

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, 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. 540/JP/2017
निर्धारण वर्ष / Assessment Year : 2008-09

Late Smt. Magan Devi Choudhary L/H Shri Laxmi Kant Choudhary Ratan Building, 388/10, Opp. Patel Maidan, Jaipur Road, Ajmer.	बनाम Vs.	The ITO, Ward-2(1), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIUPC3153A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 17/02/2020
उदघोषणा की तारीख / Date of Pronouncement: 28/04/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of the Id. CIT(A), Ajmer dated 14.03.2017 for the assessment year 2008-09 wherein the assessee has taken the following grounds of appeal:-

"1.1 The very action taken U/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed U/s 143(3)/147 dated 14.03.2017 also kindly be quashed.

1.2 The impugned order U/s 143(3)/147 dated 14.03.2017 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

1.3 The Id.CIT(A) seriously erred in law as well as on the facts of the case in holding the validity of notice issued U/s 148 of the Act even though the same was invalid in the eyes of law having been issued in the name of 'deceased assessee' U/s 148 r/w 159 of the Act. The confirmation of the validity of the impugned notice being totally contrary to the provision of law and facts be quashed and consequently the impugned assessment framed U/s 143(3)/147 also kindly be quashed.

2. Alternatively , the Id. CIT(A) further erred in law as well as on the facts of the case in not directing the AO to refer the matter to the DVO despite the assessee having objected to the higher valuation made by the DVO u/s 50C(2) of the Act, kindly be deleted in full.

3. The Id. AO further erred in law as well as on the facts of the case in charging interest U/s 234A, 234B, 234C & 234D of the Act and as also in withdrawing interest U/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest so charged/withdrawn, being contrary to the provision of law and facts, kindly be deleted in full."

2. Briefly, the facts of the case are that the notice U/s 148 of the Act dated 27.03.2015 was issued in the name of the Smt Magan Devi through legal heir, Shri laxmi Kant Choudhary by ITO Ward-2(1), Ajmer and the contents of the reasons so recorded before issuance of notice u/s 148 read as under:

3. Subsequently, Shri Laxmi Kant Choudhary was issued summons U/s 131 of the Act and his statement was recorded by the Assessing officer. In his statement, he submitted that his mother, Late Smt. Magan Devi Choudhary has since expired on 28.02.2011 and before her expiry, she had filed her return of income for A.Y. 2008-09 wherein she had declared the transactions relating to sale of the property which is subject matter of reasons so recorded for reopening the matter. Further, a letter was filed on 11.01.2016 wherein it was submitted that the return originally filed be taken as return filed in pursuance to notice u/s 148 of the Act. During the course of proceedings, show cause was also issued as to why the value of the properties not be considered as per the provisions of section 50C of the Act. The Assessing Officer, thereafter taking the said statement and the return of income so filed by the deceased assessee into consideration, besides other information/documents so called during the proceedings, invoked the provisions of Section 50C holding that the same was not objected to and worked out long term capital gains in respect of the aforesaid property sold on 27.12.2007 for Rs. 60,00,000/- which was valued adopted by the Sub-registrar at Rs. 2,36,92,362/- and adopted as deemed value of consideration u/s 50C and allowing the cost of acquisition after indexation as claimed by the assessee in the return of income. Further, another property which was sold on 10.01.2008 for Rs. 10,00,000/- was also brought to tax by considering the deemed sales consideration of Rs 40,12,800/- as per value determined by the Sub-Registrar after allowing indexation as per return of income. Accordingly, long term capital gains amounting to Rs. 29,54,242/- was determined by the AO as against loss of Rs 1,77,50,920/- as per original return filed by the assessee. Being aggrieved, the matter was carried in appeal before the Id. CIT(A) who has since confirmed the said addition and against the said findings, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that the assessee had since expired on 28.01.2011 and the notice U/s 148 has been issued in the name of Smt. Magan Devi through legal heir, Shri Laxmi Kant Choudhary and not in the name of Late Smt. Magan Devi through all the legal heirs. It was submitted that the details of the legal heirs were also available in the registered sale deed based on which reasons U/s 148 were recorded. It was further submitted that the assessment was also framed in the name of Late Smt. Magan Devi through legal heir, Shri Laxmi Kant Choudhary without impleading all the legal heirs. It was further submitted that merely because one of the L/Hs attended the proceedings does not make the defect curable u/s 292BB, particularly when he was summoned u/s 131 and called upon to attend. Non-compliance would have entailed penalty hence his participation was under pressure only but not voluntarily. Moreover, the officer taking statement advised him to be presumed the only L/H and sought his consent, vide Q 6, which is a leading Q. but then his answer does not suggest any categorical admission for other legal heirs, hence, the contention of the Id. CIT(A) that Shri Laxmi Kant had no objection if other L/Hs were not brought is also immaterial. In fact, the other L/Hs never knew of the fact of the issuance of notice and the fact that some assessment proceedings were going on in the name of the deceased then how they could have been expected to raise the objections and one of the L/Hs namely Shri Laxmi Kant could not have given consent/waive the objection on behalf of the other L/Hs without any authority to him. It was accordingly submitted that the assessment so framed without impleading all the legal heirs is the nullity in the eye of law and the same should be accordingly quashed. In support, reliance was placed on the following decisions:-

- Late Smt. Gulab Devi Sharma vs. ITO (2016) 56 Taxworld 99 (JP)
- ACIT vs. Mangi Lal (2004) 83 TTJ 590 (Jodh).
- ITO vs. Umedram (1995) 54 ITD 191 (JP)

- Shanta Kapoor vs. ACIT (2018) 93 taxmann.com 226 (Agra).
- Alamelu Veerappan vs. ITO (2018) 95 taxmann.com 155 (Mad)
- Vipin Walia vs. ITO (2016) 382 ITR 19 (Del).

5. It was further submitted that notice U/s 148 of the Act was issued by ITO, Ward-2(1), Ajmer who was not holding a correct and valid jurisdiction over the assessee as the assessee had filed her return of income for the subject assessment year with ITO 15(1)(4), Mumbai wherein she had disclosed capital gains arising from sale of the subject property. It was further submitted that the return so filed was with the same PAN as mentioned by the ITO, Ajmer while issuing notice U/s 148 of the Act. It was submitted that where the ITO, Mumbai has already admitted the return and even assessed the said return, the ITO, Ajmer had no jurisdiction to issue the subject notice. It was further submitted that merely because the address of the assessee in the PAN database contains the Ajmer address does not authorise him to exercise jurisdiction over the assessee which depends upon residence of the assessee as per Section 124 of the Act.

6. It was further submitted that the AO had initiated the proceedings U/s 147 for the reasons that the assessee had sold the piece of land for a consideration of Rs. 60,00,000/- and the stamp value authority has determined the value at Rs. 2,36,92,262/- and since the assessee has not filed any return for the assessment year under consideration, the income from the sale of property has escaped assessment within the meaning of Section 147 of the Act. In this regard it was submitted that the assessee had already filed her return of income for the subject assessment year i.e A.Y. 2008-09 on 25.09.2009 declaring the total income (Loss) of Rs.1,77,50,920/- wherein the assessee herself had disclosed the income from the sale of the subjected land. Copy of acknowledgment even contains the stamp of Income tax officer showing that the said return with enclosures was before the Income tax Department. Copies of the same was even filed before the AO and the CIT(A)

during the course of present proceedings. Moreover, the L/H has clearly stated this fact in his Statement u/s 131 and he also submitted the copy of return along with the Computation Sheet. Further as per Ques. No. 5 of the Statements of the Laxmi Kant Choudhary (L/H), the AO has himself discussed the very same return filed the assessee in the subjected assessment year. Even in the AO's order at Pg 3, the AO has himself admitted that the return had already been filed before the ITO ward 15(1)(4), Mumbai and the ROI disclosed the sale of the land therein. It was clear from the very facts of the case that there was no escapement of income within the meaning of section 147 as the assessee had already filed the return. The very reason recorded by the AO for reopening the assessment is found non-existent and has become infructuous. Hence, the notice u/s 148 has itself become invalid and therefore, same as well as the reassessment proceedings are liable to be quashed. In support, reliance was placed on the decision of Hon'ble Gujarat High Court in case of Sunrise Education Trust vs ITO (Exemption) [2018] 92 taxmann.com 74 (Guj).

7. Per contra, the Id. DR submitted that it is not disputed that the assessee had expired prior to the issuance of notice u/s 148 and that's the reason the notice was issued to the deceased assessee through his legal heir, Shri Laxmi Kant Chaudhary. It was submitted that he appeared before the Assessing officer and his statement was also recorded where he has admitted that he holds a joint account with his deceased mother and he is the legal heir of his deceased mother. He has nowhere stated that there are other legal heirs of the deceased assessee. Therefore, unless and until the Assessing officer is made aware of other legal heirs, the Assessing officer cannot implead other siblings of the Shri Laxmi Kant Chaudhary, namely his four sisters. It was further submitted that all along during the assessment and appellate proceedings and even during the present proceedings, nothing has been brought on record which clearly establish that whether the impugned property

was ancestral or self-acquired by the deceased assessee and whether the estate of the deceased assessee has devolved on other members of the family other than Shri Laxmi Kant Chaudhary and therefore merely being the siblings, it cannot be presumed that there are other legal heirs to the estate of the deceased assessee who are equally responsible to discharge the tax obligations of the deceased assessee to the extent of their respective share in the estate of the deceased assessee. It was accordingly submitted that there is no basis in contention so advanced by the Id AR that the assessment so framed without impleading all the legal heirs is the nullity in the eye of law.

8. Regarding issue of notice by non-jurisdictional Assessing officer, it was submitted by the Id DR that once the assessee has submitted to the jurisdiction of the Assessing officer basis her residence which is in the present case is ITO Ward 2(1) Ajmer and has been allotted a PAN number, such jurisdiction continues with the said Assessing officer unless there is a communication and request from the assessee due to change of her residence and once such request is made, the same is examined and thereafter, where the same is found to be in order, the PAN is migrated to the new Assessing officer having jurisdiction over the new residence of the assessee. In other words, it was submitted that the change of jurisdiction cannot be a suo-moto act of the assessee merely due to change of her residence, however, the same has to be effected by the department on request being made by the assessee. It was submitted that in the instant case, no such request was made by the assessee and in the PAN data base, there continues to be old address of Ajmer where she last resided and therefore, ITO Ajmer had the valid jurisdiction over her tax matters and contention so advanced by the Id AR cannot be accepted.

9. Further, the Id DR submitted that the AO reopened the assessment proceedings after recording the due reasons and due satisfaction after following due process. The case of the assessee was reopened in the light of

information/documents to the extent which were available with the AO. The material before the Assessing Officer was relevant and affords a live link or nexus to the formation of the prima facie belief that income chargeable to tax has escaped assessment in the hands of the assessee. The sufficiency and correctness of material need not be looked at the initial stage at the time of reopening of the case. While considering whether commencement of reassessment proceedings was valid, the Courts have held that what has to be seen is whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not to be considered at that stage. The "reasons to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion and what is required is "reasons to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. It was accordingly submitted that there is no infirmity in the assumption of jurisdiction by the AO u/s 147 in the present case and there is no merit in the contention so advanced by the Id AR. Further, the Id DR relied on the order of the lower authorities.

10. We have considered the rival contentions and perused the material available on record. We agree with the contentions of the Id DR that in absence of anything brought on record which clearly establishes that the impugned property was ancestral or self-acquired by the deceased assessee and in absence of any will or other testament or a Court order which establishes as to how the estate of the deceased assessee has devolved on other members of the family other than Shri Laxmi Kant Chaudhary, merely

being the daughters of the deceased assessee, it cannot be determined that they are also the legal heirs to the estate of the deceased assessee who are equally responsible to discharge the tax obligations of the deceased assessee. Where Shri Laxmi Kant Chaudhary, the only son of the deceased assessee had attended to the proceedings initiated u/s 147 before the Assessing officer and has submitted in his statement that he holds a joint account with her deceased mother and is also her legal heir, we do not find any illegality in the action of the Assessing officer where he has issued the notice u/s 148 by impleading Shri Laxmi Kant Chaudhary as the legal heir of the deceased assessee. It is not a case where the notice has been issued in the name of the deceased assessee which is clearly a nullity in the eyes of law as held in various decisions relied upon by the Id AR. It is a case where the notice has been issued in the name of deceased assessee as represented by her legal heir Shri Laxmi Kant Chaudhary which is clearly in compliance with the requirements of the law. Similarly, we do not find any infirmity in the assessment order where the same has been passed in the name of deceased assessee as represented by her legal heir Shri Laxmi Kant Chaudhary. Where during the appellate proceedings, Shri Laxmi Kant Chaudhary wishes to contest the said position stating that his statement as so taken was under pressure during the assessment proceedings, the onus is clearly on him to substantiate as to why he has not retracted from such statement at the first available opportunity and further, he has to demonstrate through verifiable and credible documentation that there are other legal heirs to the estate of the deceased assessee which he has failed in the instant case. Therefore, the contentions so advanced by the Id AR in this regard cannot be accepted.

11. Regarding issue of notice by non-jurisdictional Assessing officer, we agree with the contention of the Id DR that once the assessee has submitted to the jurisdiction of ITO Ward 2(1) Ajmer and has been allotted a PAN number, such jurisdiction continues with the said Assessing officer unless

there is a communication and request from the assessee due to change of her residence and thereafter, the PAN is migrated by the tax department to the new Assessing officer having jurisdiction over the new residence of the assessee and cannot be done suo-moto by the assessee. Admittedly, in the instant case, no such request was made by the assessee and in the PAN data base, there continues to be old address of Ajmer where she last resided and therefore, ITO Ajmer had the valid jurisdiction over her tax matters and there is no infirmity in his action of issuing the notice u/s 148 of the Act. Therefore, the contentions so advanced by the Id AR in this regard cannot be accepted.

12. Now, coming to the last contention raised by the Id AR. For assumption of jurisdiction u/s 147, it is a settled legal proposition that the Assessing Officer must form a prima facie opinion on the basis of material that there is an escapement of income, the opinion formed may be subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion, the reasons recorded and/or the documents available on record must show a nexus and relevancy to the opinion formed by the Assessing Officer regarding escapement of income. It is also held by the Courts from time to time that the reasons are required to be read as they were recorded by the Assessing officer, no substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the Assessing officer to disclose and open his mind through the reasons recorded by him and he has to speak through the reasons. In the present case, the reasons recorded by the Assessing officer before issuance of notice u/s 148 read as under:

" As per information received from the DDIT(Inv)-1, Udaipur vide letter no.638 dated 25.03.2014 the assessee has sold a piece of land situated at 387/10(part of plot), Opp. Patel Maidan admeasuring 646.69 sq yards sold on 27.12.2007 for a consideration of Rs.60 lacs

value of which adopted at RS.2,36,92,362/- by the sub-Registrar. Since the assessee has not filed any return for the assessment year under consideration the income from the sale of the property has escaped assessment.

"Looking to the facts mentioned above, I have reason to believe that the income to the extent of Rs 2,36,92,362/- chargeable to tax has escaped assessment within the meaning of section 147/148 of the Act."

13. We therefore find that the information in possession of the Assessing officer was a transaction of sale of piece of land for a consideration of Rs.60,00,000/- which was valued by the sub-Registrar at Rs.2,36,92,362/- by the sub-Register and secondly, the said transaction was not disclosed to the Revenue as the assessee has not filed her return of income for the impugned assessment year. Basis the same, the Assessing officer had formed a belief that the income to the extent of Rs 2,36,92,362/- has escaped assessment. However, we find that the undisputed factually position which is emerging from perusal of records is that the assessee did file her return of income for the impugned assessment year and in the return so filed, she had disclosed the aforesaid transaction of sale of piece of land. Therefore, the very premise that the transaction relating to sale of piece of land has escaped taxation on account of non-disclosure and not filing of return of income is not borne out of records. In this regard, we refer to the decision of Hon'ble Gujarat High Court in case of Sunrise Education Trust vs ITO (supra) wherein it was held as under:

"5. Having heard learned counsel for the parties and having perused the documents on record, it could be straightway seen that the Assessing Officer in the reasons recorded, proceeded on the erroneous footing that the assessee had not filed return at all. The first premise

for issuing the notice was thus factually incorrect. It is now not disputed by the Revenue that the assessee did file return of income for the year under consideration which was duly acknowledged by the Department. The entire reasoning thus proceeded on the wrong premise that the assessee had never filed the return. This itself would be sufficient to annul the notice of reopening the assessment.”

14. In the instant case as well, the Assessing officer has not disputed the fact that the assessee did file her return of income which was duly acknowledged by the Department and infact, the said return of income has been taken into consideration and except for substituting the sale consideration for the deemed sales consideration u/s 50C as per value adopted by the sub-Registrar, the Assessing officer has accepted the cost of acquisition as per the approved valuer enclosed with the said return of income and allowed the necessary indexation benefit as claimed in the return of income. Therefore, where the transaction has been duly reflected in the original return so filed, there is no legal basis for the Assessing officer to have any reason to believe that income of the assessee has escaped assessment.

15. In light of aforesaid discussions and respectfully following the decision referred supra, we are of the view that in the instant case, the Assessing officer doesn't have the legal basis to acquire jurisdiction for reassessment and thus, the notice issued under section 148 and consequent reassessment proceedings are quashed and set-aside. In the result, ground no. 1 of assessee's appeal is allowed.

16. Ground no. 2 raised on merits of the additions has therefore become academic and we do not propose to adjudicate them and the same is dismissed as infructious. Ground no. 3 is consequential in nature and doesn't require any adjudication.

In the result, the appeal filed by the assessee is allowed.

Order pronounced on 28/04/2020.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 28/04/2020.

*Santosh.

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

1. अपीलार्थी / The Appellant- Late Smt. Magan Devi Choudhary, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
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. 540/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar