

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**  
**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1139/Mum/2021  
(निर्धारण वर्ष / Assessment Years: 2010-11)

Anand Vithal 215, F Wing Orchid Apartment, Behind Jain Temple Road, Govandi East, Mumbai-400088.	<b>बनाम/</b> Vs.	PCIT-27 Room No.401, 4 <sup>th</sup> Floor, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai- 400703.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADJPV4940Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ajay Singh
Revenue by:	Shri O.P. Singh (DR)

सुनवाई की तारीख / Date of Hearing: 15/03/2022  
घोषणा की तारीख /Date of Pronouncement: 07/04/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 15.03.2021 passed by the Principal Commissioner of Income Tax-27, Mumbai [hereinafter referred to as the “PCIT”] relevant to the A.Y.2010-11 in which the Principal Commissioner of Income Tax-27 has invoked the revisional power u/s 263 of the I.T. Act, 1961.

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

“1. On the facts and circumstances of the case, Hon'ble Pr. Commissioner of Income Tax — 27 (hereinafter referred as PCIT) has erred in invoking provisions of Section 263 of the Income Tax Act, 1961 by issuing the notice in spite of the fact that scrutiny assessment U/s 144 r.w s. 147 of Income Tax Act, 1961 has been completed by the Income Tax Officer Ward 27 (1) (1), Mumbai (hereinafter referred as Income Tax Officer) after duly examining and applying mind on facts while framing the assessment order U/e 144 r.w.s. 147 of Income Tax



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*Act, 1961. The Hon'ble CIT has erred in raising the issues and making rowing enquiries in the proceeding u/s 263 of Income Tax Act, 1961. Further order U/s 263 is also passed without any conclusion merely setting aside the assessment to the file of the learned assessing officer which is unjustified. It is therefore submitted that the order passed u/s 263 should be cancelled.*

*2. Without prejudice to the Ground No. 1, The Hon'ble CIT has mentioned that assessment was completed U/s 144 r.w.s 147 whereby total income was assessed at Rs.16,80,000/being 1/3" of the value of property in question has been shown held by the three persons jointly. It is further mentioned that nothing on record appears to establish share of investment made by the each of the three persons whose name mentioned in ITS. In the circumstances, the entire investment in property constitutes the Income of the appellant. In conclusion, Hon'ble CIT has set aside the order without examining the documents and explanation filed during the 263 proceedings and mere set aside of the order is unjustified. Accordingly, necessary directions should be given in this regard,*

*3. Appellant craves leave to add, alter or delete any grounds) either before or in the course of hearing of the appeal."*

**3.** The brief facts of the case are that the assessee did not file return of income for the year under consideration. On the basis of NMS data available on the ITS, it came into noticed that, the assessee had purchased a property for the consideration of Rs.50,40,000/-. In view of the this fact the assessment was reopened u/s 147/148 of the Act and accordingly the assessment was completed u/s 144 r.w.s. 147 of the Act whereby the income of the assessee was assessed to the tune of Rs.16,80,000/- being 1/3<sup>rd</sup> of the value of the property. On verification, it was found that the assessment was completed u/s 144 of the Act and there was nothing on record to establish



the share of investment made by each of three persons whose names in the mentioned in ITS. The case pertains to A.Y.2010-11 and no material was available to establish about the filing of the return of other two persons. In the circumstances, the entire investment in the property constitute the income of the assessee. Since these facts were not verify by the AO while completing the assessment u/s 144 r.w. 147 dated 08.12.2017, therefore, the order was erroneous in so far as prejudicial to the interest of the revenue u/s 263 of the Act. Accordingly, notice u/s 263 was given and after the reply of the assessee, the PCIT has invoked the revision u/s 263 of the Act.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We find that the PCIT has invoked the revisional power u/s 263 of the Act on following grounds: -

*“(i) It was held that since the property in question has been shown held by three persons in ITS, 1/3<sup>rd</sup> of the value of the property was considered as your income and the income was assessed as Rs. 16.86,000/-. However, perusal of Index-IL which was procured from the Sub-registrar, goes to show that the total investment at the property was as under:*

Purchase consideration =	Rs. 50,40,000/-
Stamp duty	Rs, 2,52,000/-
Registration Charge	Rs.30,000
Total investment =	<b><u>Rs 53,22,000/-</u></b>

*(ii) Here it is pertinent to mention that the assessment was completed u/s. 144 of the Income Tax Act. There is nothing on record to establish the share of investment made by each of the two persons, whose names are appearing in Index-IL The case pertains to A.Y, 2010-11 and no material is available on record to establish about the filing of return of the other person. In the circumstances, the entire investment in the property constitutes worked out to Rs. 36,42,000/- (Rs.53,42,000 less Rs. 16,80,000).”*



6. It is not in dispute that the assessee was the resident of USA and was filing his return of income in USA. The case of the assessee was reopened by the AO and the AO passed the order u/s 144. r.w. Section 147 of the I. T. Act, 1961 on 08.12.2017 assessing the income at Rs.16,80,000/- i.e. 1/3<sup>rd</sup> value of the purchased property in sum of Rs.50,40,000/-. The property was purchased by three share-holder and the AO assessed the 1/3<sup>rd</sup> share of the property in sum of Rs.16,80,000/- and accordingly taxed. The PCIT did not record the reasons to which the order passed by the AO is erroneous and prejudicial to the interest of the revenue. In first reason for invoking the revisional power by the PCIT is in connection with the total investment in the property and in second reason, the PCIT mentioned about taxing the other two persons who were the share-holder in purchased the property. These facts had already been considered by the AO while passing the assessment order u/s 144 r.w. 147 dated 08.12.2017. The assessee had already been taxed to the extent of 1/3<sup>rd</sup> share meaning thereby a possible view has already been taken by the AO. Nothing therein mention about the erroneous of order and prejudicial to the interest of the revenue. In these facts and circumstances, we relied upon the decision in the case of **CIT Vs. Gabriel India Ltd. 203 ITR 108 (Bombay HC)** in which the Hon'ble High Court has observed as under: -

*“In this given case the Hon'ble High Court has observed that the AO had exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion. Such a conclusion could not be termed as erroneous simply because the CIT did not feel satisfied with the conclusion. In such a case, in the opinion of the CIT, the order may be prejudicial to the interest of the Revenue, but it cannot be held to be erroneous for the exercise of revisional jurisdiction u/s.263. According*



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*to the Court, for an order to be erroneous, it must be an order which is not in accordance with the law or which ' has been passed by the AO without making any inquiry in undue haste. The Hon'ble Court has noted that though the words 'prejudicial to the interest of the Revenue' have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. [Following Dawjee Dadabhoy & Co. v. S. P. Jain & Anr, (31 ITR 872) (Cal) and Addl. CIT v. Mukur Corporation, (111 ITR 312) (Guj.)].”*

7. The Hon'ble Gujarat High Court in the case of **CIT Vs. Arvind Jewelers 259 ITR 502** in which the Hon'ble Gujarat High Court has observed as under: -

*“11.2 From the above Gujarat High Court judgement, it is clear that even if two possible views are possible on merits of a question, and if the AO has adopted one view, his order cannot be said to be erroneous and prejudicial to the interests of revenue. For the same proposition, reliance is placed on the leading Supreme Court decision in the case of Malabar Industrial Company Ltd. V CIT 243 ITR 83 and the Hon'ble Supreme Court decision in the case of CIT v G.M. Mittal Stainless Steel P. Ltd. 263 ITR 255.”*

8. However, the Ld. Representative of the assessee has placed reliance upon the number of cases such as **CIT Vs. Hindustan Coco Cola Beverages Pvt. Ltd. 331 ITR 192 (Del)**, **CIT Vs. Anil Kumar Sharma 335 ITR 83 (Del)**, **CIT Vs. Sunbeam Auto Ltd., 332 ITR 167 & CIT vs. RK Construction Co. 313 ITR 65 (Guj)**. Since the matter of controversy had already been examined and a possible view had already been taken, therefore, invoking the revisional power u/s 263 of the Act nowhere seems justifiable. Taking into account of all the facts and circumstances, we are of



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the view that when the possible view has already been taken by AO and PCIT nowhere specify that how the order is erroneous and prejudicial to the interest of the revenue, therefore, we are of the view that the order in question passed by PCIT is not liable to be sustainable in the eyes of law. Moreover, we find that the appeal of the order passed by AO dated 08.12.2017 is pending before the PCIT in which the same issue is under consideration, therefore, invoking the power u/s 263 of the Act by PCIT nowhere seems justifiable. Taking into account of all the facts and circumstances, we are of the view that the order dated 08.12.2017 passed by AO, is wrong against law and facts and is hereby ordered to be set aside. Accordingly, the appeal of the assessee is hereby allowed.

9. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on this 07/04/2022

Sd/-

Sd/

(PRAMOD KUMAR)  
VICE PRESIDENT

(AMARJIT SINGH)  
JUDICIAL MEMBER

Mumbai; Dated 07/04/2022

Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai