

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : H : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.552/Del/2021
Assessment Year: 2017-18

Vikram Bajaj,
RNP House,
1 Shivaji Enclave, Main Road,
Near Raja Garden,
New Delhi – 110 027.
PAN: ACXPB6203D

Vs Pr. CIT (Central)-3,
New Delhi.

ITA No.553/Del/2021
Assessment Year: 2017-18

Shrikanta Bajaj,
RNP House,
1 Shivaji Enclave, Main Road,
Near Raja Garden,
New Delhi – 110 027.
PAN: AHLPR0130J

Vs. Pr. CIT (Central)-3,
New Delhi.

(Appellants)

(Respondent)

Assessee by	:	Shri Sumit Lalchandani, Advocate & Shri Shivam Yadav, Advocate
Revenue by	:	Shri Prakash Nath Barnwal, CIT-DR
Date of Hearing	:	27.07.2023
Date of Pronouncement	:	27.07.2023

ORDER

PER M. BALAGANESH, AM:

These appeals in ITA No.552/Del/2021 and 553/Del/2021 for AY 2016-17
arise out of the orders of the Principal Commissioner of Income Tax (Central), Delhi-

3 (hereinafter referred to as the 'Id. PCIT') dated 24.03.2021 in DIN & Order No.ITBA/REV/F/REV5/2020-21/1031730473(1) and in DIN & Order No.ITBA/REV/F/REV5/2020-21/1031731372(1) respectively against the orders of assessment passed u/s 153A r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.12.2019 and 17.12.2019 respectively by the Assessing Officer, Central Circle-32, New Delhi (hereinafter referred to as 'Id. AO').

2. Identical issue is involved in both these appeals and, hence, they are taken up together and disposed of by this common order for the sake of convenience.

3. The only effective issue to be decided in these appeals is as to whether any addition at all could be made in the hands of the assessee in respect of immovable property warranting any revision by the Id. PCIT u/s 263 of the Act.

4. We have heard the rival submissions and perused the material available on record. In the case of Shri Vikram Bajaj, the original return of income was filed for AY 2017-18 on 22.03.2018 declaring total income of Rs.7,50,080/-. A search and seizure action was carried out at the various premises of the Bajaj Group and its associates including the assessee on 20.04.2017. Consequent to the search action, a notice u/s 153A was issued to the assessee on 03.07.2018. In response to the said notice, the assessee, vide letter dated 18.07.2018, submitted that the return already filed on 22.03.2018 may be treated as the return filed in response to notice u/s 153A. In the said letter, the assessee also challenged the jurisdiction of the AO

and raised objection for validity of notice u/s 153A of the Act. The Id. AO alleged that there were some registered sale deeds of immovable properties made by the assessee and Smt. Shrikanta Bajaj to the tune of Rs.5,18,31,000/-. The Id. AO also alleged that there were some on money receipts in the said sale transaction in the sum of Rs.6,32,69,000/-. The assessee intimated before the Id. AO that the owner of the subject mentioned plot No.11, Model Town, New Delhi, was M/s RNB Mercantile Pvt. Ltd., wherein the assessee is a Director. The purchase of the plot was made by Shri Vikram Bajaj and Smt. Shrikanta Bajaj as the nominee registered owners only on behalf of M/s RNB Mercantile Pvt. Ltd. which is the actual beneficial owner. This was made in view of the fact that the Delhi Development Authority mandates that only husband and wife as a couple could purchase that particular property and restricted companies from such purchase. The assessee also pointed out that payment of consideration of the property was also made by M/s RNB Mercantile Pvt. Ltd. The assessee further pointed out that the said company availed loan and used the same for purchasing the plot. Accordingly, the assessee submitted that they had purchased the property and sold it on behalf of M/s RNB Mercantile Pvt. Ltd. to UCB Developers LLP and Shri Santosh Khanna. It was also submitted that the sale consideration received was duly passed on to M/s RNB Mercantile Pvt. Ltd. and recorded in the books of the said company. Further, M/s RNB Mercantile Pvt. Ltd. had also disclosed the capital gain arising out of the sale of this property in its return for AY 2017-18.

5. The assessee also filed a letter to the Id. AO stating that M/s RNB Mercantile Pvt. Ltd had filed a settlement application before the Settlement Commission, New Delhi for AY 2017-18 on 18.12.2019 wherein the on money transactions in the subject mentioned property in the sum of Rs.6,32,69,000/- were duly offered by the said company before the Settlement Commission. The Id. AO did not take cognizance of the same and proceeded to treat the on money receipts of Rs.6,32,69,000/- as undisclosed income of the assessee of Shri Vikram Bajaj on protective basis with an observation that the same would be reviewed based on the outcome of the settlement petition filed by M/s RNB Mercantile Pvt. Ltd. Finally, the Interim Board for Settlement-VII, Chennai, disposed of the settlement application and passed an order u/s 245D(4) of the Act on 27.02.2023 in the hands of M/s RNB Mercantile Pvt. Ltd. Before passing this order, the Id.PCIT, in his Rule 9 Report had stated that the capital gain had to be assessed in the hands of Shri Vikram Bajaj and Smt. Shrikanta Bajaj as they are the registered owners of the property. This argument of the Revenue was rejected by the Settlement Commission and the Settlement Commission, in para 8.2 of its order, categorically held that the subject mentioned land formed part of the assets of M/s RNB Mercantile Pvt. Ltd since its date of purchase and hence the capital gains shall be assessable only in the hands of the said company and not in the hands of Shri Vikram Bajaj and Smt. Shrikanta Bajaj (the assessee herein).

6. Based on this order of the Settlement Commission dated 27.02.2023, the Id.CIT(A) deleted the protective addition made by the Id. AO in the hands of the assessee in the sum of Rs.6,32,69,000/-. Now, the Id. PCIT, by invoking the revision jurisdiction u/s 263 of the Act is seeking to tax the very same sum in the hands of the assessee on substantive basis. Accordingly, the Id.PCIT had passed a revision order u/s 263 of the Act by treating the order passed by the Id. AO as erroneous and prejudicial to the interests of the Revenue on the ground that the undisclosed income on sale of property ought to have been assessed on substantive basis in the hands of the assessee instead of assessing on protective basis.

7. At the outset, we find this issue was also subject matter of adjudication by the Id. AO who after making adequate enquiries thereon proceeded to make an addition for alleged on money receipts on protective basis in the hands of the assessee. When adequate enquiries were made, the same cannot be subjected to revision by the Id.PCIT u/s 263 of the Act merely because the Id. PCIT has got a different view on the issue. The law is very well settled on this aspect by the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Company Ltd., reported in 243 ITR 83* and *Max India Ltd., reported in 295 ITR 282*. Hence, we have no hesitation in quashing the revision order passed u/s 263 of the Act for invalid assumption of jurisdiction thereon.

8. Further, even otherwise, the very same issue has already been considered and decided by the Id.CIT(A) on 24.03.2023 in the case of Vikram Bajaj and on 23.03.2023 in the case of Smt. Shrikanta Bajaj by placing reliance on the order of the Settlement Commission dated 27.02.2023. Once a matter has been considered and decided by the Id.CIT(A), in terms of the provisions of Explanation 1(c) to Section 263 of the Act, the very same issue cannot be the subject matter of consideration at all by the Id.PCIT in the revision proceedings either on substantive basis or on protective basis. On this account also, the revision order u/s 263 of the Act deserves to be quashed.

9. In any event, on merits, the entire capital gain and the on money receipts were subject matter of consideration and adjudication in the case of M/s RNB Mercantile Pvt. Ltd., pursuant to the Settlement Commission order dated 27.02.2023. Hence, there is absolutely no revenue loss involved herein. So, even on merits, there is absolutely no case made out by the Revenue before us. Accordingly, the grounds raised by the assessee are allowed.

10. The decision rendered hereinabove for Shri Vikram Bajaj shall apply with equal force for Smt Shrikanta Bajaj also in view of identical facts.

11. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 27.07.2023.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 27th July, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi