

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH, "SMC", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 761/CHD/2019

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Kamlesh Goyal, H.No. 987, Sector 9, Panchkula	बनाम	The ITO, Ward-2, Panchkula
स्थायी लेखा सं./PAN NO: AJOPG6961D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Nikhil Goyal & Shri Ashok Goyal, CAs
राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, JCIT

सुनवाई की तारीख/Date of Hearing : 12.03.2020
उदघोषणा की तारीख/Date of Pronouncement : 05.08.2020

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 15.02.2019 of the Commissioner of Income Tax (Appeals)-3, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in reopening of the case u/s 148.
2. That there was no reason to believe with the Assessing Officer and also the Assessing Officer, who had issued the notice u/s 148 did not have jurisdiction to issue the notice u/s 148 and, therefore, the assessment deserves to be quashed.

3. *That the Ld. CIT(A) has erred in upholding the action of the Assessing Officer in making the disallowance u/s 80C of the Income Tax Act.*
4. *That the Ld. CIT(A) has erred in not allowing the rebate u/s 24 for Rs. 1,23,644/- for which, the amount was borrowed for purchase of residential property.*
5. *That the documentary evidence as furnished has been ignored by the CIT(A).*
6. *That the Ld. CIT (A) has erred in confirming the addition of Rs. 3,06,842/- on account of payment of stamp duty for which, the source is available.*
7. *That the additions have been confirmed against the facts and circumstances of the case.*
8. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. At the outset, Ld. Counsel for the assessee has submitted that in this case the assessment was framed by the Assessing Officer u/s 147 of the Income Tax Act, 1961 (in short 'the Act') by way of reopening of the assessment. That the Assessing Officer did not himself form the belief that the income of the assessee had escaped assessment. The Assessing Officer reopened the assessment on the basis of borrowed satisfaction of his colleague. Explaining the facts, the Ld. Counsel for the assessee has submitted that the original reopening of the assessment was initiated by the ITO Ward-5(1), Chandigarh. He had recorded the reasons for the reopening of the assessment and had also taken the necessary approval

from the higher authorities u/s 151 of the Act in this respect. However, the assessee filed objections against the said reopening of the assessment on the ground that the said Assessing Officer of Ward 5(1), Chandigarh had no jurisdiction to assess the income of the assessee as the assessee was living in Panchkula for the last 20 years. Thereafter, the file was transferred by the ITO, Ward-5(1) Chandigarh to ITO, Ward-2, Panchkula. The ITO, Ward-2, Panchkula continued with the same assessment proceedings. The assessee filed detailed objections pleading that ITO, Ward-2, Panchkula had himself neither formed the belief nor recorded reasons to the fact that the income of the assessee had escaped assessment and further no approval u/s 151 was taken. However, ITO, Ward-2, Panchkula dismissed the objections of the assessee and framed the impugned assessment. The Ld. Counsel for the assessee has submitted that the ITO, Ward-2 Panchkula i.e Assessing Officer of the assessee did not himself apply his mind to the facts and did not record the reasons that the income of the assessee had escaped assessment. He simply continued with the assessment proceedings which were initiated by an Assessing Officer who did not have jurisdiction to do so.

4. The Ld. DR could not rebut the aforesaid facts on the file.

5. After considering the rival submissions, it is apparent that initially the assessment proceedings were initiated, the reasons for reopening of

the assessment were recorded and approval u/s 151 was taken by the Assessing Officer who did not have the jurisdiction to frame the impugned assessment on the assessee. Therefore, the proceedings done by the said ITO, Ward 5(1), Chandigarh were legally not valid being without jurisdiction and, hence, the same were to be treated as void ab initio and non est. The ITO, Ward-2, Panchkula, under the circumstances, was supposed to apply his mind to the facts and circumstances of the case and then, if being satisfied, he should have recorded the reasons that the income of the assessee had escaped assessment. However, the ITO, Ward 2, Panchkula continued with the proceedings which were void and non est and, therefore, the assessment framed by the Assessing Officer being not initiated in accordance with law is wrong and illegal.

In view of the discussion made above, the assessment framed by the Assessing Officer in this case is hereby quashed. The appeal of the assessee stands allowed.

This appeal could not be decided earlier due to non-functioning of the Bench on account of curfew / lockdown in the wake of Covid-19 Pandemic.

Order pronounced on 05.08.2020.

Sd/-

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated : 05.08 .2020

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar