

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.Nos.405, 406/Del/2018
Assessment Years 2008-09, 2008-09

Sabeena Khanam, Village Chandiyana, Post Bugarshi, Bulandshar (Appellant)	vs.	Income Tax Officer Ward-3(2) Bulandshahr PAN ERCPK0638F (Respondent)
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For Assessee :	Shri Rohit Aggarwal, CA
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	17.12.2018
Date of Pronouncement :	21.02.2019

ORDER

The aforesaid appeals have been filed by the assessee against separate impugned orders dated 18.9.2017, passed by Ld. CIT(Appeals) Aligarh for the quantum of assessment u/s 144/147 for the assessment year 2008-09; and order dated 18.9.2017, in relation to the penalty proceedings u/s 271(1)© for the same assessment year.

2. The facts in brief are that, on the basis of AIR information that assessee has purchased an immovable property of Rs. 10 lacs during the year which was valued by the stamp authority at Rs. 40,11,000/- for the purpose of stamp duty, a notice u/s 148 was issued on 2.3.2015 for assessing the income of the assessee. In response, assessee filed her return of income on 25.1.2016, declaring agricultural income of Rs. 2,50,000/-. Thereafter, AO issued notices to the assessee u/s 142(1), however, no compliance was made and accordingly, he had made an addition of Rs. 13,00,880/-, out of which

amount paid of Rs. 10,00,000/- for the property and balance for the stamp duty charges which was added u/s 69.

3. Before the Ld. CIT(A), the assessee contended that she has purchased the land from her father for a total consideration of Rs. 10 lacs and copy of purchase deed was also filed before him. It was submitted that she has paid the purchase consideration over the period of five years to her father out of her savings, gifts from relatives and agricultural income. This fact was also duly confirmed by her father through his affidavit and also by the assessee in her affidavit. It was submitted that the copy of the affidavit was also filed before the AO alongwith letter dated 18.3.2015. It was further submitted that payment of purchase consideration was made in earlier years which is evident from the sale deed itself, which mentions that payment has been agreed to be made in five years. Further, it was submitted that source of such purchase was mostly out of agricultural income as she was having 34 bighas of land, which yielded savings of Rs. 2,00,000/- to Rs. 2,50,000/- per annum and the only source of income by her was agricultural and she had no other source of income. Relying upon the judgment of Supreme Court in the case of CIT vs. P.K. Noorjahan it was submitted that addition could not have been made on account undisclosed investment made out of undisclosed sources.

4. Ld. CIT(A) noted that in the sale deed itself, it was mentioned that the property in concern was agreed to be purchased from her father and agreement was entered 5 years earlier and the amount of Rs. 10 lacs have been paid over the period of five years. Looking to the fact that assessee was having agricultural income, Ld. CIT(A) accepted that sum of Rs.5 lacs can be treated to be explained out of agricultural income, however the balance amount was confirmed by him as investment made from undisclosed sources.

5. After hearing both the parties and on perusal of the relevant findings given in the impugned orders as well as material placed on record, I find that, as per the sale deed itself (copy filed in the paper book), specifically on perusal of pages 22 to 30, it is seen that the assessee has made payment over the period of time and all the payment was made in the earlier years. This fact is also borne out from the affidavit of the assessee's father. Thus, it cannot be said that the payment of Rs. 10,00,000/- has been made in this year so as to warrant any kind of addition u/s 69 for the entire amount in this year, except for the stamp duty which was paid in this year amounting to Rs. 3,00,880/-. It is also undisputed fact that assessee does not have any source of income other than agricultural income and department itself has accepted that in the return of income assessee has shown agriculture income of Rs. 2,50,000/-. Once assessee has no source of income other than agricultural income then to hold that she must have made investment out of her unexplained sources would be very difficult to believe. Further, when factum of agricultural income has been accepted in this year, then assessee must have earned similar agricultural income in the earlier years as stated by her and savings from such an income can be held to explain the investment made in stamp duty in this year. Thus, when amount of Rs. 10 lacs paid for purchase of agricultural land from her father was made in the earlier years then same cannot be added in this year and stamp duty payment as held above stands explained, then nod addition on account of unexplained investment u/s 69 can be made. Accordingly, addition of Rs. 8,00,880/- as sustained by Ld. CIT(A) stands deleted.

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

7. In so far as levy of penalty u/s 271(1)© is concerned, since I have already deleted the addition, therefore, the penalty levied on the same amount has no legs to stand. The same is quashed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 21st February, 2019.

(AMIT SHUKLA)
JUDICIAL MEMBER

Delhi, Dated 21st February, 2019

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1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT Bench, Delhi
6.	Guard File.