of DIT (I&CI) and report of the Income Tax Inspector. Copy of such report was neither provided to the assessee at any time nor the contents of the alleged report have been brought out in the revision order despite specific request made to the PCIT for providing copy of report at the time of revisionary proceedings. The assessee contended that in the absence of so called report confronted to the assessee, such report cannot be taken cognizance of. While the A.O. has made requisite enquiries, the PCIT has neither confronted the report nor made any enquiry of his own on the glaring facts. The main contention of the assessee is that there is no strict condition in law that construction of the residential house should be completed within three years as per the judicial precedents and what is required is that investment should be made in construction of house within the specified period of three years. A reference was made to the decision rendered in the case of :

- *CIT vs. Sardarmal Kohari (2008) 302 ITR 286 (Mad), Page Nos.160 to 162 of Paper Book, relevant finding on page no.162;*
- *Bhavana Cuccria vs. ITO (2017) 165 ITD 124 (Chd.) Page Nos.119 to 129 of Paper Book, relevant findings on page no.129;*
- *Pr. CIT vs. Dilip Ranjrekar (2019) taxmann.com 114 (Karn.) Page Nos.130 to 132 of Paper Book, relevant findings on page no.131;*
- *Bal Kishan Atal vs. ACIT (2019) 176 ITD 330 (Del), page Nos.163 to 173 of Paper Book, relevant findings on page no.170.*

8. The assessee further contents that where the assessee has utilised the consideration for construction of residential house, the spirit of section 54F is substantially complied with and, therefore, the deduction claimed under section 54F

allowed by the A.O. was in accordance with law. The action of the A.O. in admitting the claim was thus plausible and in accordance with the law and in tune with the judicial precedents. Besides, the completion certificate *per se* is not required for claim of deduction and, therefore, not relevant.

9. We find considerable force in the plea of the assessee. The case was selected under limited scrutiny and the assessee has demonstrated that the relevant documents in relation to quantum of capital gain arising to assessee as well as towards eligibility of deduction under section 54F was placed before the A.O. The PCIT has regarded the Assessment Order as erroneous mainly on the ground that construction work has been completed to the extent of 70% only as reported by the DIT (I&CI) in this regard. The PCIT is of the view that the construction of the residential house must be completed within three years from the date of transfer of original asset to be eligible for deduction under section 54F of the Act.

10. The judicial precedents have read down the conditions of the provisions of Section 54F of the Act to align it with its object and observed that the utilisation of the consideration in the construction of residential house is sufficient to be eligible for deduction notwithstanding the fact that the construction of residential house has not been fully completed within three years. The thrust is on utilisation rather than completion of construction of residential house. The view taken by the A.O. to allow deduction under section 54F of the Act based on parameters of utilisation made in construction is thus plausible view and cannot be faulted. This being so, the order of the A.O. cannot be held to be erroneous and prejudicial to the interest of the revenue. Consequently, the powers available under section 263 of the Act cannot be exercised in the facts of the case.

11. This apart, we also notice the plea of the assessee that a fresh information coming to the knowledge of the PCIT after completion of the assessment cannot be relied upon adverse to the assessee without following the basic principles of natural justice. As can be seen from the assessment records, vide letter dated 09.03.2021, requested the Revisional Commissioner to provide a copy of verification report of Inspector of ADIT (I&CI). However, the PCIT did not choose to confront the assessee with said report. No reference to the contents of the report is mentioned in the

Revisional Order either. Such casual approach of the PCIT while disturbing the completed assessment cannot be endorsed. It is trite that evidence not confronted to the assessee coming to the knowledge of the revenue cannot be relied upon. The so-called report thus cannot be taken cognizance of in the absence of such report. When such report is ignored, there is no other material available before the PCIT to condemn the action of the A.O.

12. Hence, looking from any angle, the Revisional Order of the PCIT is unsustainable in law.

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

PRONOUNCED ON 14.10.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(N.K. CHOUDHRY)
Judicial Member

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

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True Copy
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
Raipur Bench, Raipur