

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV

आयकर अपील सं./ITA No. 700/JP/2017
निर्धारण वर्ष / Assessment Year : 2008-09

M/s Ascent Buildhome Developers (P) Ltd., J-100, Ashok Chowk, Adarsh Nagar, Jaipur.	बना म Vs.	The ACIT, Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCA 5891 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Kumar Rajput (Adv.)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 12/07/2018
उदघोषणा की तारीख / Date of Pronouncement: 09/08/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A), Alwar dated 31.07.2017 for A.Y. 2008-09. This matter was earlier dismissed ex-parte by the Coordinate Bench vide its order dated 26.10.2017 for non-prosecution and thereafter, the Bench vide its order dated 19.02.2018 has recalled the earlier ex-parte order and accordingly the matter has now come up for hearing before us.

2. At the outset, the Id. AR sought permission to raise the following additional ground of appeal which reads as under:-

"3. That having regard to the facts and circumstances of the case, the Id. AO is unjustified and lacks application of mind to initiate proceedings U/s 148 whereas the original assessment had already been framed U/s 143(3) r.w.s 143(2) of the Act."

3. The Id. AR of the assessee has submitted that the additional ground is purely a legal ground and it goes to the root of the matter, the same should be admitted in the interest of justice. In support, reliance was placed on the decision of Hon'ble Supreme Court in case of National Thermal Power Corporation Ltd. Vs. CIT 229 ITR 383. After hearing both the parties, the additional ground being a purely legal ground, the same is being admitted for adjudication.

4. Briefly the facts of the case are that the assessment in this case was originally completed U/s 143(3) of the Act, thereafter the AO recorded the reasons to believe that the income has escaped assessment and notice issued U/s 148 of the Act dated 31.03.2015 was issued which reads as under:-

"The assessee company e-filed return of income on 01.11.2008 at the return income of Rs. 4,26,139/-. The assessment of above assessee was completed in scrutiny u/s 143(3) on 01.12.2010 at on income of Rs. 5,40,080/-.

From the information in possession, it is revealed that the assessee has purchased two different properties for Rs. 22,22,060/- and sold

immovable property for Rs. 65,00,000/- during the F.Y. 2007-08. However most of the transactions were carried out in the names of different individuals. The assessee has made above investment from undisclosed income and also no capital gain was shown by the assessee for sale of land. The assessee made payment for purchase of stamp paper for registry in cash for Rs. 5,12,590/- (Rs. 2,51,350/- on 18.04.2007, Rs. 90,690/- on 11.05.2007 and Rs. 1,70,550/- on 10.05.2007/-).

In view of above, above facts and circumstances of the case, I have reasons to believe that the income of more than Rs. 1 lakh chargeable to tax has escaped assessment for the Assessment year 2008-09. Further, I have reasons to believe that the escapement of such income is due to the failure on the part of the assessee to disclose fully and truly all material facts which were necessary for assessment of his income for the A.Y. 2008-09”

5. In response to the notice issued under section 148, the assessee filed its return of income and also sought copy of reasons for reopening of the assessment U/s 147 of the Act vide its letter dated 06.07.2015. The reasons were supplied to the assessee on 16.07.2015, thereafter on 09.12.2015, the assessee filed its objection to the reasons so recorded by the Assessing Officer and it would be relevant to refer to the objections filed by the assessee which reads as under:-

"We have gone through the reasons recorded by your good self, intimated to us vide your letter dated 16/07/2015 for initiating the

proceedings u/s 147 of the Income Tax Act, 1961 for the assessment year 2008-09 in the case of aforesaid assessee company.

In this respect we have the following objections:-

- 1. The assessment of the assessee company was completed u/s 143(3) and the then Assessing officer applied his due diligence and mind while framing the assessment after obtaining all the information relevant for the purpose of completion of the assessment.*
- 2. The purchase of properties worth Rs. 22,22,060/ debited to Profit and Loss account has been duly entered in the books of accounts of the assessee and verified by the then assessing officer. If it is recorded in the audited books of accounts and audited financial statements, then how it can be an investment from undisclosed income as mentioned by your good self in the reasons recorded.*
- 3. The immovable property sold for Rs. 65,00,000 has already been shown as income in the audited Profit & Loss account of the company and duly recorded in the audited books of accounts verified by the then Assessing officer. Then how it can be said that this income has escaped assessment.*
- 4. You have recorded the reason that no capital gain was shown upon the sale of immovable property for Rs. 65,00,000/ . This is also not a valid reason since the company is doing the business of sale and purchase of immovable properties and the property sold was not a capital asset, it was in the nature of stock in trade and duly shown under*

the income head in Profit and Loss account. You cannot assess the same income twice under two different heads of income.

5. Your good self has mentioned that the assessee made payment for purchase of stamp papers for registry in cash for Rs. 5, 12,590/ on various dates. It is very humbly submitted that the company made these payments as advances for purchase of properties and these amounts are included in the gross amount of Rs. 1,40,55,079/ shown under the head Loans & Advances on the assets side of the balance sheet. No any expenses are claimed by the assessee for these payments. These amounts are duly recorded in the audited books of accounts and test checked by the then Assessing officer. Kindly see para 2 of the Assessment Order u/s 143(3) dated 01/12/2010 which clearly states that the company's A.R. produced books of accounts comprised of cash book, ledger, stock register, bills/vouchers, bank statements etc which were examined on test check basis. This reason is also seems to be not valid for taking action u/s 147 against the assessee company. No income has been escaped assessment and there is no concealment of any facts by the assessee.

Keeping in view the aforesaid ambiguities and misconceptions in the reasons recorded, you are kindly requested to drop the proceedings against the company."

6. Thereafter, on 15.12.2015 the Assessing officer passed an order disposing off the objections raised by the assessee against the initiation of reassessment proceedings and the contents of the order reads as under:-

"please refer to your objection letter dated 09.12.2015 through which certain objection were raised against reopening of assessment u/s 147 of the I.T. Act, through notice u/s 148, which are being disposed off point wise as under:-

Para-1 is in general in nature, which does not warrant any disposal.

Para-2,3 & 4 in these paras, the assessee mentions that the amount of purchase of immovable property worth Rs. 22,22,060/- is debited to the profit and loss account and Rs. 65,00,000/- sale has been credited to the profit and loss account. Herein, it is worthwhile to mention that no evidence on record has been produced to substantiate the claim of the assessee. The documentary evidence in support of sale of property worth Rs. 65,00,000/- is not in the name of the company. Further, information as called for in the notice u/s 147 is based on material in the possession of the AO which has led him to believe that income has escaped assessment.

Para-5 in this para, the assessee has stated that the amount of Rs. 5,12,590/- is paid as advance for purchase of property and is included in loans and advances. The AO has material in his possession to substantiate that such payments were cash and the nature of these payments differs from that shown in the accounts for the AY 2008-09.

In light of the same, the contention of the assessee is liable to be rejected and is accordingly disposed off. Further, you are required to furnish the details of the issue involved in this case on 23rd December, 2015. Notice u/s 142(1) is enclosed herewith."

7. During the course of hearing, the Id. AR submitted that all the relevant information/evidence/details were already on record before the Assessing officer at the time of passing the original assessment order. It was submitted that the sale proceeds of immovable property amounting to Rs. 65,00,000/- has been duly shown as income in the profit & loss account. It was submitted that purchases of Rs. 22,26,060/(1626060/- & 600000/-) were also duly recorded in books and debited to profit and loss account and how it can be added to the income of the assessee as purchase made out of books. Title deeds of these two properties purchased and bank statements showing source of investment are already in assessment records. The assessee is engaged in the business of sale, purchase and development of land and other properties. Purchasing of stamp papers on behalf of its customers/vendors is a routine exercise. Here, stamp papers of Rs. 5,12,590/ were purchased by the company on behalf of one of its vendors and shown as an advance against land and this amount was included in Advance of Rs. 81,22,290/ paid to Gopal S/o Sh. Isar under the head "Loans and Advances" (gross amount Rs. 1,40,55,079/-) on the assets side of the balance sheet. The assessee did not claim any expenses for these payments. These payments are duly reflected in the cashbook of the company produced before the AO during the course of original assessment proceedings. It was submitted that the assessee had produced complete books of accounts (Cashbook, Ledger, Stock register, bills/vouchers, bank statements) which were test checked by the earlier AO. The Ld AO

has the misbelieve that these stamp papers are purchased out of books.

8. In light of above, it was submitted by the Id AR that the Assessing Officer had obtained all the information relating to sales, purchase of properties and others expenses while framing the original assessment U/s 143(3) of the Act. It was accordingly submitted that there is no failure on the part of the assessee to disclose truly and fully all material facts which were necessary for assessment of its income and in terms of proviso to Section 147 of the Act, the reassessment proceedings are bad in law. It was further submitted that the reasons to believe that the income has escaped assessment should be based on fresh tangible material which has come in possession of the Assessing Officer, however in the instant case, all the relevant facts, documents and information were already in possession of the Assessing Officer while framing original assessment. In support, reliance was placed on the decision of the Hon'ble Delhi High Court in case of M/s Jindal Photo Films Limited vs. DCIT (1998) 234 ITR 170 and the decision of Hon'ble M.P. High Court in case of Smt. Kanchanbai vs. CIT 117 ITR 367.

9. The Id. DR is heard who has vehemently argued the matter and took us through the findings of the lower authorities which we have already noted above.

10. We have heard the rival contentions and perused the material available on record. It is noted that the assessment in this case was originally completed U/s 143(3) of the Act wherein the assessee

produced its books of accounts which were duly examined by the Assessing Officer along with the audit report in Form 3CD. There is a finding of the Assessing officer in the original assessment proceedings that during the year under consideration, the assessee was engaged in the business of sale, purchase & developing of agricultural land and thereafter, the return of income was accepted except for certain disallowances in form of land development expenses, vehicle running expenses, Travelling and conveyance expenses, etc. It is further noted that in the return of income, the assessee has shown the net loss as per profit and loss account at Rs. 36,77,197/- and thereafter, the net income under the head "profit and gain of business/profession" has been computed at Rs. 4,26,139/-. On perusal of the profit and loss account, It is noted that the total sales which have been recorded by the assessee amounts to Rs. 65,00,000/- which matches with the sales figure of Rs. 65,00,000/- which has been recorded in the reasons for reopening of the assessment as unrecorded sales transactions and on which the Assessing Officer has alleged that no capital gain has been shown by the assessee. Further, the assessee has reported the total purchases of Rs. 22,26,060/- which again matches with the purchase figure of the two properties as alleged by the Assessing Officer in the reasons so recorded u/s 148 of the Act. Thus it is clear that both the purchases and sales have been duly recorded in the assessee's books of account which are apparent on the face of the trading profit & loss account and the assessee has duly disclosed the profit on the sale transactions under the head "business income" being in the business

of sale and purchase of real estate. The said transactions have been duly examined and taken into consideration by the Assessing officer while framing the original assessment U/s 143(3) of the Act. Further, the payments for purchase of the stamp papers have also been duly recorded in the books of accounts. Hence, we don't find any failure on the part of the assessee to disclose truly and fully any material facts which were relevant for the purpose of completion of the assessment proceedings. Further, all these facts were duly available during the course of original assessment proceedings and there is no new tangible material which has come in the possession of the Assessing Officer which has led to the reopening of the assessment proceedings. In light of the same, we are of the considered view that the assessee has duly recorded the sale and purchase transactions which have been duly recorded, reported and accepted during the course of original assessment proceedings hence, there is no basis for reopening of the assessment proceeding by issuance of notice U/s 148 of the Act and the consequent reassessment proceeding U/s 147 are vitiated in law and are hereby set-aside. In view of the same, other grounds of appeal have become academic and the same are not being dealt with.

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

Order pronounced in the open Court on 09/08/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/08/2018.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Ascent Buildhome Developers (P) Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-2, Alwar.
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. 700/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar