

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.684/Ind/2016
Assessment Year:1997-98**

Shri Krishan Bahadur Saxena, 8, Surendra Enclave, H.No.4, Bawaria Kalan, Near Dana Pani Restaurant, Bhopal	<u>बनाम/</u> Vs.	CIT(A)-I Bhopal
(Appellant)		(Revenue)
P.A. No.AGQPS7938B		

Appellant by	Shri Yashvant Sharma, CA
Revenue by	Shri K.G. Goyal Sr. DR
Date of Hearing:	02.08.2018
Date of Pronouncement:	21.08.2018

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal of Assessee pertaining to A.Y. 1997-98 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-1, Bhopal, (in short 'CIT(A)'), dated 23.03.2016 which is arising out of the order u/s 143(3) r.w.s 147 of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 20.03.2002 by ITO, Bhopal.

2. Brief facts as culled out from the records that the assessee is an Assistant Teacher in Public Inter College, Tehsil Jahangirpur, Dist. Gautam Budh Nagar (UP). For the year under consideration the assessee received salary of Rs.88,888/-. No return of income was filed. The Ld. AO based on certain information came to know that the assessee had allegedly made investment in the construction of residential house for an estimated amount of Rs.10,12,000/- but the same has not been disclosed to the department. Accordingly, in order to assess the escaped income, action u/s 148 of the Act was initiated by issuing the notice but even after multiple attempts, the Assessing Officer failed to serve the notice as none was available at the address available with the income tax department. The ld. AO having no other alternative completed the assessment on the basis of information available with him. After allowing standard deduction 16(i) of the Act at Rs.15,000/- against gross salary of Rs.88,888/- Ld. AO made an addition for the alleged investment in construction of residential house from undisclosed income at Rs.10,12,000/-. Protective addition of Rs. 5,06,000/- was made in the hands of assessee's wife, Smt. Asha Saxena who is half owner of the impugned residential property. The impugned assessment order was framed on 20.03.2002 but it was served upon the assessee on 12.12.2008.

3. Subsequent, thereto the assessee filed an appeal before the Ld. CIT(A) on 12.01.2009. Challenging the validity of reassessment proceedings, addition of Rs.10,12,000/- for investment in house

property from undisclosed income from other sources as well as addition of salary income of Rs. 73,890/-.

4. During the course of appellate proceedings it was contended by the assessee that the Ld. AO has made very high pitched assessment making a huge addition completely ignoring the fact that the constructed area of the house is much less as to what has been shown in the assessment order and in the amount estimated for construction is on a very higher side. It was also submitted that construction was not carried out during the assessment year 1997-98. But it started during the assessment year 1998-99 and completed in A.Y.1999-2000. A sum of Rs.2,50,000/- each has already been shown in the hands of assessee and his wife for the investment in the residential house.

5. The ld. CIT(A) on the basis of report of AVO, Meerut which was done on the direction of predecessor CIT(A)-1, Bhopal, came to conclusion that the value of the residential house by the Valuation Officer Meerut is calculated at Rs.13,62,000/- and therefore there was no reason to disturb the finding of the Ld. AO who was made the addition of Rs.10,12,000/-. The Ld. CIT(A) has partly allowed the assessee's appeal holding the action of the Ld. Assessing Officer of reassessment proceedings as valid confirmed the addition of Rs.10,12,000/- and directing the Ld. AO to verify the details of TDS if any deducted on the salary given to the assessee.

6. Aggrieved the assessee is now in appeal before the Tribunal raising following grounds of appeal:

- “1. That, on the facts and circumstances of the case, the order of the Id. CIT (A) is bad in law.*
- 2. That, on the facts and circumstances of the case, the assumption of jurisdiction u/s 147 was bad in law.*
- 3. That, on the facts and circumstances of the case, the Ld. CIT(A) erred in confirming action of the AO towards making addition of Rs.10, 12,000/- on account of investment in house property from undisclosed sources.*
- 3A. That, on the facts and circumstances of the case, the Ld. CIT erred in taking cost of construction of residential property at Rs.13,62,000 as per report of AVO, as against addition of Rs.10,12,000/- made by the AO, without giving any notice of enhancement.*
- 3B. That, on the facts and circumstances of the case, since no construction was done by the assessee or his wife in impugned F.Y. 1996-97 (AY. 1997-98) but the same was done in next F. Y.1997 -98 (A Y.1998-99) & F. Y.1998-99 (A Y.1999-2000), no addition was warranted in impugned AY. 1997-98.*
- 3C. That, on the facts and circumstances of the case, reference for valuation made by AO after completion of assessment was unlawful and uncalled for because no reference could be made by AO after completion of assessment or re-assessment, as per law, that too at the behest of CIT(A).*
- 4. That, on the facts and circumstances of the case, the Id. CIT erred in not giving direction to AO for allowing rebate u/s 88. He also erred in not giving direction to AO to call for the detail of TDS deducted by employer-college as assessee has life threat and is not in a position to visit his college.*

7. Apropos Ground No.2 wherein the assessee has challenged the assumption of jurisdiction u/s 147 of the Act by the Assessing Officer was bad in law. The Ld. counsel for the assessee submitted that that it is a settled law that there should be clear inference of escapement of income for issue of notice u/s 148 of the Act and no assessment can be resorted to on the basis of vague allegations,

suspicion, indefinite or far-fetched, fanciful or unspecific surmises and conjectures as done by AO in the instant case. He further relying on the judgment of Hon'ble Apex Court in the case of CocaCola v. ITO (1998) 231 ITR 200(SC) submitted that irrelevant information could not be the basis of reassessment and therefore, same was bad in law and deserves to be declared as void.

8. Ld. DR opposed the submission made by the Ld. counsel for the assessee and relied on the finding of the Ld. CIT(A).

9. We have heard the rival contentions and perused the material available on record before us. In Ground No.2 the assessee has challenged the reopening of assessment and the wrong assumption of jurisdiction u/s 147 of the Act. We observe that the assessee did not file its income tax return even though he was earning salary of Rs.88,000/-. The Assessing Officer was having information about the alleged unaccounted investment in residential house which prompted to initiate the assessment proceedings in order to examine the alleged investment in the residential house and its disclosure in the return of income.

10. We therefore in the given facts and circumstances of the case are of the considered view that reassessment proceedings has been rightly initiated by issuing notice u/s 148 of the Act. Therefore, no interference is called for in the finding of the Ld. CIT(A). Accordingly, ground No. 2 of the assessee's appeal is dismissed.

11. Now we take up ground No.3 wherein the assessee is aggrieved with the order of Ld. CIT(A) of confirming addition of Rs.10,12,000/- for investment in house property from undisclosed sources.

The ld. counsel for the assessee relied on the following written submission.

Investment in House property:

The assessee purchased a plot on 23.06.95 measuring 225 sq. mtrs. at Shivpuri Khurja for R.s. 161000/(incl. cost of stamp) in the joint name of himself and his Wife Smt. Asha Saxena. Construction of the house was completed in F. Y.98-99 (A Y.99-2000) as disclosed in the returns of assessee and his Wife much before the launching of reassessment proceedings :

Name	Share	Plot cost ASSESSMENT YEAR 96-97	Cost of Construction				Total	Copy return of
			96- 97	98- 99	99-00			
Assessee self	50%	80550	-	-	200000	50000	250000	Pg.28-35
Smt. Asha Saxena, Wife	50%	80500	-	-	200000	50000	250000	Pg.36-42
Total		161000			400000	100000	500000	

Thus it is apparent from the above that the assertion of the inspector that the construction Work Was completed in December, 1996 is erroneous and opposed to facts available on record because construction Work Was completed in F. Y.1998-99 corresponding to A. Y.1999-2000. This also proves casual and arbitrary approach of the inspector as well as of the AO.

Further, though the report of the inspector cannot be relied upon because it is not based upon any evidence, much less credible evidence, and is based merely upon heresay but then, even so-called estimate of cost of construction by inspector is far from reality and is on the very higher Side because way back in F.Y.97-98 and F.Y.98-99, the cost of construction Was not as high as R.s.500/ per sq. feet, and

that too for an ordinary type of house constructed by an asstt. Teacher at a small place like tehsil Khurja. Ten years back, cost of such type of construction (excluding land cost) Was merely R.s 150-175 per sq. feet and hence the cost of Rs. 500000/_ shown by the assessee for 2025 sq. was quite reasonable by and' standards. The assessee is ready to sub,...,it affidavit ,if directed, to Support the cost of construction.

Sir, the arbitrary approach of the Id. AO can be judged from the fact that he has not even given credit of the investment shown by the assessee and his wife.

Valuation of the property may be got done from DVO

Moreover, the AO Was not correct in ignoring investment of Rs.2,50,000/- made by my Wife, Smt. Asna Saxena towards cost of construction and in making entire addition on a/c of So-called investment in to assessee's hands only. This is because my Wife is regular assessee showing her income to the deptt. as per copy of return enclosed (supra). These incomes have always been accepted by the deptt. and the view conceived by the AO that my Wife did nothing, Was based only on the Inspector's report which Was again based on some So-called local enquiry made by inspector, the basis of which is itself not at all known, what to talk of some credible evidence gathered and brought on record by AO.

Hence, the basis of addition was merely unproved allegation based 011 Suspicion, conjecture and surmises and hence are unsustainable and cannot be acted upon.

12. Ld. Counsel for the assessee further referred to the rejoinder filed by the assessee against the report of Assessing Officer dated 12.09.2012 where assessee made following submissions:-

"As accepted by the ld. ITO-1 (1). Bhopal at pg. 2 Para(ii), the

terms of reference of valuation was to fix the

Reserve Price of the Standing Property as on 16.08.2004(date of inspection) [u/s.222]. hence the back calculation done by AVO for working out cost of construction in December .1996 using the same Reserve Price calculations, was unlawful, unacceptable and requires to be ignored by your honour.

Without prejudice to above. the assessment/reassessment was completed u/s 147 on 20.03.2002 whereas reference for valuation to AVO was given after long 9 years on . 09.08.2011 by IT01(1),Bhopal, present incumbent AO on transfer of file to Bhopal, after completion of assessment. The said valuation report could, therefore, not be used or acted upon after completion of assessment as per the following decisions:

The opening words of section 55A reads as follows. - "with a view to ascertaining the fair market value of a capital asset for the purposes of this chapter. the Assessing officer may refer the valuation of capital asset to a valuation officer. " Form the above wording of section 55A. it is abundantly clear that for computation of income falling under chapter IV of (the Income-tax Act, the Income-tax officer may refer the matter of valuation of a property to the valuation officer when the assessment is still pending. There is no authority under the said provisions of section 55A to refer for valuation of a property after the assessment is completed by the income-tax Officer. The reference becomes invalid because the purpose for which the valuation report can be utilized, namely, for completion of the assessment in conformity with the valuation report is no longer in existence, the assessment having been completed in the meantime.

Bhola Nath Majumdar v.ITO[1996]221 ITR 608(Gauhat(HC)

The purpose for which alone a valuation report can be utilized namely for completion of the assessment in conformity with the valuation report is 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.

Reliance Jute and Industries Ltd. V ITO[J984] 150 ITR 643. 647(calcuta HC)

We are of the opinion that the foundation or bedrock of the jurisdictional facts necessary for giving jurisdiction under section 16A is that the Wealth-tax Officer must be seized of a return filed by the assessee containing valuation of his assets for which he is to apply his mind and adjudicate the valuation for completing the assessment. The situation contemplated in clauses (a) and (b) of sub-section (1) of section 16A can be visualized only in a case of pending assessment and not a completed assessment. Once the assessment is completed and before the reassessment commences the Wealth-tax Officer becomes functus officio for (he purposes of section 16A, as he is not in the process of completing any assessment. for the purpose of which he wants to check up from the Valuation Officer, the correctness of the valuation of the assets disclosed by the assessee in the return and which, according to him, are undervalued, looking to the fair market value or as per the standards laid down in clause ((a) or clause(b) of sub-section 91).

This makes the opening phrase 'for the purpose of making an assessment' extremely important and an opening gate through which and through which alone. the Wealth -tax Officer can have access and approach to the Valuation Officer. The opening gate of section, 16A is wholly solely and exclusively governed and contained in the phrase 'for the purpose of making an assessment' which, of course. can include the reassessment as per the definition of assessment as mentioned above, ..

Brig B. Lall v WTO[1981] 127 ITR 308, 3239 Raj. HC)

In view of above if the valuation report of A VO is ignored. and legally so, and the construction done by assessee as per map approved by Bulandshahar Khurja Development Authority. Bulandshahar is taken into consideration, for which affidavit of assessee has already been filed with application u/r46A at pg. 48,49 vide letter dtd. 14th June.2012/ 15th June, 2012 the cost of construction shown by the assessee was quite reasonable. it is also note worth to mention here the following facts which go to

the root of the case .-

- i. The ld. AO as well as the AVO, Meerut have practically accepted the fact and averments of assessee deposed on oath that the assessee has done construction only as per approved map on 60.08 sq. Meter on both floor i.e. 60.08 on ground floor and 60.08 on first floor and not on the area stated by IT Inspector or AVO; this is because they have maintained complete silence on this crucial fact in their reports. They have not commented at all on vast variation in the constructed area shown by Inspector, AVO and deposed to have been constructed by the assessee. This proves the truth the version of the assessee.*
- ii. Since the affidavit of the assessee has remained un rebutted or uncontroverted. the same needs to be accepted as per Hon 'ble MP High Court decision in CIT vs STL Extrusion(2011)17 ITJ 648(MP).*
- iii. Despite our serious objection on the issue. still the AVO has neither sent the detailed measurement of the property nor the photograph of the property valued which goes to reinforce our apprehension that physical measurement of the property was not done as the occupant is hard core criminal.*
- iv. Cost of construction was taken by the AO on the behest of IT Inspector on surmise conjectures, estimates and without basis only. The same needs to be ignored as they are not expert in the field. "*

13. On the other hand, Ld. DR opposed the submissions of the Ld. counsel and relied on the finding of the lower authorities and submitted that value was correctly done by the Assistant Valuation Officer and the addition made by the AO is less than the value calculated by the valuation Officer.

14. We have heard the rival contentions and perused the material available on record before us. The issue raised by the assessee in the revised ground No.3, 3A, 3B, 3C, related to the addition of Rs.10,12,000/- made by the Ld. AO on account of investment in

House property from undisclosed source and the same stands confirmed by the Ld. CIT(A)

15. We find that the alleged unaccounted investment is for the construction of residential house situated at New Shivpuri, Khurja. It has been alleged that the assessee had made unaccounted investment in the residential house jointly owned with his wife. Addition of Rs.10,12,000/- was made in the hands of assessee by the AO on the basis of cost construction estimated by the inspector of the Income Tax Department applying cost of construction @ Rs.500/- per sq.ft. On the total construction area of Rs.2025 sq.ft. Protective addition of 50% of this amount at Rs.5,06,000/- was also made in the hands of assessee's wife.

16. We observe that the assessee filed an affidavit (placed on page 43 & 44 of the paper book) confirming on oath that the construction was not carried out during A.Y. 1997-98 but the work commenced in the A.year 1998-99 and completed in A.Y.1999-2000 and amount of Rs.2,50,000/- each was shown to be invested by the assessee as well as his wife and the same is duly disclosed in the income tax return filed for these two assessment years.

17. We also find that during the course of appellate proceedings before the Ld. CIT(A) valuation of the impugned property was again carried out by the AVO, Income Tax Department Meerut. In this report placed at pages 53 to 61 of the paper book total cost of house including the land, total cost of construction of the house is shown at Rs.17,72,700/-. Going through this valuation report, we find that

when the valuer went to inspect the property, some other person other than the assessee were occupying the impugned property and none of the records were available. The assessee had no opportunity to provide the necessary details. Valuation was made on the basis of fair market value on 16.08.2004 and thereafter making some backward calculation, to compute the value as on December, 1996.

Further from perusal of the Map approved by the Bulandshahar Khurja Development Authority, We find that the assessee did construction only as per the approved Map of the area of 60.08 sq.mt. on both floors i.e. 60.08 on ground floor and 60.08 on first floor. The total plot area is 225 sq meter out of which 72.37 sq.meter has been left for road widening. 60.08 sq.m. each for ground floor and first floor was constructed and open area for ground floor 92.56 sq.meter remains without any construction. Whereas, the inspector who prepared the report has taken area of 1350 sq.ft. (675 sq.ft. for ground floor and first floor). Whereas the AVO has taken the area 184.68 sq.mt & 140.07 sq.mt for ground floor and first floor and applied the rate of 3558.56 per sq.mt. & 3244.76 per sq.mt. and calculated the amount of Rs.11,11,689/-.

18. From perusal of the above facts, we are of the considered view that one cannot deny the possibility that the valuation report is based on some type of conjectures and guesswork. It is also in doubt that any physical verification/measurement was actually done.

19. Even for the sake of arguments if rate taken by the valuation officer at Rs. 3558.56 per sq.mt. & 3244.76 per sq.mt. is applied

on the permissible area constructed by the assessee as per the proved map of 60.08 sq.mt. each for both the floors. The estimated cost of construction will come to Rs.2,85,280/- in the following manner:

	Area constructed by assessee	Rate per sq.mt.	Amt.
Ground Floor	60.08 sq.mt	3558.56	213798
First floor	60.08 sq.mt	3224.76	193744
Total cost as per plinth area rate			407542
Less: 10% in CPWD and state PWD rates (Note: As per some decisions, it should be 25%)			(-)40754
10% for self supervision			(-) 40754
10% for direct purchases and sufficient time given in supervising the work as assessee was salaried employee			(-) 40754
Cost of construction as per estimate of AVO Rs.			2,85,280

20. As against the above estimated cost of construction of Rs.2,85,280/-, the assessee has already disclosed Rs.5,00,000/- as investment in the house at Rs.2,50,000/- each by him as well as his wife in the income tax return and this fact is not disputed by the Ld. Departmental Representative and is verifiable for records. In these given facts and circumstances of the case, we are of the considered view that Ld. CIT(A) was not justified in sustaining the addition of Rs.10,12,000/- in the hands of assessee. We, therefore,

set aside the finding of both the lower authorities, and delete the addition of Rs.10,12,000/- made in the hands of assessee and allow ground No.3 raised by the assessee in this appeal.

21. Apropos Ground No.4, we direct the Assessing Officer to call for the details of tax deducted at source by the employer of the assessee i.e. Public Inter College and allow the credit of tax if any deducted at source on salary and also allow the genuine claim of rebate u/s 88 of the Act on the basis of documentary evidence to be furnished by the assessee after providing proper opportunity of being heard. Ground No.4 is allowed for statistical purposes.

22. Ground No.1 is general in nature its needs no adjudication.

23. In the result, the appeal of the Assessee is partly allowed for statistical purposes.

Order was pronounced in the open court on 21.08.2018.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANTMEMBER

Indore; दिनांक Dated : 21/ 08/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore