

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं. /I.T.A. No. 109/Ahd/2021
(निर्धारण वर्ष / Assessment Year : 2015-16)

Navin Kalidas Patel 802, Block –A, Status Appartment, Opp. T. V. Tower, Drive-in-Road, Ahmedabad, Gujarat, 380054	बनाम/ Vs.	The Pr.CIT-3 Ahmedabad
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : ACHPP0215B		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से / Appellant by :	Shri S. N. Soparkar, Sr. Advocate & Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से/ Respondent by :	Shri Sudhendu Das, CIT. DR

Date of Hearing	05/08/2024
Date of Pronouncement	14/08/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax, Ahmedabad-3, (in short ‘the Pr. CIT’) dated 29.03.2021 in exercise of his revisionary power under Section 263 of the Income Tax Act, 1961 (in short ‘the Act’) for the Assessment Year 2015-16.

2. The brief facts of the case are that the return of income for A.Y. 2015-16 was filed by the assessee on 25.01.2016 showing total income of Rs.2,03,730/-. The case was selected for scrutiny

under CASS for verification of “Large investment in property (AIR) as compared to total income”. The assessment was completed under Section 143(3) of the Act on 29.11.2017 and the returned income was accepted. Subsequently, the assessment record was called for by the Pr. CIT, wherein it was noticed that the source of the investment in the property was not properly examined by the AO. The Ld. PCIT, therefore, held that the order of the AO was erroneous and prejudicial to the interest of revenue. Accordingly, a notice under Section 263 of the Act was issued by the Pr. CIT on 16.03.2022 and, thereafter, on various other dates. No compliance made before the Ld. Pr. CIT in response to the notices under Section 263 of the Act. Thereafter, the Ld. Pr. CIT passed the impugned order under Section 263 of the Act and the assessment order was set aside with a direction to the AO to make requisite enquiries and proper verification and, thereafter, to complete the assessment de novo.

3. Aggrieved with the order of the Ld. Pr. CIT, the assessee is in appeal before us.

4. The assessee has taken following grounds in this appeal:

- “1. *On the facts and in the circumstances of the case, the learned Principal CIT erred in assuming his jurisdiction u/s 263 of the IT. Act, whereas the mandatory conditions for assuming such jurisdiction are totally absent, with the result that the impugned order passed us 263 is bad in law.*
2. *On the facts and in the circumstances of the case, the learned Principal CIT erred in arriving at a conclusion to the effect that the assessment order passed by the Assessing Officer was erroneous as well as prejudicial to the interest of the revenue*

on the ground that such order was passed without making proper enquiries.

3. *On the facts and in the circumstances of the case, the learned Principal CIT erred in arriving at a conclusion that there was a complete failure on part of Ld. AO to examine source of funds for purchase of immovable property as well as creditworthiness of lenders on the ground that the creditworthiness and genuineness of the transactions with lenders namely Infinity International and Horizon Finvest is not proved as per norms of section 68 of I.T. Act.*
4. *On the facts and in the circumstances of the case, the learned Principal CIT erred in cancelling the assessment order passed by the Assessing Officer on 29.11.2017 u/s. 143(3) of the IT. Act and directing the Assessing Officer to frame assessment afresh.*
5. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”*

5. Shri S. N. Soparkar, Ld. Sr. Advocate appearing for the assessee submitted that the issue of investment in property was examined by the AO in detail in the course of assessment proceeding. The assessee has filed a paper book containing 174 pages and the Ld. Sr. Counsel has taken us through the said paper book. He has drawn our attention to various notices issued by the AO in the course of assessment proceedings as well as to the reply filed by the assessee. The Ld. Senior Counsel explained that the assessee had purchased agriculture land for a consideration of Rs.9.30 Crores and a copy of sale deed was brought on record. Further that the explanation for the sale consideration as mentioned in the sale deed was all provided in the course of assessment proceeding, which was examined by the AO and, thereafter, accepted as correct. He further explained that for the

purpose of purchase of this property, loans were taken from different parties and a confirmation in this regard along with other relevant documents to establish their identity, creditworthiness and genuineness was also filed before the AO. The Ld. Senior Counsel contended that when the matter was examined by the AO in detail in the course of assessment proceeding, it was not correct on the part of the Ld. Pr. CIT to hold that the order of the AO was erroneous and prejudicial to the interest of the revenue. He further submitted that a detailed reply dated 24th March, 2021 was also filed before the Ld. Pr. CIT, which was not taken into account in his order. He placed reliance on the following decisions in support of his contention that the order of the AO was not erroneous and prejudicial to the interest of the revenue and, therefore, the order under Section 263 of the Act passed by the Ld. Pr. CIT should be quashed:

- i. *CIT vs. Kamal Galani, [2018] 95 taxmann.com 262 (Gujarat)*
- ii. *CIT vs. Kamal Galani, [2019] 110 taxmann.com 213 (SC)*
- iii. *CIT vs. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 (Guj.)*
- iv. *ACIT vs. Jas Infra Space Pvt. Ltd. in ITA No. 2130/Ahd/2017 & Ors.*
- v. *Mastek Limited vs. PCIT in ITA No.375/Ahd/2023*
- vi. *HBC Lifsciences Private Limited vs. PCIT in ITA No.328/Ahd/2023*

6. Per Contra, Shri Sudhendu Das, the Ld. CIT.DR submitted that the AO had not properly examined the source of large investment made in the property by the assessee. According to the Ld. CIT.DR, the case was selected for limited scrutiny only to examine the large investment in property made by the assessee as compared to total income as disclosed. Therefore, it was incumbent upon the AO to critically examine the source of such investment, considering the fact that the assessee has disclosed only nominal income of Rs.2,03,730/- in his return. He further submitted that the assessee has not paid any interest on the loans taken for the purpose of acquisition of the property and consequently, there was no deduction of TDS as well. Considering these facts also, the AO should have examined the genuineness of loan transactions towards acquisition of the property by making independent enquiries. In view of these facts the order of the AO was certainly erroneous and prejudicial to the interest of revenue. He further submitted that no compliance was made by the assessee before the Ld. Pr. CIT in spite of numerous opportunities provided by him. The Ld. CIT.DR submitted that the decisions relied upon by the Ld. Senior Counsel were distinct on facts and he strongly supported the order of the Ld. Pr. CIT.

7. We have carefully considered the rival submissions. The moot question to be decided in this case is whether the order of the A.O. was erroneous and prejudicial to the interest of revenue and whether the assumption of jurisdiction by the Ld. PCIT u/s

263 of the Act was correct. In this context it will be relevant to reproduce the provisions of Section 263 of the Act, which is as under:

Revision of orders prejudicial to revenue.

263. (1) The ⁹⁹[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer ¹[or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, ²[including, –

- (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or
- (ii) an order modifying the order under section 92CA; or
- (iii) an order cancelling the order under section 92CA and directing a fresh order under the said section].

As per provision of this section the PCIT is empowered to call for and examine the record of any proceeding under the Act. Accordingly, he had called for the record of this case, examined the assessment order and after such examination he formed an opinion that the order of the AO was erroneous and prejudicial to the interest of revenue.

8. The circumstances under which an order can be held as erroneous and prejudicial to the interest of revenue is specified in Explanation 2 to section 263 of the Act, which is found as under:

Explanation 2. – For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer ³[or the Transfer Pricing Officer, as the case may be,] 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 Chief Commissioner or Chief Commissioner or 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.*

As per the *Explanation 2*, the order passed by the A.O. shall be deemed to be erroneous and pre-judicial to the interest of revenue if the order is passed without making inquiries or verifications which should have been made or where the order is passed allowing any relief without enquiring into the claim. We have to, therefore, examine as to whether this condition was fulfilled in this case and whether the assumption of jurisdiction by the Ld. PCIT u/s 263 of the Act was correct.

9. It is found that the case was selected for scrutiny to verify the large investment in property made by the assessee as compared to the total income as disclosed by him. It appears from the various notices issued in the course of assessment that the AO did make enquiries in respect of investment in the property. It is found from the copy of the sale deed brought on record that the assessee had purchased agricultural land admeasuring 8361 sq. meters for total consideration of Rs.9.30 Crores. As per the sale deed dated 19.02.2015, the consideration of Rs.9.30 Crores was paid by the assessee in the following manner:

<i>Sr. No.</i>	<i>Amount (Rs.)</i>	<i>Particulars</i>
1	30,000/-	<i>By confirming Party No.1 to seller by cash at the time of execution of agreement to sale (banakhat)</i>
2	30,000/-	<i>By confirming Party No.2 to seller by cash at the time of execution of agreement to sale (banakhat)</i>
3	30,000/-	<i>By confirming Party No.3 to seller by cash at the time of execution of agreement to sale (banakhat)</i>
4	24,70,000/-	<i>By purchaser to seller by Ch.No.000091 dated 13.02.2015 drawn on A'bad Mercantile Co. Op. Bank</i>
5	24,70,000/-	<i>By purchaser to seller by Ch.No.000092 dated 13.02.2015 drawn on A'bad Mercantile Co.Op. Bank</i>
6	24,70,000/-	<i>By purchaser to seller by Ch.No.000093 dated 13.02.2015 drawn on A'bad Mercantile Co. Op. Bank</i>
7	1,00,00,000/-	<i>By purchaser to Confirming Party No.1 by Ch. No.000076 dated 13.02.2015 drawn on A'bad Mercantile Co.Op. Bank</i>
8	1,00,00,000/-	<i>By purchaser to Confirming Party No.1 by Ch. No.000078 dated 13.02.2015 drawn on A'bad Mercantile Co.Op. Bank</i>
9	85,00,000/-	<i>By purchaser to Confirming Party No.1 by Ch. No.000079 dated 13.02.2015 drawn on A'bad Mercantile Co.Op. Bank</i>
10	1,00,00,000/-	<i>By purchaser to Confirming Party No.2 by Ch. No.000080 dated 13.02.2015 drawn on A'bad Mercantile Co.Op. Bank</i>
11	1,00,00,000/-	<i>By purchaser to Confirming Party No.2 by Ch. No.000081 dated 13.02.2015 drawn on A'bad Mercantile Co. Op. Bank</i>
12	85,00,000/-	<i>By purchaser to Confirming Party No.2 by Ch. No.000082 dated 13.02.2015 drawn on A'bad Mercantile Co. Op. Bank</i>
13	1,00,00,000/-	<i>By purchaser to Confirming Party No.3 by Ch. No.000083 dated 13.02.2015 drawn on A'bad Mercantile Co.Op. Bank</i>
14	1,00,00,000/-	<i>By purchaser to Confirming Party No.3 by Ch. No.000084 dated 13.02.2015 drawn on A'bad Mercantile Co. Op. Bank</i>

15	85,00,000/-	By purchaser to Confirming Party No.3 by Ch. No.000085 dated 13.02.2015 drawn on A'bad Mercantile Co. Op. Bank
Total:	9,30,00,000/-	

10. It is evident from the above payment schedule that apart from Rs.90,000/-, which was adjustment of earnest money of the confirming parties, the balance amount of Rs.9,29,10,000/- was paid by the assessee vide 12 different cheques all dated 13.02.2015, drawn on Ahmedabad Mercantile Cooperative Bank. In view of this fact, it was incumbent upon the AO to verify the source of Rs.9,29,10,000/- paid by the assessee by cheques dated 13.02.2015 with reference to the bank account of the assessee. He should have examined whether the assessee had so much of available balance in his bank account on that date, and if not, how the funds were arranged. A copy of the bank account of the assessee, from which above cheques were cleared, has been brought on record. It is found that none of the 12 cheques were cleared from the account of the assessee prior to the date of sale deed i.e. 19.02.2015. In essence, the property was transferred in the name of the assessee without receiving any payment from the assessee (except adjustment of Rs.90,000/- from the 3 confirming parties). It was quite unusual that the sale deed was executed and the property was transferred in the name of the assessee without encashment of any of the cheques issued by the assessee and this fact should have raised the suspicion of the AO to verify the matter further. It is further noticed from the bank statement that the three cheques for Rs.24,70,000/- each bearing Nos. 000091, 000092 & 000093, all dated 13.02.2015, which were drawn in the

name of the seller, was appearing in the bank statement as encashed on 16.03.2015 with the narration "PAY CASH-SELF". Thus, it was evident from the bank statement that these cheques were not encashed by the seller of the property but the cash was withdrawn by the assessee himself. This fact also should have been taken note by the AO to make further enquiry in the matter. No enquiry was made from the assessee as to why the cash was withdrawn through these three cheques almost after a month, when these cheques were drawn in favour of the seller towards the purchase consideration. Neither any enquiry was made from the seller in this regard.

11. From the materials brought on record, we do not find any enquiries being carried out by the AO in respect of the discrepancies as discussed in the preceding para, in the course of assessment proceeding. Thus, the AO had failed to make enquires and verifications which were required to be made in order to examine the issue for which the case was selected for scrutiny. The bank statement also revealed that the assessee had no funds of his own to make these payments. It was explained that the payments towards sale consideration were made on the strength of loans taken from "Infinity International" and "Horizon Finvest" and a copy of confirmation in respect of the loans taken from these parties along with their ITR and accounts were brought on record. The evidences filed by the assessee were accepted by the AO without any verification. The AO should have examined whether any interest was paid on these loans obtained

and whether TDS was deducted thereon. No such enquiry was made in the course of assessment and the documents and the evidences furnished in the course of assessment proceeding were accepted by the AO on their face value without any verification. It is, thus, evident from the above facts that the AO had not conducted proper enquiries in respect of the investment in the properties and, therefore, the order of the AO was rightly treated as erroneous and prejudicial to the interest of the revenue by the Ld. Pr. CIT.

12. In the course of proceeding under Section 263 of the Act, the Ld. Pr. CIT had made specific enquiry in respect of source of Rs.9.30 Crores along with evidences of creditworthiness of “Infinity International” and “Horizon Finvest”, details of interest paid to these two concerns, evidence of re-payment of loan etc. However, no compliance was made before the Ld. Pr. CIT. Though, the assessee has submitted that a reply dated 24th March, 2021 was filed before the Ld. Pr. CIT, no acknowledgement in respect of this letter has been brought on record. Further, it is found that no specific reply to the queries as raised by the Ld. Pr. CIT was given and the reply was more on the legality of the proceeding u/s 263 of the Act.

13. The decisions relied upon by the Ld. Sr. Counsel are all found different on facts and not applicable to the peculiar facts of this case. It was held by the Hon’ble Jurisdictional High Court in the case of *CIT vs. Kamal Galani (supra)* that once the

Assessing Officer carried out detailed inquiries, it was not open for the Commissioner to reopen the issue on mere apprehension and surmises. As already discussed earlier there was no proper enquiry made in this case by the AO. One has to see from the records as to whether there was application of mind by the AO and we don't find any such application of mind by the AO in this case. The other decisions in the case of *Ranchhod Jivabhai Nakhava (supra)* and *Jas Infra Space Pvt. Ltd (supra)* are on the issue of genuineness and creditworthiness of the loan transactions which is not the issue involved in this case. It is a trite law and a well settled position that non application of mind or wrong assumption of facts or incorrect application of law by the A.O. will make the order erroneous and pre-judicial to the interest of revenue. Therefore, we do not find anything wrong with the assumption of jurisdiction u/s 263 of the Act by the Ld. Pr. CIT as the order of the AO was erroneous and pre-judicial to the interest of revenue for the reasons as already discussed above. We, therefore, upheld the order of the Ld. Pr. CIT. The grounds of appeals taken by the assessee are all dismissed.

14. In the result, the appeal preferred by the assessee is dismissed.

This Order pronounced on 14/08/2024

Sd/-

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 14/08/2024
S. K. SINHA

(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad