

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCH 'B', JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
Before : Shri Ramesh C.Sharma, AM & Shri Vijay Pal Rao, JM

आयकर अपील सं./ITA No. 546/JP/2017
निर्धारण वर्ष/Assessment Year : 2011-12

Smt. Erawati Devi W/o late Shri Brij Lal E-44, Mohan Nagar, Hindaun City	बनाम Vs.	The ITO (3) Karauli, HQ Sawai Madhopur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से / Assessee by : None (Notice returned unserved)
Written submission

राजस्व की ओर से/ Revenue by: Shri Kailash Mangal, Addl. CIT-DR

सुनवाई की तारीख/ Date of Hearing : 23/07/2019

घोषणा की तारीख/ Date of Pronouncement : 25/07/2019

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order dated 13-01-2017 of Id. CIT(A), Kota for the Assessment Year 2011-12. The assessee has raised the following grounds:-

“1. That the Id. CIT(A) was not justified in confirming the action of the AO for initiating proceedings u/s 147 and consequence

issue of notice u/s 148 in an arbitrary manner without recording any findings upon detailed submissions of the appellant. Therefore, he was not justified in confirming this action of the AO. Therefore, the initiation of proceedings u/s 147 and consequence notice u/s 148 & ultimate assessment order may kindly be quashed.

2. That while adjudicating upon Ground No. 2 taken in appeal before the Id. CIT(A) against assessing the total income of the appellant, quite arbitrarily and illegally, being impressed only for the defaults of the appellant confirming the assessment of the total income of appellant which is unjustified for the following reasons.

(i) Firstly, the total income of the assessee was assessed by the AO as income from undisclosed sources which was the sale consideration of an immovable property, admittedly by the AO also but this objection was not accepted by the Id. CIT(A) as not maintainable.

(ii) Secondly, the Id. CIT(A) not allowing this ground wholly relying upon an Enquiry Report obtained u/s 250(4) of the AO for which no opportunity was given to the appellant by the AO as well as Id. CIT(A).

3. That without prejudice to the above, in any case, even on the facts considered by the Id. CIT(A) in the appellate order itself, this was only a case of short term capital gain, if any not to the extent of Rs. 10,97,000/- as assessed and confirmed as income from undisclosed sources and as such there is no justification of assessing the total income of the appellant as confirmed.”

2.1 None appeared on behalf of the assessee when this appeal was called for hearing. It transpired from the record that the assessee has been seeking adjournments since beginning and the appeal of the assessee was earlier dismissed vide Tribunal order dated 14-08-2017 due to non-appearance as well as defects in the appeal were not removed by the assessee. Subsequently, the said order was recalled by the Tribunal vide

its order dated 4-4-2018 in M.A. No.19/JP/2011 filed by the assessee. Although the case of the assessee was recalled for deciding afresh after hearing yet the assessee did not come forward to appear and argue her case before the Tribunal. On the earlier occasion on 15-05-2019, the Id.AR of the assessee has withdrawn his power. Therefore, fresh notice was issued to the assessee through RPAD. The said notice was also returned unserved with the postal remarks that no such person is available at the address. In these circumstances, we propose to hear and dispose of the appeal of the assessee ex-parte after considering the written submission filed by the assessee.

3.1 The Ground No. 1 of the assessee is regarding validity of reopening of assessment.

3.2 In the written submission, the assessee has contended that the AO has reopened the assessment without application of mind and without arriving to the conclusion whether any income assessable to tax has escaped assessment. Further the AO has considered entire sale consideration of the immovable property sold by the assessee as income has escaped assessment. Thus the assessee has contended that when there was no income chargeable to tax then there was no need of filing of

return of income by the assessee. The only basis for forming the belief is sale deed executed by the assessee and the AO has not undertaken any step to find out whether any income chargeable to tax has escaped assessment. Thus it is pleaded that formation of belief for escapement is based on irrelevant and wrong assumption of facts especially available on record and therefore, the proceedings initiated for reassessment are illegal, without jurisdiction and void ab initio.

3.3 On the other hand, the Id. DR has submitted that the AO has recorded the reasons for reopening of assessment by giving the details of transaction of sale of immovable property by the assessee vide sale deed dated 4-01-2011. Since the assessee has not filed any return of income, therefore, the said information and transaction of sale of immovable property constitutes a tangible material to form the belief that income assessable to tax has escaped assessment. He has referred to the order of the Id. CIT(A) and submitted that the Id. CIT(A) has duly considered the objections raised by the assessee and it was held that the information in the possession of the AO constitute a tangible material to form the belief that income assessable to tax has escaped assessment and therefore, the reopening of the assessment is held as valid.

3.4 We have considered the rival submissions as well as the relevant material available on record. There is no dispute that the assessee has not filed any return of income u/s 139 of the Act. It is also not in dispute that during the year under consideration the assessee has sold the plot of land vide sale deed dated 4-01-2011 and the said information was received by the AO. Since the assessee has not filed any return of income and stamp duty valuation of plot of land was found more than the sale consideration shown in the sale deed, the AO initiated the proceedings u/s 147/148 of the Act by recording the reasons as under:-

“The assessee has not filed return of income for the Assessment Year 2011-12. From the information received from the Sub-Registrar, Hindaun City, it is gathered that the assessee has sold an immovable property on 04-01-2011 for a total consideration of Rs. 1021000/- which was assessed at Rs. 1097000/- by the sub-registrar for stamp duty purposes. Since the assessee has not filed return of income as well as details about cost of acquisition, hence sale consideration u/s 50C at Rs. 1097000/- has escaped assessment within the meaning of Section 147 of the Act as the assessee has not disclosed any type of capital gain income.”

It is clear that even if the valuation adopted by the Stamp Valuation Authority is ignored, the sale consideration shown in the sale deed itself constitute a tangible material to form the belief that income in the shape of capital gain is assessable tax has escaped assessment specifically

when the assessee has not filed any return of income. Hence, the AO at the time of recording the reasons and issuing notice u/s 148 of the Act was having material with him in the shape of transaction of immovable property vide sale deed dated 14-01-2011 and no contrary material was available with the AO to be considered for forming the belief that income assessable to tax has escaped assessment. The quantum of income finally liable to be assessed to tax may vary after considering the cost of acquisition and other allowable deductions if any. But at the time of recording the reasons when those informations were not available with the AO due to the reason of non-filing of return of income then the material available with the AO was required to be considered to form the belief and hence in our view the AO was justified in forming the belief that income assessable to tax has escaped assessment. Accordingly, we do find any error or illegality in the impugned order of the ld. CIT(A) upholding the validity of reopening of assessment. Thus Ground No. 1 of the assessee is dismissed.

4.1 The Ground No. 2 and 3 of the assessee are regarding addition made by the AO on account of sale of plot of land.

4.2 In the written submission, the assessee has contended that the AO as well as ld. CIT(A) committed an error while treating the sale consideration as income from undisclosed sources whereas the income is from sale of immovable property and therefore, it ought to have been assessed as capital gain after allowing cost of acquisition as deduction. Thus entire contention of the assessee raised in the written submission is regarding not allowing the cost of acquisition as deduction from sale consideration while assessing the sale consideration as income from undisclosed sources.

4.3 On the other hand, the ld. DR has submitted that ld. CIT(A) sought report from the AO and after considering the outcome of the enquiry conducted by JCIT, Range-2, Kota, it was found that the assessee purchased the said plot of land during the year under consideration on 02-08-2010 for a consideration of Rs. 8.21 lacs. The said consideration was shown as paid by the assessee in cash and therefore, in the absence of source of said payment in cash the entire amount has been treated as income from undisclosed sources. He relied on the orders of the authorities below.

4.4 We have considered the rival submissions as well as relevant material on record. The Id. CIT(A) has decided this issue as under:-

“In view of the Ground No. 2 raised by the appellant objecting to the assessing of sale consideration received on sale of property as income from undisclosed sources, details regarding the property was sought from the AO u/s 250(4) whereby the chain of property ownership and the basis for holding the receipt from sale of property as undisclosed was sought to be explained and justified.

From a perusal of the report obtained from the AO dated 10-01-2017, duly forwarded by JCIT, Range-2, Kota, it is clear that the assessee purchased the property in cash on 02-08-2010 for Rs. 8,21,000/- from one Shri Radhey Shayam Jangid who was the owner of said property from 1976 as per the document. Subsequently, after a gap of 3 months, the assessee sold the property for Rs. 10,21,000/- (valued by sub-registrar or stamp duty purposes at Rs.10,97,000/-). Hence, the property was never a capital asset for the purpose of long term capital gains. At best, if the source of acquisition of the property could be ascertained, the amount of difference would be taxable as short term capital gain. However, neither during the course of assessment proceedings, nor during the course of appellate proceedings, the A/R of the assessee could explain the source of the money invested in the initial purchase & later sale of the property. No return was filed to claim any sort of exemption from taxable gains or otherwise. Under the circumstances, I do not find fault with the AO's action to tax the receipt as undisclosed.

As regards the objection of the A/R regarding changing of head of income while assessing the same is not considered valid since the initial action being taken on a 'reason to believe' of certain income escaping assessment, the final enquiry revealed that there was no disclosed source of the said investment & subsequent receipt from sale. Hence, the objection is considered as not maintainable & dismissed. The case laws enclosed are not found similar on the facts involved in the instant appeal and the decision is based on the findings brought out in the assessment order itself.

The addition of Rs. 10,97,000- is accordingly confirmed.”

There is no dispute that the assessee purchased the plot of land in question during the year itself on 2-08-2010 and claimed the purchase consideration of Rs. 8.21 lacs which was paid in cash. The assessee has not explained the source of the said payment of Rs. 8.21 lacs. However, subsequently, the said plot was sold by the assessee vide sale deed dated 4-01-2011 for a consideration of Rs. 10.21 lacs. The AO has taken the stamp duty valuation at Rs. 10.97 lacs and added the same as income from undisclosed sources. It is pertinent to note that once the stamp duty valuation is considered as full value consideration then it can be treated only for the purpose of capital gain. Therefore, the addition made by the AO by considering the stamp duty valuation of sale transaction as income from undisclosed sources is not proper and justified when the said sale consideration is duly supported by sale deed. However, the purchase consideration of Rs. 8.21 lacs paid by the assessee in cash is certainly remained unexplained and therefore, to the extent of said amount of Rs. 8.21 lacs it is an unexplained investment. Accordingly, apart from addition of Rs. 8.21 lacs on account of unexplained investment, the short term capital gain on sale of the said land is liable to be assessed to tax. Hence, in the facts and circumstances of the case, we restrict the addition

to the extent of Rs. 8.21 lacs as unexplained investment and short term capital gain by considering the full value of consideration u/s 50C of the Act and after allowing cost of acquisition of Rs. 8.21 lacs. Thus Ground No. 2 and 3 of the assessee are partly allowed.

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

Order pronounced in the open court on 25/ 07/2019.

Sd/-
(रमेश सी शर्मा)
(Ramesh C. Sharma)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 25/07/ 2019
*Mishra

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

1. अपीलार्थी / The Appellant- Smt. Erawati Devi, Hindaun City
2. प्रत्यर्थी / The Respondent-The ITO -3 Karauli, HQ Sawai Madhopur
3. आयकर आयुक्त(अपील) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.546/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar