

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.825/Del/2020
Assessment Year: 2014-15

Joginder Singh, C/o Virender Kumar Rastogi, Near Old telephone Exchange, Sher Khan Sarai, Civil Lines, Sambhal, Uttar Pradesh.	Vs.	ITO, Ward, Sambhal.
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PAN: EISPS5626G

(Appellant)

(Respondent)

Assessee by	:	Shri Virender Kumar Rastogi, Adv.
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	05.05.2022
Date of Pronouncement	:	18.05.2022

ORDER

This appeal filed by the assessee is directed against the order dated 25.11.2019 of the CIT(A), Moradabad, relating to Assessment Year 2014-15.

2. Facts of the case, in brief, is that the assessee purchased immovable property jointly with Mr. Margoob Husain valued at Rs.91,48,500/- (Bainama - Rs 8550000/- + Stamp Duty Rs 598500/) in which Rs. 45,74,250/- was invested by the assessee during the F.Y. 2013-14 (A.Y. 2014-15) and he had neither filed his return of income u/s 139 nor u/s 148 of the Act for the A.Y 2014-15. System

generated notice of non-filing had been issued on 10.03.2016. Further, Non-statutory notice dated 28.09.2017 was issued and served to the assessee. After approval u/s 133(6) of the Income Tax Act 1961 from Ld. Pr. Commissioner of Income Tax, Moradabad, notice u/s 133(6) had been issued on 22.12.2017 but no reply had been received and assessee had also not filed his ITR for the A.Y. 2014-15. Thereafter, after approval from the JCIT, notice u/s 148 of the I.T. Act, 1961 was issued on 16.03.2018 and duly served on 22.03.2018 on the assessee. Further notice u/s 142(1) along with questionnaire was issued on 08.05.2018, fixing the date for compliance on 22.05.2018. Nobody attended nor was any written submission filed on the date fixed for compliance. Further, the notices u/s 142(1) issued on 11.06.2018 & 08.08.2018 and the penalty show cause notice u/s 271(1)(b) of the Act issued on 06.09.2018 were not complied with on the dates fixed for their compliance. Penalty order passed u/s 271(1)(b) of the Act was passed on 24.09.2018. Further, a show cause notice u/s 144 of the Act along with draft order dated 09.10.2018 was issued which were also not complied with by the assessee on the dates fixed for their compliance.

3. Since sufficient opportunities have been provided by issue of various notices and reminders from time to time as mentioned above and no one attended the proceedings nor furnished any details/documents required vide notice u/s 142(1) of the I.T. Act, 1961, the AO completed the assessment on the basis of

material available on record making an addition of rs.45,74,250/- by observing as under:-

“3. In view of the facts and discussion in the foregoing paras, it is evident that there is nothing to tell about source of the above investment in immovable property on the assessee and this amount of Rs. 45,74,250/- has been earned from undisclosed sources. As such, I hereby hold the amount of Rs. 45,74,250/- invested during the financial year 2013-14 (AY 2014-15) as his Income from undisclosed sources under Section 69A of the Income Tax Act, 1961 (taxable at the rate of 30% as provided u/s 115BBE). The penalty proceedings are being initiated u/s 271(l)(c) of the I.T. Act, 1961 for concealment of particulars of income.”

4. In appeal, the ld. CIT(A) gave part relief to the assessee by observing as under:-

“5.0 Findings & Decision:

After going through the facts of the assessment order, submission of the appellant and remarks of the remand report, it is noted that the appellant has purchased immovable property in which Rs. 45,74,250/- was invested by the appellant in A.Y. 2014-15. This amount was invested by the appellant out of his salary income, business income, agriculture income and loan taken from several persons. After considering the facts of the computation for A.Y. 2014-15 and other supportive documents submitted by the appellant, it is clear that the appellant is a partner in a firm namely “M.J. Auto Workshop” and a term loan of Rs. 60,00,000/- was also taken in the name of the above mentioned firm in the year under consideration for business purposes.

In his submission, the appellant himself declared that a loan of Rs.60,00,000/- was taken by the firm and no business could be carried on. Appellant has invested half share of this loan i.e. Rs. 30,00,000/- in purchasing immovable property in his personal name or capacity.

Since, the firm is a partnership firm, it is liable to file its ITR and to maintain his books of account separately. The assets & liability of the firm should have mentioned in the firm’s separate books of account. Therefore, any loan taken in the name of firm for the purpose of business activities could not be utilized by the partners in his personal capacity.

In the present case, the appellant has utilized the amount of loan taken in the name of partnership firm amounting to Rs. 30,00,000/- in his personal

capacity. Hence, 1/2 share of the loan i.e. Rs. 30,00,000/- which was invested in immovable property by the appellant in his personal capacity is hereby sustained. The balance amount of investment i.e. of Rs. 15,74,250/- is verified by supporting evidences and hence the addition of Rs. 15,74,250/- made by the AO is held to be unjustified & is hereby deleted. Appellant gets relief upto Rs.15,74,250/- and the addition of Rs. 30,00,000/- is sustained. AO is also directed to ensure that the loan taken by the partnership firm should not be utilized by another partner and the interest paid by the firm against the loan should not be allowed as expenses.”

5. Aggrieved with the order of the CIT(A), the assessee is in appeal before the Tribunal against the sustenance of Rs.30 lac out of the addition made by the AO of Rs. 45,74,250/-.

6. The Id. Counsel for the assessee, referring to page 31 of the sale deed submitted that Rs.60,00,000/- was advanced by the bank to him and this amount was paid directly to the seller of the property in question and, therefore, the finding of the Id.CIT(A) does not stand. Referring to page 4 of the order of the CIT(A), the Id. Counsel submitted that his remark that ITR for AY 2013-14 was not accepted by the system is not correct and it was correct for AY 2014-15. The ITR for AY 2014-15 was filed after the ex parte assessment order was passed and prior to filing appeal before the CIT(A). However, the same could not be e-filed. The ITR against u/s 148 for AY 2014-15 could not be fled due to an accident met by the assessee.

7. The Id. Counsel for the assessee, drawing our attention towards page 11 of appeal folder submitted that the copy of statement of bank account of partnership

firm M/s M.J. Auto Workshop clearly reveals that the assessee along with his partner obtained advance/loan of Rs.60 lakhs on 12.02.2014 from bank and copy of sale deed at pages 12-16 further reveals that immediately after two days i.e., on 14.02.2014, a sale deed was registered in favour of the assessee and his partner Shri Margoob Hussain and out of total consideration which was Rs.85,50,000/-, Rs.60 lakh was paid through banker's cheque No.702766 dated 12.02.2014, of Punjab National Bank, Amroha Gate, Moradabad. The ld. Counsel vehemently contended that the loan was taken by the assessee and his partner from the bank account of partnership firm and the same was used for purchase of property in the name of two partners, therefore, there is no iota of doubt regarding source of investment of Rs.30 lakh towards purchase of property by the assessee. The ld. AR stated at Bar that no addition has been made in the hands of partner Shri Margoob Hussain and investment has been accepted as explained. Therefore, the similar treatment should be given to the present assessee having similar facts and circumstances.

8. Replying to the above, the ld. Sr. DR submitted that loan has been obtained from the bank account of the partnership firm, but, the property has been purchased in the name of partners, therefore, the AO was right in making addition in the hands of the assessee on account of unexplained investment of Rs.30 lakhs.

On careful consideration of rival submissions, I am of the considered opinion that the Id. Sr. DR could not controvert that an amount of Rs.60 lakhs was taken as advance/loan by the assessee and his partner from Punjab National Bank, Amroha Gate, Moradabad, which was used towards purchase of property in the joint names of partners and the cheque issued by the bank was directly given to the seller of the property. Therefore, the source of investment of Rs.30 lakhs i.e., half share pertaining to the present assessee is clear and loud that the impugned amount has been obtained by the assessee as advance/loan from partnership firm bank account and he has purchased the property in the capacity of co-owner with his partner. Merely because the property has been purchased in the name of two partners and not in the name of partnership firm, the source of investment cannot be treated as unexplained, because the partners are also entitled to purchase property on behalf of partnership firm using the funds of partnership firm. Therefore, in my humble opinion, the addition made by the AO and confirmed by the Id.CIT(A) has no legs to stand on the sound principles of tax jurisprudence. Therefore, the AO is directed to delete the addition.

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

Order pronounced in the open court on 18.05.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 18th May, 2022.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi