

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 1372 & 1373/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

Sh. Ghasi Lal Gurjar Village-Sumel, Agra Road, Jaipur	बनाम Vs.	ITO, Ward-7(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AOQPG 5853 B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Vishal Gupta (CA)
राजस्व की ओर से/ Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 21/06/2022
उद्घोषणा की तारीख/Date of Pronouncement: 29/06/2022

आदेश / ORDER

PER RATHOD KAMLESH JAYANTBHAI, AM:

These are the two appeal filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeal)- III, Jaipur [here in after referred as Ld. CIT(A)] both for the assessment year 2009-10. The relevant details of the same is extracted herein below:

ITA NO.	Date of order of Ld. CIT(A) which is disputed before the bench	Reference to the order of AO	Date of order passed by the AO
1372/JPR/2019	21-03-2016	Order passed u/s. 147/144 by the ITO, 7(4),	03.03.2015

		Jaipur	
1373/JPR/2019	15-01-2018	Order passed u/s. 271(1)(b) by the ITO, 7(4), Jaipur	30.09.2015

2. Since both these appeals are heard together and the issue is inter related and is of the same assessee for same assessment year, is disposed of by this common order.

3. The assessee has assailed the appeal in ITA No. 1372/JP/2019, before us on the following grounds;

“1. On the facts and circumstances of the case, the Ld. AO grossly erred in concluding assessment without issuing any notice under section 147/148 and without recording reasons as contemplated under said section. Even the date on note sheet is overwritten and tampered. Such an assessment is without jurisdiction and hence deserved to be declared null and void ab initio.

2. On the facts and circumstances of the case, the Ld. AO grossly erred in reopening the case of the assessee without obtaining requisite approval under section 151. Even on note sheet it has been mentioned that case has been reopened under section 148 on the basis of information from Ld. JCIT (instead of sanction). Such a reopening is bad in law and hence entire assessment proceedings in pursuance thereof are prayed for being declared void.

3. On the facts and circumstances of the case, the Ld. AO grossly erred in concluding assessment proceedings without any service of notice u/s 148. The assessment proceedings are thus prayed for being declared void.

4. On the facts and circumstances of the case, the Ld. CIT (Appeals) has erred in approving the action of Ld. AO who has grossly erred in taking reassessed stamp duty value as full value of consideration instead of assessed stamp duty valuation as on date of sale which is against the provisions of section 50C. The addition to that extent i.e. Rs. 1200000.00 (9840000.00 – 8640000.00) is arbitrary and deserve to be deleted.

5. *On the facts and circumstances of the case, the Ld. AO grossly erred in not allowing claim of stamp duty and other expenses paid by assessee of Rs. 108200.00 for land purchased for claiming deduction under section 54B. The appellate authority is hereby prayed for allowing deduction of said amount.*

6. *The appellant hereby craves leave to add, alter, delete or substitute one or more grounds of appeal before or at the time of hearing.”*

4. As the decision of appeal in ITA No. 1372/JP/2019 has bearing on the appeal in ITA No. 1373/JP/2019 therefore, we take the appeal in ITA No. 1372/JP/2019 for disposal first.

5. The fact as culled out from the records is that the assessment in the case of the assessee for the year under consideration was completed u/s. 144 by the AO and addition was made under the long term capital gain at Rs. 92,70,000/- for the sale of land. During the course of appellant proceeding before CIT(A) the assessee filed additional evidence along with written submissions. As the evidences are new and filed for the first time, the same was forwarded to the AO on 23-11-2015 for his comments. In compliance, AO submitted his report through Joint Commissioner of Income Tax, Range-7, Jaipur. In the report AO stated that the on the basis of information received from the higher authorities, it is gathered that the assessee had sold a land bearing Khasara No.326 & 327 situated at Village Sumel, Agra Road, Jaipur on 08-05-2008 for a consideration of Rs.8640000/- the value of which has been taken by the Collector (Stamps), Jaipur at Rs.9840000/- for stamp purposes. The land was situated within the municipal limit of Jaipur Nagar Nigam, thus,

the land has been ascertained as capital asset in the meaning of Section 2(14) of the I.T.Act,1961. Moreover, as per provisions of section 50-C of the amount of Rs.9840000/- was liable to tax under Capital Gain Tax. It has also been noticed from the System that return of Income for the F.Y. 2008-2009 relevant to Asstt. Year 2009-2010 had not been filed by the assessee. Therefore, believing that the income to the tune of Rs.9840000/- has escaped assessment, initiated proceedings U/s 147 of the IT Act,1961 by issue of notice U/s 148 on 08-11-2013. The notice was duly served upon the assessee on 14-11-2013.

5.1 The assessee was asked to file his return of income for the relevant year within thirty days from the date of receipt of the notice U/s 148. However, no return of income has been filed in response to the notice U/s 148.

5.2 Thereafter, notice u/s 142(1) alongwith a detailed questionnaire was issued on 25-11-2014 i.e. after a year, to the assessee requesting him to produce documentary evidence with regard to sale of property, the value of which has been adopted at Rs.9840000/- by the Collector (Stamp), Jaipur. In compliance to the said notice neither any one attended nor any written submission filed. Since, the assessment proceedings were going to be barred by limitation on 31-03-2015, and the assessee was not co-operating in finalizing assessment proceedings, therefore, a show cause letter U/s 147/144 (1) along-with notice U/s 142(1) was issued on 03-02-2015, asking the assessee as to why the amount of Rs.9840000/- should not be taxed in his

hands treating the same as undisclosed income of the F.Y.2008-2009 relevant to assessment year 2009-2010. The assessee was asked to file his explanation on or before 10-02-2015, otherwise an exparte assessment will be made on the basis of information available on record. This show cause letter and notice U/s 142(1) was duly served upon the assessee on 07-02-2015. This time also neither any one attended nor any written submission filed. Ultimately the assessee himself attended on 03-03-2015 alongwith copy of Sale deed and Bank pass book. Statement of the assessee Shri Ghasi Lal Gurjar recorded. As regards the charging of Capital gain tax on 9840000/- the assessee categorically stated that he has no objection, if the said amount is taxed in his hands under the Capital Gain Tax after allowing exemption of Rs.570000/-. Accordingly, assessment order in his case was passed U/s 147/144 of the I.T.Act,1961 on 03-03-2015 determining total income of Rs.9270000/-.

6. The learned assessing officer has filed reply based on each ground submission filed by the assessee and his comments on the contentions taken by the Id. AO which is not reproduced as the same is part of the record.

7. The appellant on 06.06.2022 has filed an application for additional ground of appeal. The application is extracted here in below for the sake of brevity of the facts.

"Respected Sir(s),

Sub : Application for admission of additional ground of appeal

We hereby submit as follows:

As per Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963

11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule :

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

In pursuance of this rule, the assessee hereby request and pray for leave of the Hon'ble Bench for admission of additional grounds of appeal (Ground No. 1 to 3, 5, & 8) mentioned hereunder. The issue raised therein except Ground No. 5 are legal issues questioning the jurisdiction of authorities and alike. The facts, if any, related to these issues are already in possession of the respondent. The details regarding legality of these grounds as well as the evidence of facts being present with the department related to these issues have been discussed in later part of this application ground wise. These grounds have not been raised before the lower authorities for two reasons. Firstly, the assessee came to know about these jurisdictional and other deficiencies only when his counsel conducted inspection of assessment record after appellate order and Secondly, these issues were all legal technical issues for which assessee could not be expected to have knowledge of and also he did not get proper legal advise from his erstwhile counsel. As these grounds play a very vital role in attaining true ends of justice and they go to the root of the matter, it is hereby prayed that the same may be admitted.

We place our reliance on the decision of Hon'ble Supreme Court in case of National thermal Power Corporation Ltd. vs CIT 229 ITR 383 in which it was held by the H'ble Apex Court that

"U/s 254 power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability:we do not see any reason why the assessee should be prevented from raising that question before the ITAT for the first time, so long as the relevant facts are on record in respect of that item:.. the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee."

Also, in CIT v Indian Bank (2015) 230 Taxman 635 (Mad.) (HC), the court observed that Rule 11 of the Income Tax Appellate Tribunal rules makes it clear that the assessee has the right to raise additional grounds and if the same is beneficial to the assessee, the same should be considered by the tribunal. Similarly, in Indo Java Co. vs IAC (1989) 30 ITS 161 (Delhi) (SB), the Special Bench has held that point which can be agitated in appeal before Tribunal by an appellant may also include points impinge on computation of income as shown by the assessee himself by mistake or otherwise and even not agitated before ITO or ACC. We also rely on the decision in Nath Developers v ACIT (2013) 157 TTJ 224 (Pune) (Trib.) where it was held that the assessee is entitled to raise fresh ground of reassessment in appeal at the tribunal stage as the relevant facts were already on records.”

8. Attached to that application the additional ground raised is also extracted here in below:

“Ground No. 1

On the facts and circumstances of the case, the Ld. A.O grossly erred in concluding assessment without issuing any notice under section 147/148 and without recording reasons as contemplated under said section. Even the date on note sheet is overwritten and tampered. Such an assessment is without jurisdiction and hence deserve to be declared null and void ab initio.

Whether Legal Ground – Yes, as it questions assumption of jurisdiction by the Ld. Authority in absence of issue of the notice U/s 148 / without recording of reasons required for issuing notice under section 148.

Documents Required whether available with the respondent already – The documents which are required in this case are the record of department itself which includes copy of notice, copy of reasons, note sheet and hence there is no such document which was not present with the respondent at any stage of proceedings, whether assessment or appellate.

Ground No. 2

On the facts and circumstances of the case, The Ld. A.O grossly erred in reopening the case of the assessee without obtaining requisite

approval under section 151. Even on note sheet it has been mentioned that case has been reopened under section 148 on the basis of information from Ld. JCIT (instead of sanction). Such a reopening is bad in law and hence entire assessment proceedings in pursuance thereof are prayed for being declared void.

Whether Legal Ground – Yes, as sanction under section 151 is a pre requisite for assumption of jurisdiction by the Ld. Authority.

Documents Required whether available with the respondent already – The documents which are required in this case are the record of department itself which includes memorandum of recording reasons and letter of higher authority granting sanction and hence there is no such document which was not present with the respondent at any stage of proceedings, whether assessment or appellate.

Ground No. 3

On the facts and circumstances of the case, the Ld A.O grossly erred in concluding assessment proceedings without any service of notice U/s 148. The assessment proceedings are thus prayed for being declared void.

Whether Legal Ground – Yes, as the service of notice in the manner contemplated by law is mandatory for completion of assessment proceedings u/s 148.

Documents Required whether available with the respondent already – The documents which are required in this case are the proof of delivery of notice. However, as there was no notice issued as mentioned above, question of service is secondary. Hence, in this case also, there is no such document which was not present with the respondent at any stage of proceedings, whether assessment or appellate.

Ground No. 5

On the facts and circumstances of the case, the Ld. A.O grossly erred in not allowing claim of stamp duty and other expenses paid by assessee of Rs 108200.00 for land purchased for claiming deduction under section 54B. The appellate authority is hereby prayed for allowing deduction of said amount.

Nature of Ground – Factual

Documents Required whether available with the respondent already – We hereby draw the attention of the Ld. Authority to Page 7 to Page 14 of the paper book and particularly Page 7 of the paper book. The assessee has incurred Rs 108200.00 (Rs 5000 for stamp value and Rs 103200.00 as duty and other charges) as cost of registration fees for purchase of agricultural land. The assessee has submitted the said registry before the Ld. Assessing authority who has allowed the cost of land but not the registration charges. In the appellate proceedings, the Ld. CIT (A) has not allowed the said claim for want of specific ground in relation to same. However, in the remand report itself which is enclosed vide Page No. 28-31 of paper book, the Ld. A.O has agreed to same on Page 31 of paper book (Kindly refer first para). Thus, the document in this case required was copy of relevant registry which was present with the department at the time of assessment proceedings as well as appellate proceedings.

Ground No. 8

On the facts and circumstances of the case and as an alternate plea, the assessee hereby submit that the reopening of the assessment was without jurisdiction for various reasons. Thus, it is hereby prayed that the notice u/s 148 as well as proceedings in pursuance of such invalid notice should be quashed.

Whether Legal Ground – Yes, as the jurisdiction was assumed by the Ld. A.O on the basis of wrong fact altogether that the assessee has not filed return for the relevant period.

Documents Required whether available with the respondent already– The documents which is required in this case is the copy of return filed which is a document which was present with the department even before the assessment or appellate proceedings.”

9. Relying on the judgement of Hon'ble Supreme Court in the Case of National Thermal Power Corporation Ltd. Vs. CIT 229 ITR 383 where in the Hon'ble apex court held that the tribunal has jurisdiction to examine a question of law which arises from the facts as available on the records of the authorities below and

having a bearing on the tax liability of the assessee. Considering the specific petition on the additional ground and the same are legal in nature we have admitted the above grounds which goes to the very root of this case and it was not resisted from other side. The grounds taken by the assessee are pure legal grounds for which no further investigation of fact is required. After hearing both sides we have found it for a fact from the records.

10. Au contraire, Id. DR objected to the additional grounds of appeal filed by the assessee stating that these grounds have not been taken by the assessee ever before lower authorities, in all fairness, the Id. DR has left the issue to the bench considering the interest of justice and submitted that the Bench may take appropriate view.

11. On these additional grounds raised by the assessee a report of the Assessing Officer was called for in respect of issue of notice u/s 148, its service and approval for reopening the case. The Id. AO vide letter dated 26.10.2021 which was produced before the Bench by the Id. DR vide his letter dated 16.11.2021. The relevant portion is extracted here in below :



OFFICE OF THE
INCOME TAX OFFICER,
WARD-7(2),
C-95, BABA SIDDHANATH BHAWAN, JANPATH,
LAL KOTHI, JAIPUR

No. ITO/W-7(2)/JPR/2021-22/1541

Dated : 26.10.2021

To,
The Addl. Commissioner of Income-tax (Sr. Dr)-II
ITAT, Jaipur.

Respected Madam,

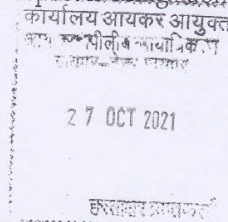
Sub- Appellate Proceedings In The Case Of Shri Ghasi Lal Gurjar, Jaipur V/S Ito
Ward 7(2), Jaipur Jaipur AOQPG5853B A.Y 2009-10 Ita No 1372 & 1373 Jp /19
Reg - Regarding-

Kindly refer to your office letter No. 179 dated 20.10.2021 on the above mentioned
subject. In this regard, the point wise detailed report as required by your good office are
submitted here as under for your kind perusal :-

S.No.	Particulars	Remarks
1.	Copy of notice u/s 148 of the Act issued to the assessee	Not Placed on file.
2.	Reasons recorded for re-opening of the case for assessment u/s 147 of the I.T. Act 1961	Not Placed on file ✓
3.	Approval of u/s 151 of JCIT/ CIT for re-opening of the case	Not Placed on file ✓
4.	Proof of service of notice u/s 148	Not Placed on file ✓
5.	Copy of note sheet	Copy of note sheet enclosed herewith for your kind perusal.

The report is being submitted for your kind perusal.

Encl : as above



Yours faithfully,

(S.D. Bairwa)
Income-tax officer
Ward- 7(2), Jaipur.

Copy to The Additional Commissioner of Income tax , Range -7, Jaipur for kind information.

Income-tax officer
Ward- 7(2), Jaipur.

12. Ongoing through the said report, it has been transpired that no notice was available with file of the Assessing Officer and no reasons recorded reopening the case was available with the AO. Obviously in the absence of that primary document the necessary approval of higher authority was also not there on the records.

13. In light of the evidences placed before us and after going through the records produced before us. We have observed that the department has failed to issue notice, failed to report the reasons for reopening the case and also failed to take the approval of the appropriate authority before as initiation of proceedings u/s 147 of the I.T. Act. These facts is not controverted by the Id. DR appearing on behalf of the revenue. Therefore, since the notice is not legally issued, the proceedings also not valid in the eye of law and thus, these additional technical grounds of the assessee is allowed without going into merits of the case. The appeal of the assessee is thus, allowed on technical grounds.

14. In view of our above finding, the other grounds became infructuous and thus, appeal of the assessee is allowed in ITA No. **ITA No. 1372/JP/2019 for A.Y 2009-10**

15. In ITA No. 1373/JP/2019, the assessee has taken the following grounds in this appeal;

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in approving the action of Ld. AO where the Ld. AO has grossly erred in initiating as well as levying penalty under section 271(1)(b) on the basis of a vague notice, without even mentioning

the specific charge or specific non compliance of any section. Further, without prejudice to same, the notice even did not mentioned the specific date/dates of notice which was not complied with by the assessee. Thus, the penalty so levied and initiated is void ab initio and hence prayed for being deleted.

2. That on the facts and circumstances of the case and without prejudice to the preceding ground, the Ld. CIT(A) has erred in approving the action of Ld. AO where the Ld. AO has grossly erred in levying penalty for non-compliance of notice issued on 25.11.2014 (as alleged in relevant orders) when such notice was never served upon the assessee. Such a order is thus invalid and hence prayed for being quashed.”

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in rejecting appeal of the assessee without going through the record of assessment proceedings which was in possession of the department only. Thus, such an order is totally against principles of natural justice and hence prayed for being quashed.

4. The appellant hereby craves leave to add, alter, delete or substitute one or more grounds of appeal before or at the time of hearing.”

16. Since, the very basis, upon which the proceedings is initiated and notice is alleged to have been issued, in fact is not issued and served upon the assessee as confirmed by the AO in his report dated 26.10.2021. In view of this fact being on record the subsequent levy of penalty of non-compliance on that notice has not valid force so as to levy penalty u/s. 271(b). In terms of this observation the appeal of the assessee is allowed on technical ground. Since, we have allowed the appeal of the assessee on technical ground other grounds became infructuous

In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 29/06/2022.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/06/2022

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Ghasi Lal Gurjar, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(4), Jaipur
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 Nos. 1372 & 1373/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar