

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 306/AHD/2020

निर्धारण वर्ष/Asstt. Year: 2015-2016

M/s. Visu Casement Pvt. Ltd., P.O. Box No.163, Maikrupa Society, Channi Road, Channi, Vadodara-390002.. PAN: AAACV6597J	Vs.	The Principal Commissioner of Income-tax-2, Vadodara.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Hem Chhajed, A.R
Revenue by	:	Shri Sudhendu Das, CIT.D.R

सुनवाई की तारीख/**Date of Hearing** : **31/07/2023**

घोषणा की तारीख /**Date of Pronouncement**: **20/10/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax-2, Vadodara, arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The only issue raised by the assessee is that the learned PCIT under section 263 of the Act erred in holding the assessment framed under section 143(3) of the Act as erroneous insofar prejudicial to the interest of revenue.

3. The necessary facts of the case are that the assessee in the present case is a private limited company and engaged in the business of real estate. The assessee in the year under consideration has sold part of the land admeasuring 12181 square metres amounting to ₹ 5,90,16,060.00 only. The corresponding cost of the part of the land sold by the assessee was Rs. 23,83,588.00 which was valued by the registered valuer as on 1 April 1981 at ₹ 71,98,971 which was indexed at ₹ 2,64,55,981 only. Thus, the assessee in effect has disclosed long-term capital gain amounting to Rs. 2,52,02,906.00 only.

4. However, the learned PCIT on examination of the records of the assessment proceedings found that the DVO under section 55A of the Act has valued such land at ₹9,26,771.00 only as on 1-4-1981 and indexed cost stands at ₹ 94,90,132 whereas the assessee has claimed indexed cost of Rs. 2,64,55,981.00 which is in excess by ₹1,69,65,849 only. Accordingly, the Id. PCIT was of the view that the income of the assessee has been under assessed on account of the error by taking the wrong value of the property as on 1st April 1981. Thus, the learned PCIT concluded that assessment framed by the AO is erroneous insofar judicial to the interest of revenue on account of non-examination of the necessary facts. Accordingly, the learned PCIT directed the AO to frame the assessment afresh in the light of the above stated discussion as per the provisions of law and after giving the opportunity to the assessee.

5. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

6. The learned AR before us has filed the written synopsis of his arguments running from pages 1 to 5 which was supported by various judicial

pronouncement. The learned AR in his synopsis has assailed the order of learned PCIT on various counts. One of the arguments of the learned AR was that assessment has been framed by the AO after due verification and application of mind. Therefore, the order of the AO cannot be said erroneous insofar prejudicial to the interest of revenue on account of non-verification. As per the learned AR the learned AO has taken one of the possible views by adopting the cost of acquisition as on 1 April 1981 shown by the assessee based on the registered valuation report. Thus, there is no infirmity in the order of the AO in case the AO does not adopt the value of the property as on 1.4.1981 determined by the DVO under section 55A of the Act.

6.1 The learned AR further contended that the valuation report of the DVO was received by the AO dated 3 January 2018 whereas the assessment was framed on 29 December 2017. Thus, there is no ambiguity to the fact that the valuation report from the DVO was not available at the time of assessment, meaning thereby, such report of the DVO was not forming part of the records of the assessment and therefore no credence can be given to such report.

7. On the other hand, the learned DR contended that the object of the provisions of section 263 of the Act is to ensure that there should not be any loss to the revenue on account of the error committed by the AO. As per the learned DR, there is an error in the order of the assessment which is causing prejudice to the interest of revenue as discernible from the DVO report. Accordingly, the learned DR vehemently supported the order of the Id. PCIT.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The Commissioner under section 263 of the Act may call for the assessment records and examine the same. On examination of the assessment records, if the learned PCIT finds any error in the order of the AO causing prejudice to the interest of revenue, then he can initiate the proceedings under the provisions of section 263 of the Act. However, what we find is this that

the learned PCIT under the statute is empowered to examine the records of the proceedings under the Act. Thus, it is implied that the learned the PCIT has to draw inference based on the examination of the records which were available in the proceedings. Admittedly in the case before us, the report from the DVO was received by the AO dated 3 January 2018 after the assessment order passed which evidence that such report was not available or part of the assessment records. Accordingly, based on the documents which was not part of the assessment records, the learned PCIT is precluded to initiate the proceedings under section 263 of the Act. In holding so, we draw support and guidance from the judgement of Hon'ble Calcutta High Court in the case of Reliance Jute and Industries Ltd. Vs. ITO reported in 150 ITR 643 wherein it was held as under:

The valuation proceeding was liable to be quashed on the grounds that: (a) the opinion of the ITO which was an essential prerequisite for making a reference for valuation under section 55A was absent in the present case, and. (b) the purpose for which alone a valuation report could be utilised, namely, for completion of the assessment in conformity with the valuation report was no longer existent, the assessment having been completed in the meantime. In such circumstances, to allow the assailed valuation proceeding to continue, would militate against well-known canons of strict construction of taxing statutes.

8.1 In view of the above, we hold that the basis to initiate the proceedings under section 263 of the Act by the learned PCIT is misplaced as it was based on the document which was not forming part of any proceedings. Therefore, we hold that the order passed by the learned PCIT is not sustainable. Accordingly, we quash the same. Hence, the ground of appeal of the assessee is hereby allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 20/10/2023 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad: Dated 20/10/2023
Manish

(True Copy)