

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

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

आयकर अपील सं./ITA No. 1340/JP/2018
निर्धारण वर्ष / Assessment Year : 2012-13.

The Income Tax Officer, Behror.	बनाम Vs.	Shri Virender Yadav S/o Late Shri Jeet Singh Yadav, village : Sanoli, Tehsil: Munawar, Distt. Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ABPPY 6892 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Notice served by D/R)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 10.12.2019.
घोषणा की तारीख / Date of Pronouncement : 12/12/2019.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the revenue is directed against the order dated 13.09.2018 of
Id. CIT (Appeals), Alwar for the assessment year 2012-13. The revenue has raised
the solitary ground as under :-

“ On the facts and circumstances of the case and in law Id.CIT
(A) erred in restricting the addition of Rs. 2,91,52,880/- to Rs.
2,92,880/- made by the AO on account of unexplained
investment from undisclosed sources, without appreciating the
material facts of the case.”

2. None has appeared on behalf of the assessee respondent despite the notice sent through the AO was duly served on the assessee as per the acknowledgement and report of the AO. We further note that since beginning the assessee has not been appearing despite the notices issued, therefore, in the facts and circumstances when the notice was duly served upon the assessee as per the acknowledgement of the assessee and nobody has appeared on behalf of the assessee, we proposed to hear and dispose off the appeal of the revenue ex parte.

3. We have heard the Id. D/R and carefully perused the orders of the authorities below. The assessee is an Individual and has not filed any return of income for the year under consideration. The AO has issued a notice under section 148 of the IT Act on 29th December, 2014 on the basis of the information of purchase of immovable properties for a consideration of Rs. 2,69,82,340/-. During the assessment proceedings, the assessee explained the source of investment as sale of land measuring 4.81 hectares i.e. 19.20 bigha to one Shri T. Lachunagapa resident of Gangtok (Sikkim) @ Rs. 15 lacs per bigha for a total consideration of Rs. 2,88,05,845/-. The assessee has claimed that the said land was sold through a sale agreement dated 07.05.2011 against the consideration received in cash. The AO has not accepted the said explanation of the assessee on the ground that the assessee has not produced any documentary evidence which can be verified. The assessee has produced only an agreement which is not registered and further the entire sale consideration was claimed to have been received in cash. Thus the AO doubted that a person who belongs to Gangtok (Sikkim) cannot bring or carry such a huge amount of Rs. 2,88,60,000/- in cash. The AO further noted that even after the

expiry of about 6 (six) years from the date of alleged sale agreement, no sale deed has been executed or registered. The AO accordingly made the addition of Rs. 2,91,52,880/- on account of unexplained investment in purchase of immovable properties. On appeal, the Id. CIT (A) has called for a remand report from the AO. In the remand proceedings, the alleged purchaser Shri T. Lachunagapa, a Sikkimese, has admitted the transaction of purchase of land from the assessee. Based on the said admission of the purchaser, the Id. CIT (A) has deleted the addition. The Id. D/R has contended that it is only a device to cover up the undisclosed income by the assessee by planting a purchaser whose income is exempt under section 10(26AAA) of the IT Act. Thus the Id. D/R has submitted that since the income in the hands of Sikkimese is exempt under section 10(26AAA), therefore, the assessee has claimed that he has received the consideration from the alleged purchaser. The Id. D/R has further contended that the assessee has claimed to have sold the land through an unregistered agreement which is not possible when the purchaser belongs to Sikkim and will pay such a huge consideration without having a proper title document, despite the expiry of such a long time there is no sale deed regarding the said transaction, therefore, the alleged agreement to sell is nothing but an after-thought make belief document. She has relied upon the order of the AO.

4. Having considered the submissions of the Id. D/R and going through the orders of the authorities below, we find that during the assessment proceedings, the AO granted as many as 20 opportunities to the assessee. The details of the notices issued by the AO given at page 3 of the assessment order as under :-

Notice issued and date of issue of notice / Note Sheet entry	Due date of compliance	Details of compliance made by the assessee
u/s 148 dated 29-12-2014	02-02-2015	No compliance made
u/s 142(1) dated 20-02-2015	02-03-2015	No compliance was made
Order sheet entry dated 04-03-2015	11-03-2015	No compliance was made
u/s 142(1) dated 21-05-2015	29-05-2015	No compliance was made
Show cause u/s 144 dated 10-06-2015	22-06-2015	Request for adjournment was received
Notice u/s 142(1) dated 22-06-15	29-06-2015	AR of the assessee and brother of the assessee attended but no compliance was made
Order sheet entry dated 29-06-2015	08-07-2015	No compliance
Notice u/s 142(1) dated 13-07-2015	21-07-2015	Request for adjournment was received
Notice u/s 142(1) dated 04-08-2015	18-08-2015	Non compliance was made
Notice u/s 142(1) dated 19-11-2015	27-11-2015	Application for adjournment was received
Order sheet entry dated 27-11-2015	08-12-2015	Part reply furnished
Order sheet entry dated 08-12-2015	16-12-2015	No compliance was made
Summon u/s 131 dated 13-01-2016	21-01-2016	Non compliance
Order sheet entry dated 16-02-2016	03-03-2016	Non compliance
Order sheet entry dated 04-03-2016	14-03-2016	Non compliance
Notice u/s 142(1) 14-03-2016 along with last & final opportunity letter	18-03-2016	No compliance was made.

The AO issued notice under section 133(6) to the Sub Registrar, Neemrana and on receiving the details of the documents from concerned Sub Registrar, the AO found that the assessee had made investment of Rs. 2,69,82,340/-. All these enquiries were conducted by the AO due to the reason that the assessee did not cooperate and file the details regarding the investment made in the immovable properties. Only when the AO issued the show cause notice to frame the assessment under section 144 of the IT Act and also issued summon under section 131, the assessee furnished a copy of the alleged agreement dated 07.05.2011 and claimed that the sources of investment is sale proceeds of land for a consideration of Rs. 2,88,60,000/- to one Shri T. Lachunagapa resident of Gangtok (Sikkim). It is

pertinent to note that it is beyond preponderance of human probability that a person from Gangtok (Sikkim) would purchase a land in Rajasthan against a consideration of Rs. 2,88,60,000/- without having a proper title deed in his favour. The alleged agreement to sell is not a document which can be verified independently and can be considered as a conclusive evidence for transaction of purchase and sale of the immovable properties. Even otherwise, the immovable properties cannot be transferred under such an unregistered document being agreement to sell. The details of assessee's share in the alleged ancestral land are also not available on record. It is also not clear from the record whether the assessee was having the share in the ancestral property to the extent of 19.20 bigha. Further, not executing the sale deed and registration with the authorities even after the expiry of such a long time creates a genuine doubt about the transaction. Therefore, the genuineness of the claim has not been established with verifiable documentary evidence. It is also a relevant fact that the alleged purchaser of the land being a Sikkimese, is exempt from Income tax as per section 10(26AAA) of the IT Act. Therefore, the possibility of using the name of such a person as a device to evade the tax cannot be ruled out. Accordingly, in the facts and circumstances of the case, we set aside this matter to the record of the AO for conducting a proper enquiry particularly on the point of the assessee's share in the alleged ancestral property and whether the said property is available in the exclusive right of the assessee for transfer. The status of the land regarding the possession and the real ownership is also required to be verified. Needless to say that the assessee be given a proper opportunity of hearing before passing the fresh assessment order.

5. In the result, appeal of the revenue is allowed for statistical purpose.

Order pronounced in the open court on 12/12/2019.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/12/2019.

das/

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

1. अपीलार्थी / The Appellant-The Income Tax Officer, Behror.
2. प्रत्यर्थी / The Respondent-Shri Virendra Yadav, 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. 1340/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar