

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 765/JP/2016  
निर्धारण वर्ष/Assessment Year : 2009-10

|   |             |                                 |
|---|-------------|---------------------------------|
| M/s. Vasudev Dewani<br>B-17, Sansar Chand Road<br>Outside Chandpole Bazar, Jaipur | बनाम<br>Vs. | The ITO<br>Ward- 3(4)<br>Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPD 4077 E                              |             |                                 |
| अपीलार्थी/ Appellant  |             | प्रत्यर्थी/ Respondent          |

निर्धारिती की ओर से/ Assessee by: Shri Sandeep Jhanwar, CA  
राजस्व की ओर से/ Revenue by :Smt. Poonam Rai, DCIT-. DR

सुनवाई की तारीख/ Date of Hearing : 12/04/2017  
घोषणा की तारीख/ Date of Pronouncement : 13 /04/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id.  
CIT(A)-1, Jaipur dated 01-03-2016 for the assessment year 2009-1-  
raising therein following grounds:-

“1. Under the facts and circumstances of the case, the Id. CIT(A) has erred in not quashing the reopening proceedings u/s 147/148 of the I.T. Act, 1961. The said reopening proceedings u/s 147/148 is bad in law and deserves to be quashed.

2. Under the facts and circumstances of the case, the Id. CIT(A) has erred in upholding the action of and confirming the following additions made by AO by applying the provision of Section 69/69B.

(i) Addition of Rs. 11,00,000/- in respect of alleged unexplained investments for purchase of immovable property.

(ii) Addition of Rs. 1,48,380/-in respect of alleged unexplained registry expenses of land.

2.1 Apropos Ground No. 1 of the assessee, I have heard the rival contentions and perused the materials available on record. It is noted that original assessment in this case u/s 143(3) of the Act was finalized by the AO vide his order dated 27-12-2011. It is further noted that the AO while recording reasons for issue of notice u/s 148 of the Act in the case of the assessee observed as under:-

*“As seen from the assessment records/documents obtained and available on record that during the year under consideration, the assessee has purchased a residential plot namely B-107 situated at Sunder Nagar, Badanpura, Gopalpura Bye-pass Road, Jaipur for a sale consideration of Rs. 15,51,000/- through registered sale deed dated 28-11-2008. As per sale deed dated 28-11-2008, the assessee has made payment for purchase of above residential plot as under:-*

1. *Rs. 11,00,000/- paid in cash before execute of sale deed dated 28-11-2008.*

2. *Rs. 3,51,000/- paid through cheque No. 792500 dated 21-11-2008*

3. *Rs. 1,00,000/-paid in cash on the date of executing sale deed dated 28-11-2008.*

During the course of hearing, the ld. AR of the assessee drew the attention of the Bench to the effect that this issue was considered by the AO while making original assessment order dated 27-12-2011. The ld. AR further drew the attention of the Bench as to the reply submitted by the assessee on 4-10-2011 to the AO (APB page 1) wherein the copy of the sale deed was enclosed and it is placed at pages 2 to 9 of the assessee's paper book. The letter of Addl. Collector (Stamps), Jaipur dated 4-05-2010 which is placed at APB pages 10 and 11, the copy of RAAJI NAMA between Shri Dinesh Sharma and Vasudev Dewani which is placed at APB page 13, copy of statement recorded u/s 131 of the Act of Shri Vasudev Dewani on 14-12-2011 which are placed at APB page 13 to 19, copy of statement recorded u/s 131 of the Act of Shri Dinesh Sharma on 15-12-2011 which are placed at APB page 20 to 22, Copy of the affidavit submitted by Shri Vasudev Dewani which are placed at APB pages 23 to 24. It is also noted that all the documents placed from pages 1 to 24 of the paper book were before the AO prior to finalisation of the assessment order dated 27-12-2011 u/s 143(3) of the Act. Thus it is amply clear that the AO has made the assessment order after considering all these documents in his mind and the AO issued the notice on the basis

of these documents only. Therefore, this is a clear case of change of opinion and the AO has no power to issue notice u/s 148 of the Act on the basis of change of opinion. During the course of hearing, the ld. AR of the assessee relied on following case laws to this effect.

1. CIT vs. Hindustan Zinc Ltd., 70 Taxmann.com 262 (Raj)
2. Allied Strips Ltd. vs. ACIT, 69 Taxmann. Com 444 (Del.)
3. Manish Kumar Tulsidas Kaneriya vs. DCIT , 73 Taxmann.com 11) (Guj)
4. Mohan Gupta HUF vs. CIT, 44 Taxmann.com 171 (Del.)
5. ACIT vs. ICICI Bank Security Primary Dealership Ltd. 24 Taxmann.com 310 (SC)
6. Aroni Commercials Ltd. vs. DCIT , 44 Taxmann.com 304 (Bom.)
7. Plus Paper Food PAC Ltd. vs. ITO, 56 Taxmann.com 467 (Bom.)
8. CIT vs. Kelvinator of India Ltd. , 123 Taxman 433 (Del.)
9. ACIT vs. Maersk Global Service Centre (India) (P) Ltd., 16 Taxmann.com 47 (ITAT Mumbai Bench)
10. DCIT vs. Pasupati Spinning & Weaving Mills Ltd. , 20 Taxmann.com 160 (ITAT Delhi Bench)

11. Epcos India (P) Ltd. vs. ACIT, 72 Taxmann.com 66  
(ITAT Kolkata Bench)

2.2 The Id. DR during the course of hearing relied on the orders of the lower authorities.

2.3 Considering all these facts and case laws, I hold that the assessee has submitted all the relevant materials and facts on record during the course of original assessment proceedings with regard to the payment of Rs. 11.00 lacs for purchase of land. The AO accepted the assessee's contention without any adverse findings in this regard. There was no new information before the AO. Thus on the basis of the same facts of the case, the AO's action amounts to change of opinion as has been held in various cases by Hon'ble High Courts and Hon'ble Supreme Court (supra). Therefore, the decision of reopening of the assessment by the AO on the basis of change of opinion is not lawful. Once the assessee has made full disclosure of all relevant facts and the AO has accepted the same and later on by re-appreciation of the same material available on record which was submitted during original scrutiny assessment before the AO shall definitely amount to change of opinion which is patently not legal. Therefore, I allow this ground of appeal of the assessee.

3.1 As regards the Ground No. 2 of the assessee, it is noted that since the reopening of the assessment proceedings u/s 147/148 is quashed therefore, there is no need to adjudicate upon the Ground No. 2 of the assessee.

4.0 In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on 13/04/2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13 /04/ 2017

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Vasudev Dewani, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 3(4), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 765/JP/2016 )

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar