

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'बी.', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ITA No. 510/CHD/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Sushma Kapila, C/o M/s Kapila Nursing Home, Palampur, Distt. Kangra (HP).	बनाम VS	The DCIT, Circle, Palampur (HP).
स्थायी लेखा सं./PAN No: ADXPK8794R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar & Shri Aditya Kumar, CAs

राजस्व की ओर से/ Revenue by : Smt. Anita Sinha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 04.09.2018

उद्घोषणा की तारीख/Date of Pronouncement : 31.10.2018

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 28.03.2016 of CIT, Shimla pertaining to 2011-12 assessment year on the following grounds :

1. That order passed u/s 263 of the Income Tax Act, 1961 by the Ld. Principal Commissioner of Income Tax, Shimla is against law and facts on the file in as much as he was not justified to hold that assessment order dated 27.03.2014 passed, by the Ld. Deputy Commissioner of Income Tax, Palampur is erroneous in as much as prejudicial to the interest of the Revenue.

2. That he was not Justified to hold that the Ld. Assessing Officer did not make proper enquiry/investigation with respect to the sale of agricultural land and also deposits in bank account maintained with HDFC Bank by the appellant.

2. The ld. AR inviting attention to the material available on record submitted that in the facts of the present case, AO on the very same reasons had carried out re-assessment proceedings and after considering the submissions of the assessee and calling forth for the replies etc. had chosen not to make any addition on account of the sale of agricultural land and the deposits in the bank account maintained with HDFC bank by the assessee. Referring to the facts it was his submission that the assessee alongwith her husband owned the specific property wherein assessee had half share and half share was held by her husband Dr.

S.C.Kapila. The property was sold in one chunk to the same person and the department on the very same facts has not drawn any adverse inference or taken any adverse view in the case of the husband and only in the case of the wife who had half share in the said property have proceeded to give a different treatment. Thus, it was his submission that apart from the facts that in the case of the co-owner, the facts are not disputed and in the case of the assessee, adverse inference was drawn also ignoring the fact that in the facts of the present case, the issue has already been looked into by the AO in 147 proceedings. Attention was invited to order dated 27.03.2014 passed by the AO u/s 147/143(3) of the Act.

2.1 Inviting attention to the reasons recorded on the basis of which re-opening was done, copy of which was made available. The ld. AR carrying us through the notice issued u/s 263 for forming the view that the order passed by the AO is erroneous and prejudicial to the interests of the revenue, invited attention to the explanation offered before the CIT read alongwith the explanation made before the AO in the 147 proceedings submitted that ignoring the submissions and the facts on record, the CIT Shimla has proceeded to exercise the power without bringing on record any evidence to rebut the conclusions drawn. The order having been passed purely on suspicions, it was submitted, deserves to be dropped. Reliance was placed upon Radhey Shyam Agarwal, HUF V CIT, Gwalior (2012) 35SOT 356 (Agra).

3. Addressing new issue on merits, attention was invited to the facts noticed by the AO in the re-assessment proceedings in para 3 wherein specific mention is made to the specific deposits in the HDFC Bank Ltd. Referring to the other evidence and the explanations given in para 2(c) and (g) it was submitted, would show that the assessee had accepted the making of the addition and it was noticed that there was duplication etc. in the two different AIRs which had been noticed by the AO. As a result of this, the returned income of Rs. 8,39,570/- was assessed at Rs. 1,05,00,770/-. Accordingly, it was his submission that the order passed by the CIT Shimla to the said extent cannot be upheld.

4. It was fairly conceded that on the third issue i.e. the bank interest not added in the total income, the assessee had himself made a prayer that this has been omitted and necessary directions may be issued to the AO.

5. The ld. CIT-DR relied upon the impugned order.

6. We have heard the rival submissions and perused the material on record. It is seen that the assessee had returned its income on 30.07.2011 declaring an income of Rs. 8,39,470/-. The said return was processed u/s 143(1). The AO after recording the reasons and issuance of notice u/s 148 reopened the case u/s 147 on 07.11.2012. On a reading of the copy of the reasons recorded which has been made available by the Id. AR, it is seen that the AO has recorded the following reasons for re-opening :

Reasons: for reopening the Case of Dr. Sushma Kgpila C/o Kapila Nursing Home, Palampur, Distt. Kangra (H.P).-A.Y, 2011-12 (PAN: ADXPK8794R)

In this case return of Income was filed on 30,7.2011 declaring income of Rs. 8,39,470/-. The same was processed u/s 143(1) on 7.10.2011 at the income returned.

A survey was conducted u/s 133A of the I.T. Act, 1961 In the case of Shri Sachin Verma Prop. M/s Baldev Raj Verma & Sons Auto Division. On going through the Impounded material it has been noticed that Sh, Sachin Verma purchased a land at Bindrafaan, Palampur for a consideration of Rs. 60,00,000/- from Dr. S.C. Kapila and his wife Smt. Sushma Kapila C/o Kapila Nursing Home having equal shares on 08.02.2011. During post survey inquiry the assessee Smt. Sushma Kapila in her written submission has stated that there is no capital gain chargeable being the land in question was agriculture land. However, the copy of sale deed do not support the contention made.

Therefore, I have reasons to believe that the income chargeable to tax amounting to the capital gains on sale of land at Rs,30,00,000/- has escaped assessment within the meaning of section 147 of the Income-tax Act, and it is fit case for issuance of notice u/s 148. Therefore, in order to assess this Income and any other income which may come to the notice of the Assessing Officer during the course of reassessment proceedings, a notice u/s 148 for the A.Y. 2011-12 is being issued.

Sd/-

(R. NISHA ORAON)

*Asstt. Commissioner of Income Tax,
Circle-Palampur (H.P).*

6.1 It is seen that considering the same, as per letter dated 20.03.2014 noticed by the AO in the order dated 27.03.2014, the assessee was found to have made the following submissions :

“The assessee has submitted his submissions vide letter dated 20.03.2014 which are reproduced as under :-

1. Sale of land Rs. 60,00,000/- to Shri Sachin Verma : It is submitted that in this case the assessee has sold agriculture land for Rs. 60,00,000/- which was in ½ joint share with her husband Dr. S.C.Kapila. The share of the assessee in this land comes to Rs. 30,00,000/-. This was agriculture land situated in mohali Bindraban. Necessary land record reflecting this land as agriculture land is enclosed herewith for your kind records. Keeping in view the facts state above no capital gain tax was applicable on the sale of this land.

This sale consideration of Rs. 30,00,000/- was received through different cheques from Sachin Verma in the year under consideration. The sale consideration was credited in the regular bank account in State Bank of India 11034516286.”

6.2 It is seen that the said explanation was accepted by the AO and no addition on this account was made. It is further seen that the CIT Shimla taking note of issued notice u/s 263 for proposing action under the said Section on the following ground :

“It has been noticed from the perusal of the assessment record that during the course-of assessment proceedings, you have filed copy of sale deed of land date 08-02-2011 alongwith a copy of Jama Bandi property for the Year 2018-09. However, the plain reading of the sale deed shows that a house was situated on the land and a map of the house was enclosed with the sale deed and the land was sold alongwith a house. No enquiry was made (leave apart any independent inquiry) from the Revenue Department whether the land is an agricultural land or not and whether the land situated within municipal limits or otherwise and how much distance it had from the municipal limits. It was necessary to investigate the fact stated in the reasons recorded.”

6.3 It is seen from the reply extracted before the CIT that following submissions have been advanced on behalf of the assessee :

a) Sale of land for Rs. 30,00,000/- to Sachin Verma

"the assessee has sold agriculture land for Rs. 60,00,000/- which was in ½ joint share with her husband Dr. S.C. Kapila. The share of the assessee sold in this land comes to Rs. 30,00,000/-. This agriculture land is situated in Mohal Bindravan Tehsil Palampur as per Jamabandi issued by the local revenue authorities. During assessment proceedings necessary investigation was made by the assessing officer to ascertain the status of land in the revenue record, copies of revenue records were also called for, placed on the file and the assessment was never framed in the haste. After considering all facts and documents the assessing officer reached on the logical end that this land is an agriculture land "a non capital assets"

It is further submitted that the population of municipal council Palampur is less than ten thousand, necessary evidence, a certificate from Executive Officer, Municipal counsel Palampur is enclosed herewith for your kind satisfaction, therefore this land falls in the definition of Non a capital assets as the population of Palampur Municipal Council is less than ten thousand and no capital gain tax is attracted, the Assessing officer has rightly treated the said land as non capital assets as agriculture land and no capital gain tax was levied.

As your good self has raised another issue that there is a house in the land therefore it be considered as agriculture land I would like clarify that the house situated on the said land was a cow shed and it was not a residential house. However, legally it makes no difference there can be a residential house in agriculture land also.

6.4 Similarly qua the deposits in the HDFC account, the assessee has accepted the additions and some discrepancies were pointed out to the AO in the re-assessment proceedings. The CIT concluded that qua the deposits of Rs. 31,31,700/- the deposits were not explained. The assessee's explanation that there was some duplication and the amounts were added twice, was not accepted by the CIT. The following submissions extracted in the impugned order are extracted hereunder :

“Cash deposited in the HDFC Bank Id-34784869 Account Number 17361930000349.

It is further submitted that during assessment year under consideration the assessee had made a cash deposit in her HDFC Bank Account Number 17361930000349 Palampur amounting to Rs. 58,56,700/- on different dates. The assessee has only one bank account in the HDFC as mentioned above (A/c 17361930000349)

I would like to bring in your kind notice that the HDFC Bank has filed two AIRs in two parts before the Income Tax Department during the year under consideration i.e 2011-12 against the PAN of the assessee under consideration

Part-i Cash deposit Rs. 33,47,200/- consolidated 31.03.2011

Part-ii Cash Deposit Rs. 25,49,500/- consolidated 31.03.2011

While completing the assessment the assessing officer made an additions of Rs. 84,62,200/- on account of deposits made in the HDFC Bank account whereas the actual cash deposit made by the assessee were only Rs. 58,56,700/- as per bank statement with effect from first April, 2010 to March 31, 2011. The assessing officer also made an addition of Rs. 9,00,000/-(09.02.2011), Rs. 9,50,000/-(08.02.2011), Rs. 5,00,000/-(17.01.2011) and Rs. 2,15,5007-06.10.2010) figure again taken from the bank statement of HDFC bank same account number 17361930000349 which had already

formed part of AIRs Part-I Rs. 2,15,000/- and balance figures reflected in Part-ii of the AIRs. Thus an addition of Rs. 25,65,500/- was made twice.”

6.5 We find on going through the impugned order that as far as the factum of sale of specific property is concerned, not only the fact that in the case of the co-owner, it has not been disturbed but even otherwise, we find that there are only inferences, presumptions and suspicions and there is nothing on record on the basis of which it can be said that the matter was not enquired into by the AO and that the specific house referred to was not a cow-shed, as has been consistently argued on behalf of the assessee. Accordingly, we are of the view that in the peculiar facts of the present case, 263 proceedings on this ground cannot survive.

6.6. We find that addressing the claim of duplication of the amounts in para-I and para-II of the AIRs, we do not find on considering pages 24 and 25 of the Paper Book how the cash deposit of Rs. 31,31,700/- can be said to have been addressed. We further find that on the issue of bank interest which admittedly has not been considered in the re-assessment proceedings admittedly has not been added to the total income as is borne out from the following submissions on behalf of the assessee himself before the CIT, Shimla. Accordingly, to the said extent, the action of the CIT, Shimla deserves to be sustained. For ready reference, relevant extract from the assessee's submission is reproduced hereunder :

Bank interest not added in the total income:

The interest earned on the bank deposits in HDFC, OBC and OBC FDRs Rs. 3,91,370/- has been omitted by the assessing officer, the necessary directions be issued to the assessing officer in this regard to add back the same into the income of the assessee.

7. Accordingly, in view of the above, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 31.10. 2018.

Sd/-

(अन्नपूर्णा गुप्ता)

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“पूनम”

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

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायकि सदस्य/ Judicial Member

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar