

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 757/JP/2017
निर्धारण वर्ष / Assessment Year : 2014-15

Shivani Khandealwal 416/27, Ram Kutir, Ran Ganj, Ajmer.	बनाम Vs.	The ITO, Ward-1(2) Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AZGPK 0147 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Hardik V. Vora (Adv.)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 07/03/2018
उदघोषणा की तारीख / Date of Pronouncement: 12/03/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 18.07.2017 of CIT(A), Ajmer for the assessment year 2014-15. The assessee has raised the following grounds:-

" That under the facts of the circumstances of the case the Ld. CIT(A) has erred in:-

- (1) Applying the provision of section 50C and considering 50C value at Rs. 11491732.00 instead of Rs. 51,11,000.00 whereas the matter is subjudicious in court of law.
- (2) Restricting deduction u/sec 80 to Rs. 79615.00.

(3) Any other matter with prior approval of the Hon'ble Bench."

2. The assessee is an individual and filed his return of income on 18.02.2015 declaring total income of Rs. 2,10,220/-. The assessee thereafter filed a revised e-return on 04.07.2016 declaring total income of Rs. 4,30,160/-. During the assessment proceedings, the AO noted that as per ITS, the assessee has purchased a Flat No. 321, situated at Plot/ Block No. A/6 Paiki Southern side 'Chetan Cooperative Housing society Ltd, Scheme-1, Vadodara for Rs. 51,11,000/- on 31.10.2013 whereas the stamp authority has valued the said property at Rs. 1,14,91,732/-. The AO issued a show cause notice to the assessee as to why the market value assessed by stamp duty authority should not be taken as the purchase consideration as per provisions of Section 56(2)(b) of the Income Tax Act and assess as the same income from other sources. The AO noted that nobody has attended the proceedings though the assessee filed a letter address to the Dy. Collector (Stamp), Badodra for appeal against the valuation for the purpose of stamp duty. The AO after considering the written submissions of the assessee made the addition of Rs. 63,80,732 u/s 56(2)(b) of the Act. The assessee challenged the action of the AO before the Id. CIT(A) however, despite various opportunities given by the Id. CIT(A) nobody has attended the

hearing before the Id. CIT(A) and therefore, the impugned order was passed ex-parte whereby the addition made by the AO were confirmed.

3. Before us, Id. AR of the assessee has submitted that due to shifting of residence from Ajmer to Badotra the assessee could not receive the notices issued by the Id. CIT(A) in time and therefore, there was no appearance as before the Id. CIT(A) on behalf of the assessee. He has further contended that the non appearance before the Id. CIT(A) was neither intentional nor willful but due to the circumstances as the assessee has shifted from Ajmer to Badodra. He has further contended that when the assessee has disputed the stamp valuation adopted by the AO then, the AO was required to refer the valuation to the DVO. He has further contended that the only grievance in this appeal of the assessee is the addition made by the AO u/s 56(2)(b) of the Act due to the adaptation of the consideration u/s 50C of the Act. Thus, the Id. AR stated that the another disallowance is not disputed by the assessee and therefore, the matter ought to have been referred to the DVO. Thus, He has pleaded that the assessee may be one more opportunities to represent its case before the Id. CIT(A).

4. On the other hand, Id. DR has submitted that despite the number of opportunities given by the Id. CIT(A) nobody has appeared before

the Id. CIT(A) and therefore, in the absence of any explanation and other documentary supporting evidence the Id. CIT(A) was justified in sustaining the addition made by the AO. The Ld. DR has further submitted that even before the AO, the assessee did not appear and only written submissions were filed.

5. Having considered the rival submissions as well as relevant material on record at the outset, we note that the Id. CIT(A) has granted number of opportunities to the assessee for attending the hearing as recorded in para 3 of the impugned order as under:-

"3.0 During the course of appellate proceedings, the appeal was fixed for hearing on 27.04.2017, 17.05.2017, 05.06.2017, 19.06.2017, 04.07.2017 and 18.07.2017. No one has attended on any of the date of hearing and no written submission has been filed. Therefore, the appeal is decided after going through the assessment order and grounds of appeal as under."

The main grievance of the assessee in this matter is the adoption of the value of the flat u/s 50C of the Act and consequential addition u/s 56(2)(b) of the Act. However, we note that once the assessee has filed the appeal before the Id. CIT(A) the assessee cannot take a plea of shifting his residence from Ajmer to Badodra for non appearance before the Id. CIT(A). Thus, it is a clear case of causal and negligent conduct of the assessee for not pursuing the appeal and appearing

before the Id. CIT(A) after filing the appeal. We further note that the assessee in the written submissions as reproduced by the Assessing Officer raised the objection against the adoption of value as determined by the stamp duty valuation authority as per provisions of Section 50C and consequential addition u/s 56(2)(b) of the Act though no specific request was made by the assessee for reference of the matter to the DVO. Accordingly, in the facts and circumstances of the case and in the interest of justice, we set aside the issue in ground no. 1 to the record of the Id. CIT(A) for fresh adjudication after giving one more opportunities to the assessee subject to cost of Rs. 10,000/-. We make it clear that the opportunity granted by us shall stand vacated in case the assessee fails to appear before the Id. CIT(A) in the remand proceeding.

6. Ground No. 2 is regarding the restricting of deduction u/s 80C. The assessee has not filed any evidence or record in support of his claim despite this issue was specifically raised before the Id. CIT(A) and the Id. CIT(A) has rejected the same on the ground that the assessee has not furnished any documents in support of his claim. Therefore, in the absence of any supporting documents even before us, we do not

find any substance or merit in ground No. 2 of the assessee appeal, the same is dismissed.

In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12/03/2018.

Sd/-
(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 12/03/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shivani Khandelwal, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 757/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar