

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 24/JP/2021  
निर्धारण वर्ष / Assessment Years : 2011-12

Smt. Krishna 27, Sunder Vihar, Durgapura, Jaipur.	बनाम Vs.	The Pr. CIT, Jaipur-2.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: EBBPK5238Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri B. K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 28/07/2021  
उदघोषणा की तारीख / Date of Pronouncement : 29/07/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. PCIT, Jaipur dated 31.03.2021 for the assessment year 2011-12 wherein the assessee has taken the following grounds of appeal:-

- "1. Under the facts and circumstances of the case, order passed by the Ld. PCIT u/s 263 is illegal & bad in law.*
- 2. The Ld. PCIT has erred on facts and in law in holding that the order passed by the AO u/s 143(3) dt. 15.12.2018 is erroneous and prejudicial to the interest of Revenue as the said order has been passed in routine and perfunctory manner without*

*verification of the investment made in the property brought by the assessee for Rs.14 lacs ignoring the fact that this issue was examined by the AO in detail vide notice issued u/s 142(1) dt. 20.11.2018 which was replied vide letter dt.26.11.2018."*

2. During the course of hearing, the Id AR that briefly the facts of the case are that the assessee in response to notice u/s 148 filed her return of income on 27.04.2018 declaring total income of Rs.35,760/-. During the year under consideration, she sold a land for Rs.14,50,000/- and after claiming deduction of transfer expenses of Rs.29,000/- and cost of acquisition of Rs.15,54,000/-, declared capital loss at Rs.1,33,000/-.

3. It was submitted that during the course of reassessment proceedings, AO vide notice u/s 142(1) dt. 31.10.2018 required the assessee to furnish the source of investment in purchase of immovable property, details of property sold, capital gain earned and taxes paid. In response to same, the assessee vide reply dt. 06.11.2018 & 16.11.2018 submitted that the land was purchased for Rs.14 lacs and after including registry expenses, brokerage expenses, etc., total cost of land came to Rs.15,54,000/-. The source of purchase of land is out of sale of gold and silver ornaments for Rs.4,55,800/-, sale of cattle for Rs.1 lacs, gift from brother Sh. Ramawatar Sharma of Rs.2 lacs and earlier savings of Rs.7,72,000/- for which necessary documents were filed. Thereafter, the AO again vide notice u/s 142(1) dt. 20.11.2018 required the assessee to furnish the complete postal address of person to whom gold and silver ornaments were sold, complete address of Sh. Ramawatar Sharma and his genuineness & creditworthiness, details of savings and

documentary evidence of sale of cattle. The same was replied by the assessee vide letter dt. 26.11.2018. The AO after considering the same accepted the source of land purchased by the assessee. However, the AO after taking the DLC value of land of Rs.24,99,750/- as full value of consideration, computed the short term capital gain at Rs.9,16,750/-.

4. It was submitted that after completion of assessment proceedings, an audit objection was raised on 13.12.2019 by ITO, IAP-II, Jaipur on the ground that savings shown at Rs.7,72,000/- is not verifiable as no return of income was filed by the assessee and no evidence regarding cash balance as on the date of purchase was furnished. Based on this objection, the Ld. PCIT initiated proceedings u/s 263 vide show cause notice dt.19.02.2021 stating that Rs.7,72,000/- have remained unverified as it is just mentioned as earlier savings in the submission and the AO has also accepted it without establishing the genuineness of the facts. Against this notice, the assessee filed detailed reply vide letter dt. 02.03.2021. It was submitted that the Ld. PCIT at Pg 4 of his order accepted that AO has raised specific query on 20.11.2018 as to the source of purchase of the property but records reveal that query has not been answered satisfactorily by the assessee and thus, only because query has been raised by AO would not mean that he has made necessary verification. The AO accepted the claim of assessee on face value without application of mind and thus not verified the investment of Rs.14 lacs made in the purchase of the property on 29.09.2010. Accordingly, in view of clause (a) & (b) of Explanation 2 to section 263, the order passed by AO was held to be erroneous in so far

as prejudicial to the interest of revenue for de-novo assessment. Against the said order, the assessee is in appeal before the Tribunal.

5. In the aforesaid factual background, it was submitted by the Id AR that in respect of the source of cost of acquisition of the property for Rs.15,54,000/- (cost of property Rs.14,00,000+ registry & other expenses Rs.1,54,000), the assessee has filed a detailed reply dt. 16.11.2018 along with documentary evidence of sale of ornaments for Rs. 4,55,800/- and gift from brother Sh. Ramawatar Sharma of Rs. 2 lacs. Thereafter, vide reply dt. 26.11.2018 the explanation regarding source of savings of Rs.7.72 lacs and sale of cattle of Rs.1 lacs was submitted. The AO after considering the same accepted the source of cost of acquisition of the property. Therefore, neither clause (a) nor clause (b) of Explanation 2 to section 263 is applicable in as much as AO has passed the order after making the enquiries which should have been made.

6. It was submitted that the in respect of sale of jewellery of Rs.4,55,800/- and gift of Rs. 2 lacs received from brother Sh. Ramawatar Sharma all the necessary documents in support of the same was filed. In respect of sale of cattle and past savings, it has been explained that assessee is 52 years old lady and have regular income from sale of milk and cattles. The income from sale of milk is also accepted by AO. Her husband Sh. Jagdish Narain Sharma is regular income tax assessee having more than 100 bigha of agricultural land. Considering these facts, the AO has taken a judicious view in accepting the amount available from sale of cattle and past savings from dairy as

source for making the investment in property. Hence, the view taken by him cannot be said to be without making enquiry or verification which as a quasi-judicial officer he ought to have made.

7. It was submitted that as per clause (a) to Explanation 2 to section 263, order of the AO shall be deemed to be erroneous if it is passed without making enquiries or verification which should have been made. The scope of the term 'enquiries or verification' has been beautifully explained by Hon'ble ITAT, Mumbai Bench in case of Sir Dorabji Tata Trust Vs. DCIT(E) 188 ITD 38 and in terms of which, the formation of view by Commissioner should be in a reasonable manner and if the AO has taken a prudent, judicious and reasonable view, then his order cannot be termed as erroneous in so far as prejudicial to the interest of revenue. In the present case, the AO has taken a prudent, judicious and reasonable view after considering the entire material available on record and therefore, only because the Ld. CIT has a subjective satisfaction that AO has passed the order in a routine and perfunctory manner without verification, which is against the material available on record, his order cannot be held to be erroneous.

8. Per contra, the Id. PCIT/DR submitted that though query regarding source of investment has been raised by the AO, however, records reveal that the query has not been answered satisfactorily by the assessee. Therefore, the fact that query had been raised by the AO does not mean that he had made necessary verification. There is nothing on record to show that the query was satisfactorily replied by the assessee. The claim regarding sale of jewellery, cattle or receipt of

gifts by assessee was not properly examined. Similarly the claim of past savings, particularly when no return of income had been filed, required deeper and proper verification and examination. The AO accepted the claim of assessee on face value. Thus, it is evident that the AO has not applied his mind to the issue in any manner. It was accordingly submitted that the AO has not verified the investment made in the property bought by the assessee for Rs. 14,00,000/- on 29.09.2010. This in turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non-application of mind to relevant material, reflecting non-application of facts and an incorrect application of mind to law which is prejudicial to the interest of the Revenue. Thus, the order passed U/s 143(3) on 15.12.2018 has been rightly held by the PCIT as erroneous and prejudicial to the interest of the Revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without verification of the investment made in the property bought by the assessee for Rs. 14,00,000/- and set aside with direction to the Assessing officer to verify and examine the investment made in the property and finalize the assessment in accordance with the prevailing law to qualify the correct income of the assessee liable to tax for AY 2011-12 after according reasonable opportunity to the assessee. In support, reliance was placed on the decisions in case of CIT vs Amitabh Bachchan [2016] Taxmann.com 170 (SC) and Danial Merchants P Ltd and others (SLP No. 23976/2017 dated 29.11.2017).

9. We have heard the rival contentions and perused the material available on record. The case of the assessee was reopened basis receipt of information that the assessee has sold a piece of land and

resultant capital gains have escaped taxation due to non-filing of return of income. The assessee in response to notice u/s 148 filed her return of income declaring short term capital loss on such sale of land. The matter was examined by the AO and as against short term capital loss, short term capital gains was determined at Rs 916,750/- substituting the sale consideration with DLC value of land and accepting the cost of acquisition and other transfer expenses. Once the transfer of land is brought to tax, the factum of purchase and ownership of land in the hands of the assessee is accepted and in such a scenario, the cost of acquisition in the hands of the assessee has to be allowed as it is not in dispute that the assessee has actually purchased and subsequently sold the piece of land during the year. The assessee has demonstrated that she has discharged the purchase consideration of Rs 14 lacs and where the AO after due verification has allowed the said purchase consideration while working out the capital gains in the hands of the assessee, we failed to understand how the order so passed by the AO is held as erroneous and prejudicial to the interest of the Revenue. We further find that the AO has gone ahead, enquired and carried out necessary verification regarding source of such investment by way of purchase of land and the assessee in turn has explained and demonstrated the same to the satisfaction of the AO. Even where the Id PCIT holds the view that the level of enquiry that should have been made has not been made by the AO and we accept the same for the moment, the order so passed by the AO cannot be held as erroneous as the AO while bringing to tax the sale consideration has to allow the cost of acquisition in the hands of the assessee and not allowing the same would be against the mandate of law in bringing to tax the right amount

of income by way of capital gains. It is not a case that there is no purchase consideration or the purchase consideration cannot be computed. Therefore, where the sale consideration has been brought to tax, the AO is duty bound to allow the cost of acquisition in the hands of the assessee. In the result, we are of the considered view that the Id PCIT is not correct in law and facts in invoking his jurisdiction u/s 263 and the order so passed is hereby set-aside and the order of the AO is confirmed.

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

Order pronounced in the open Court on 29/07/2021.

Sd/-

( संदीप गोसाई )

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/07/2021.

\*Santosh

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

1. अपीलार्थी / The Appellant- Smt. Krishna, Jaipur.
2. प्रत्यर्थी / The Respondent- PCIT, Jaipur-2.
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. 24/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar