

,IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH “G”: NEW DELHI]
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA. No. 1601/Del/2017
(Assessment Year: 2011-12)

Shri Vishnu Saran, 47 – M – 1, Jawahar Quarters, Meerut New Delhi – 110 002. PAN: AIHPS0904J (Appellant)	Vs.	ACIT, Circle : 2, Meerut. (Respondent)
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Assessee by :	Dr. Rakesh Gupta, Advocate;
Department by:	Shri Umesh Takyar, Sr. D.R.;
Date of Hearing :	16/11/2021
Date of pronouncement :	16/11/2021

ORDER

PER PRASHANT MAHARISHI, A.M. :

1. This appeal is filed by the assessee against the order passed by the Id. Commissioner of Income Tax (Appeals), Meerut, dated 20.01.2017, for assessment year 2011-12.
2. The assessee has raised the following grounds of appeal:-

“1. *Because the learned Commissioner of Income Tax (Appeals) erred in law as well as on facts while conforming the action of assessing officer and the addition of Rs. 71240000/- as income of the assessee which do not belong to assessee .*

2. *Because the learned CIT (Appeals) has erred in overlooking and in summarily rejecting the detailed statement of facts submitted along with memorandum of Appeal, Documents , evidences while accepting the factually incorrect version of the learned AO.*

(a) The order was passed on borrowed opinion. The Learned AC certainly relied on the Opinion of Audit Party. AC himself has issued a letter to that effect.

(b) 143 (3) notice was not issued, CIT (Appeal) relied upon the letter as produced during remand report though the letter with the number in original was different one and the same was produced before learned CIT (Appeals). The notice is definitely a cooked one as it is clearly evident from the copy of assessment proceedings. The assessee has also submitted an affidavit for not receiving any notice u/s 143 (2). Hence the submission of the AO regarding issuing a mandatory notice be rejected and the case shall be heard with a mention that no mandatory notice u/s 143 (2) have been issued to the assessee.

3. *Because the following observations of the learned Commissioner of Income Tax*

(Appeals) in the order are perverse, arbitrary ,baseless and misleading on sheet 14 & 15 mentioning the following facts

a. Flow the sale consideration can be below the amount agreed upon between the parties ignoring the fact that it is a mutual agreed agreement and new conditions are always negotiable. Moreover this fact has nothing to do with the taxability over the issue.

b. That there was no period fixed in agreement to execute the sale deed ignoring a fact that the period can not be stipulated as it was based on the action of the State Govt under no fixed schedule of working.

c. That the purchase permission was obtained on 09/03/2007 though the said date was making application to government.

d. That why purchase deeds in favour of trustees were made on 12th December 2008, 24th December 2008 i.e after receiving the sale permission mistataing the fact that no permission was granted by that date.

e. The observation of the Hon. CIT (Appeals) that Assessee failed to establish that when purchase permission was received on 09/03/2007 before the date of sale deed in favour trustees then why sale deed were got executed in the name of trustees and not in the name of trust directly when as claimed by the funds used belonged to the trust is senseless and without application of MIND.

4. *The assessee craves leave to add/alter any of grounds of Appeal before or at the time of hearing.”*

3. Before us the assessee has made an application for admission of the additional ground as under:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 143(3)/148 without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961 and without obtaining valid approval/sanction u/s 151 as per law.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order passed by Ld. AO u/s 143(3)/148, is bad in law and against the facts and circumstances of the case and not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO and that too without issuing/serving the mandatory notice u/s 143(2) within the statutory allowable period.”

4. The assessee says that all these three additional grounds raised are jurisdictional grounds which go to the root of the matter and therefore, they should be admitted. It was further stated that no fresh facts are required to be investigated.

5. The ld AR reiterated the same arguments for admission of additional grounds.

6. The Id DR vehemently objected and stated that these were not raised before the lower authorities and hence, should not be admitted.
7. We have carefully considered the rival contentions and perused the application for additional ground raised by the assessee. The assessee has raised a jurisdictional issue of non issuance and receipt of notice u/s 143(2) of the Act within the prescribed time. Therefore, this issue goes to the root of the matter. Accordingly, we admit the additional grounds.
8. As the additional ground stated by us goes to the root of the matter so we proceed to decide the same first.
9. The fact shows that the assessee is an individual who filed his return of income on 28.07.2011 for Assessment Year 2011-12 on 28.07.2011 at a total income of Rs. 13,27,310/-. On perusal of the assessment record for Assessment Year 2009-10 certain information were found which showed that the assessee is one of the person who purchased a property for Rs. 1.45 lakhs whose stamp duty valuation is Rs. 3.66 crores. Subsequently, the above property was transferred in the name of M/s. Devbhumi Foundation at Rs 1.45 Crores. Therefore, the provision of section 50C of the Act were applicable in the case of the assessee as the property was transferred on 28.10.2010 to the trust at the same consideration on which it was purchased and fair market value of the property is Rs 3.66 Crs. .
10. Accordingly, notice u/s 148 was issued on 03.02.2013. The assessee submitted that on 22.02.2014 that original return submitted on 28.07.2011 may be treated as return filed in compliance of notice u/s 148 of the Act. Objections were raised and same were disposed off on 12.03.2015. Notice u/s 142(1) were issued on 17.03.2015. The claim of the assessee is that notice u/s 143(2) of the Act has not been issued. According to the assessee notice u/s 143(2) should have been issued within six months from the end of the financial year in which return of income was filed. It is submitted that the assessee filed return of income on 22.01.2014 and therefore notice u/s 143(2) should have been issued to the assessee on or before 30.09.2014. It was stated that in absence of the same the order passed by the Id AO deserved to be quashed.
11. The Id DR submitted that no such issue was raised before lower authorities.
12. We have carefully considered the rival contentions and perused the orders of lower authorities. Assessee is response to notice u/s 148 of the act submitted a letter dated 22/02/2014 complying with the notice requesting to take the original return filed as compliance. Thus ROI in response to 148 notice was filed on 22/02/2014. In the paper book furnished before us by the assessee the respective order sheet entries are also given. The order sheet entries shown that the reasons recorded by the Id AO on 03.02.2014 and on 21.02.2014 the assessee submitted a compliance letter of filing of the return of income. On

20.01.2015 the reasons were submitted to the assessee on 12.03.2015. The reasons were disposed of On 17.03.2015 , query letter were issued and information was not received. Assessee sought further time. Therefore, it is apparent that no notice u/s 143(2) of the Act was issued to the assessee within six months from the end of the financial year in which return of income was filed. As required notice has not been issued and no information is also produced before us of issuance of any notice u/s 143(2) of the Act, we quash assessment order passed by the Id AO. Accordingly, the additional ground of the assessee is allowed.

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

Order pronounced in the open court on 16/11/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 16/11/2021

AKKEOT

Copy forwarded to

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi