

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 235/JP/2022
निर्धारण वर्ष/Assessment Years : 2012-13

Shri Om Garg C/o Pawan Kumar Sharma F-37, Balaji Tower, Behind Sun and Moon, Vidhyadhar Nagar, Jaipur	बनाम Vs.	Income-tax Officer, Ward 4(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHLPG 1894 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

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

सुनवाई की तारीख/ Date of Hearing : 07/07/2022
उदघोषणा की तारीख/Date of Pronouncement: 08/07/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is arising out of an order passed by the National Faceless Appeal Centre [here in after referred to as NFAC] by dated 07-04-2022 for the assessment years 2012-13 which in turns arise out of an assessment order passed under section 144 of the Act by the Income Tax Officer, Ward-(4)(2), Jaipur dated 06.12.2019.

2. The assessee has raised the following grounds of appeal:-

"Sub: In the case of Shri Om Garg A.Y. 2012-13 [PAN: A H LPG I 894Q]

Statement of Facts:

It is to bring to your notice that Assessing Officer in Ward 4(2), Jaipur has passed an Assessment Order u/s 144/147 of the Income Tax Act on 06.12.2019. The total additions in the assessed income are:

Particulars	Amount (Rs.)
Long Term Capital Gain on sale of immovable property	12,51,000/-
Income from unexplained Sources u/s 69A of the Income Tax Act	49,57,826/-
Total Additions	62,08,826/-
Total Income R/o	62,08,830/-

A demand notice u/s 156 has also been issued vide DIN: 20121091996 dated: 06.12.2019. The total tax demand is Rs. 46,08,730/-.

In response to such hurried and harassed order and demand notice, the appellant has filed appeal dated 04.01.2020 vide Acknowledgement No: 287433931040120. However, due to Corona Pandemic and other return filing obligations, the assessee could not collect documents on time. The assessee had time to time requested for adjournments. However, before the grace period was over, the Learned CIT(Appeals) had passed the order u/s 250 of the Income Tax Act on 07/04/2022.

Hence, an appeal to ITAT is filed to plead to quash the order of CIT(Appeals) or to remand the case back to Assessing Officer for fresh Assessment.

Current Submissions:

Ground of Appeal No. 1: The order under appeal is bad in law, against the facts and circumstances of the case and against of law of natural justice. Shri Om Garg [PAN: AHLPG1894Q], is a respected businessman, proprietor in the firm Shri Balaji Polymers, who has been filing his income tax returns as and when income chargeable to tax arose. This can be vouched by logging into his income tax portal and scrutinising his submissions for various Assessment Years for which returns have been filed. In A.Y. 2012-13,

the appellant was involved in recycling of plastic waste and earned income through types of sources:

1. Recycling of plastic material i.e. converting the plastic into plastic granules and then selling the same to third parties.
2. Trading of Plastic, Plastic Granules and Scrap on commission basis

The assessee did not have any income chargeable to tax in the said Assessment Year, therefore, no income has escaped assessment.

Ground of Appeal No. 2: The reasons recorded u/s 148 are vague, improper, incomplete, incorrect and without application of mind. The notice has been issued only on the basis of information available with the office. The additional income from sale of immovable property situated at Industrial Plot No. G-510 (B1), Road No. 9A, Vishwakarma Industrial Area, Jaipur, amounting to Rs. 23,44,248/- is not correct as per appellant's records. This is ambiguous and incorrect in nature. The assessment order based on such ambiguity of notice be quashed.

As per the show cause issued by the Assessing Officer, appellant had sold an immovable property, an industrial plot, amounting to Rs. 23,44,248/-. The details of the property mentioned above are:

Date of Sale	Address	Amount (Rs.)	Sold to
21.10.2011	Industrial Plot No. G 510 (B1), Road No. 9A, VKI Area, Jaipur	12,51,000	M/s. Sharma Engineering works

As per the records of the appellant, the sale deed and the bank statement, the property was sold for Rs. 12,51,000/- to M/s. Sharma Engineering works (Proprietor: Mrs Durga Devi Sharma). The amount of Rs. 12,00,000 was received through HDFC bank [Account no: 05521000035442] and rest was received in cash. The property was received as a gift from appellant's elder brother on 24.10.2007. It is to be noted that despite repeated search, purchase deed of the said property cannot be found. The appellant is in the process of getting a duplicate copy issued and/or finding the original one.

Further, the AO has made an addition of Rs.12,51,000/- on account of Long Term Capital Gains. It is to be noted that the appellant has invested the entire proceeds from the sale of industrial land in buying a residential property. The details of such purchase are as under:

Date of Purchase	Address of the Property Purchased	Amount (Rs.)	Bought from
24.10.2011	House No. 79, Pocket A-00, Sector 2, Rollin i. Delhi	16,27,100 [15,35,000- Sale Value 92,100- Stamp Duty]	Shri Virender Kumar Sharma

Also, even in the absence of purchase amount of the Industrial Plot in Jaipur, the amount invested in the residential house in Delhi is greater than the sale consideration received for the industrial plot in Delhi. Therefore, the appellant is entitled to the full exemption of sale consideration u/s 54F of the Income Tax Act. Therefore, appellant has no income chargeable to tax and income has not escaped assessment.

Ground of Appeal No. 3 The reasons recorded under assessment order u/s 144/147 are vague, improper, incomplete and without application of mind. The assessment of the income amounting to Rs. 49,57,826/- has been made only on the basis of cash deposited/time deposit in the bank account only without considering materials on record, facts and circumstances of the case and without considering debit transactions in the bank account. Therefore, order passed on the basis of such incomplete reasons be quashed.

The appellant has three bank accounts for the Assessment Year 2012-13, the details of which are mentioned below:

Name of the Bank	Name of the Accountholder	Account No.	Closing Balance as on March 31, 2012 (Rs.)
HDFC Bank	Shri Om Garg	03482000005629	0.00
HDFC Bank	Shri Balaji Polymers	05521000035442	1,27,150.79 Cr.
Bank of Baroda	Shri Om Garg	07100100008066	3470 Cr.

As per records with the appellant, the following cash deposits and other transfers were made during the year in three bank accounts:

Bank Name	Total Cash Deposits	Total Cash Deposits	Difference	Total Deposits other than cash	Total Deposits other than cash	Difference
	As per Bank Statement (a)	As per Assessment Order (b)	(a-b)	As per Bank Statement (c)	As per Assessment Order (d)	(c-d)
Bank of Baroda	2,000	-	-	34,142	-	34,142
HDFC - 35442	7,50,000	7,50,000	-	50,49,279	50,54,826	-5,547
HDFC - 05629	2,23,000	2,23,000	-	-	-	-
Total	9,75,000	9,73,000	-	50,83,421	50,54,826	

As evident from the above table, the total deposits other than cash as per the assessment order and as per the bank statements do not match.

Further, the learned AO, has treated Rs. 49,57,826/- (excluding the credit entries on account of sale proceed from the transfer of immovable property in question) as deposits from unexplained sources and added in the total income of the appellant u/s 69A of the Income Tax Act for the year under consideration. Despite trying numerous permutations and combinations, it cannot be understood as to how the Learned AO has reached at the figure of Rs. 49,57,826/-. As per Assessing Officer, Total deposits including cash are Rs. 60,27,826/-. If the credit entries pertaining to sale of immovable property are excluded i.e. Rs.12,51,000/- is excluded from the above mentioned figure, then the remaining figure is Rs. 47,76,826/-. The AO has made an addition of Rs. 49,57,826/-. The figures, on apparent record, do not match on the assessment order only. Further, the AO has not given any consideration to interest received on savings bank account which is reflected clearly in the bank statement.

Also, there are debit entries in the bank statements that Learned Assessing Officer has clearly overlooked. Those entries pertain to

expenses incurred by the appellant in normal course of business. Thus, it can be inferred that AO has passed the Assessment Order without application of mind. The order is improper and incorrect.

Ground of Appeal No: 4

The appellant had filed an appeal against the original assessment order. The assessee could not file responses for the same on time. Since the sale and purchase of property was in Financial Year 2011-12, the assessee had misplaced documents. This happened during when assessee moved from Jaipur to Delhi where he currently lives. It took time to find original copies and submit them. For the same, adjournments for the same were asked on time. The details of which are:

Date on which notice was issued	Date on which response was due	Date on which response was due after adjournment
29.12.2021	03.01.2022	Not Applicable
12.01.2022	21.01.2022	05.02.2022
22.03.2022	25.03.2022	09.04.2022

The CIT (A) passed the order u/s 250 on 07.04.2022 without considering the plea for adjournment. The order was made ex-parte. Therefore, assessee is requesting to please consider quashing the order or remanding the case back to Assessing Officer for fresh assessment.

Tax Effect

Ground of Appeal	Tax Effect (Rs.)
Ground of Appeal No: 1	Nil
Ground of Appeal No: 2	Rs. 46,08,730/-. <i>Please Note: The combined tax effect is the tax demand that department has asked from the appellant. It is difficult to segregate the tax effect for each ground of appeal since computation was not provided. Therefore, the entire tax demand is quoted which is inclusive of</i>
Ground of Appeal No: 3	
Ground of Appeal No: 4	Nil

PRAYER

In view of the aforesaid facts & circumstances stated above, it humbly prayed to Your Honour:

- (i) That the impugned Assessment Order with DIN: ITBA/NFAC/S/250/2022-23/1042620644(1) dated 07.04.2022 may kindly be set aside.
- (ii) That the appellant may be granted relief from tax amounting to Rs. 46,08,730/- and penalty proceedings be kept in abeyance till the matter is resolved.
- (iii) To pass any other orders as your Honour may deem fit in favour of the appellant.
- (iv) The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Honorable appellate authority.

VERIFICATION

Verified at New Delhi on this 23.05.2022 that the above contents are true and correct to the best of my knowledge and belief and nothing has been concealed there from."

3. Aggrieved by the order of the Id. CIT(A) dismissing the appeal of the assessee wherein even though the Id. AR of the assessee sought for an adjournment due to pandemic corona virus and the extension of all time by limit by Hon'ble Supreme Court. The Id. AR of the assessee argued that considering the fact that though assessment order is passed ex-party even the order of the Id. CIT(A) is also ex-party and the reason behind it of relocation of the assessee from Jaipur to Delhi and therefore, in the interest of justice he requested to give one chance to represent his case on merits. Looking to the extension of limitation granted by the Hon'ble Supreme Court, the Id. CIT(A) should have granted the sufficient

opportunity to the assessee. The appeal of the assessee should be decided on merit. After giving a reasonable opportunity of being heard looking to the overall fact of the assessee that he has shifted from Jaipur to Delhi and in that process and due to corona virus Covid-19. He could not defend his case and Id. CIT(A) has not granted adjournment as requested by the assessee.

4. The Id. AR of the assessee further submitted that he has received the money in bank account on account of sale of industrial plot and invested the residential house in Delhi. The sale proceeds are deposited in the bank account, in addition there is receipt of business activities also. Since, the Assessing Officer has passed the assessment order ex-party and even looking to the fact of the case. The return of income is also not filed by the assessee. In light of these observations, the Id. AR of the assessee prayed before us that in the interest of justice he may be given one more chance to present his case on merits before the lower authorities.

5. Per contra, the Id. DR stated that the assessee has raised general grounds no specific grievance against the order of the lower authorities raised by the assessee and thus, his appeal is not maintainable. The Id. DR further argued that since the assessee has filed the appeal he should be aware about of his right and these rights are coupled with the duties and he should be aware about the pendency of appeal and its status. The Id. CIT(A) has stated on page 3 he has given as many as five opportunities which the assessee could not avail and present the case before the lower authorities and

therefore, Id. CIT(A) processed being online the assessee plea is not maintainable.

6. We have heard the rival contentions and persuaded the material available on record. The facts argued before us and also gone through the orders of the lower authorities. It is not disputed that both the orders of the lower authorities are ex-parte and the assessee being small tax payer and whole amount credited in the bank account which consist of business receipt and capital gain arising on account of sale of property also cannot be taxed in gross. We found also force in the argument of the Id. AR of the assessee that the interest income credited in the said bank account cannot be charged to tax u/s 69A of the Act. All these facts are required to be verified at length and considering the request of Id. AR of the assessee that the assessee has relocated from Jaipur to Delhi and due to pandemic this has happen. Therefore, we feel that he may be given a chance to represent his case. However, the time of the Revenue is also important and the assessee is directed to present the whole facts before the lower authorities and at the same time, the assessee is directed to pay cost of Rs. 1100/- which is to be deposited in the Prime Minister Relief Fund within 45 days on receipt of the order and accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to reframe the assessment order considering the facts of the case and submission placed by the assessee on record. After giving him proper opportunity being heard. In terms of these observations, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08/07/2022

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/07/2022

*Ganesh Kumar

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

1. The Appellant- Shri Om Garg, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 235/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar