

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 348/JP/2022
निर्धारण वर्ष/Assessment Year : 2011-12

Shri Dileep Gangwal B-138, Vijay Path Tilak Nagar, Jaipur	बनाम Vs.	The ITO Ward 6 (1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPPG 1936 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 23/11/2022
उदघोषणा की तारीख / Date of Pronouncement: 14/12/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 18-07-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 wherein the assessee has raised the following ground of appeal.

"1. The ld. CIT(A), NFAC has erred on facts and in law in upholding the notice u/s 148 and the consequent order u/s 147 ignoring that the immovable property with reference to which

reassessment proceedings has been initiated was admittedly purchased in A.Y. 2012-13 and not in the year under consideration.

2. The Id. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.5,79,979/- u/s 68 of the I.T. Act, 1961 on account of unexplained investment ignoring that as per the sale deed dated 8-12-2011 Rs.5 lacs was paid in cash earlier is claimed to be paid in FY 2007-08 (Rs.1,80,000/-), 2009-10 (Rs.35,000/-), 2010-11 Rs.2,40,000) & 2011-12 (Rs.45,000/-) and 79,979/- on account of expenses on registration was paid on 8-12-2011 and thus in the absence of any evidence that such amount was paid in the year under consideration without having any source is bad in law.

2.1 Apropos ground No. 1 and 2 of the assessee, the facts as emerges out from the order of the Id. CIT(A) are as under:-

“2.1 As per the information received from I&CI Wing, it is seen that the appellant has purchased immovable property in the year 2011-12 vide sale deed dated 8-12-2011. Accordingly, the case is reopened and notice u/s 148 was issued. In compliance to the notice u/s 148, the assessee filed the return of income on 15-05-2018 declaring total income of Rs.1,94,290/-. During the assessment proceedings, the assessee was asked to explain the source of amount of Rs.5,79,979/-. As the assessee has failed to submit the sources, the Assessing Officer treated it as unexplained income u/s 68 and added to the total income and completed the assessment with assessed income of Rs.7,74,269/-. Against the order u/s 143(3) r.w.s. 147 of the Act, the assessee preferred present appeal.

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6. Decision

6.1 It is observed from the assessment order the Id. AO has added an amount of Rs.5,79,979/- on account of unexplained investments. The learned AO did not accept the submissions of the appellant that the investment in the property which was purchased in

the FY 2011-12 were related to amounts withdrawn from bank accounts in different years. The learned AO verified bank account as there were no payments in respect of property purchases. During the appellate proceedings also, the appellant did not submit any documents which indicate the source of the deposit. Accordingly, the addition made by the AO of Rs.5,79,979/- is confirmed.

7. In the result, the appeal filed by the appellant alongwith grounds of appeal is dismissed as there is no merit in the grounds of appeal and submissions.

2.2 During the course of hearing, the ld. AR of the assessee has filed the following written submission praying therein as to the ground no. 1 that assessment framed u/s 147 of the Act by the AO is illegal and bad in law and the same needs to be quashed. Further, the ld. AR prayed as to the Ground No. 2 that the source of these payments are out of cash withdrawn from the bank account in support of which the bank pass book was filed but the AO has nowhere proved that the cash so withdrawn has been used elsewhere and not for purchase of property. Therefore, the addition made by the AO is illegal and justified which needs to be deleted.

“Ground No.1: The Ld. CIT(A), NEAC has erred on facts and in law in upholding the notice u/s 148 and the consequent order u/s 147 ignoring that the immovable property with reference to which reassessment proceedings has been initiated was admittedly purchased in AY 2012-13 and not in the year under consideration.

Facts & Submission:-

1. Assessee filed the return on 05.09.2011 declaring total income of Rs.1,94,290/- (PB 1-3). The AO issued notice u/s 148 dt. 27.03.2018 (PB 4-5) by recording the reasons that assessee with his wife purchased immovable property vide registered deed dt 08.12.2011 In response to notice u/s 133(6) it was explained to ITO (I&CI)-11. Jaipur vide letter dt. 27.08.2014 (copy enclosed) that the property was purchased on 08.12.2011 for Rs.12 lacs (PB 8-18). Out of total consideration of Rs. 12 lacs, Rs.5 lacs was paid in cash in earlier years and Rs.7 lacs was paid by cheque. The AO, however, recorded the reasons that assessee failed to furnish necessary information regarding source of cash payment of Rs.5

lacs paid in earlier years and stamp duty expenses of Rs.79,979/-. Therefore, Rs 5,79,979/- has escaped assessment as per clause (b) of Explanation 2 to section 147 of the Act.

2. From the reasons recorded and the material available before the AO, there is no dispute as to the fact that the total cost of property including the stamp duty expenses is Rs.12,79,979- The property was purchased on 08.12.2011 which falls in AY 2012-13. The AO, however, without considering this fact has reopened the assessment for AY 2011-12 by invoking clause (b) of Explanation 2 to section 147 of the Act. This clause provides that income chargeable to tax shall be deemed to have escaped assessment where return of income has furnished but no assessment has been made and the AO notices that assessee has understated the income or claimed excessive loss, deduction, allowance or relief in the return.

3. The AO in the reasons recorded has not specified that assessee has understated the income or claimed excessive loss, deduction, allowance or relief in the return. In fact the property was purchased in AY 2012-13. As per the sale deed dt. 08.12.2011, Rs.5 lacs was paid earlier. Rs.7 lacs was paid by cheque in December, 2011 & January, 2012 and stamp duty expenses of Rs.79,979/- were incurred at the time of registry on 08.12.2011. Thus, there is no material with the AO to have reason to believe that expenditure of Rs.5,79 979/- was incurred in AY 2011-12. From these facts it is evident that AO has recorded the reasons without application of mind but only on the basis of information received from ITO (1&CD)-11, Jaipur. Hence, the reasons so recorded is on borrowed satisfaction and therefore, the notice issued u/s 148 is illegal & bad in law as held in following cases:-

M/s Devansh Exparts Vs. ACIT (2018) 176 DTR 17 (Kol) (Trib.)

The information given by DIT(nv) can only be a basis to ignite/ trigger "reason to The AO has to carry out further examination to convert the "reason to suspect" into "reason to believe. If the AO acts on borrowed satisfaction and without application of mind, the reopening is void.

Pioneer Town Planners (P) Ltd. Vs. DCIT (2018) 170 DTR 237 (Del.) (Trib.)

AO having formed the belief that assessee's income has escaped assessment only on the basis of some material received from the Investigation Wing without making any effort to examine and discuss the material received from the Investigation Wing and without application of the mind to the same, it follows that be initiated the reassessment proceedings on the basis of borrowed satisfaction without application of his own mind and therefore, reassessment proceedings and all consequent proceedings and orders including impugned reassessment are bad in law and not sustainable.

Lakshya Ice & Cold Storage (P) Ltd. Vs. ITO (2019) 181 DTR 153 (Agra) (Trib.)

AO having issued notice under sec. 148 only on the basis of information received from Dy Director of IT (Inv.) without independent application of mind and there being no nexus between tangible material and reason to believe except the suggestion of Dy. Director of IT (Inv.), the notice under sec. 148 and consequent reassessment cannot be sustained

S.N. Arora/Sapra Vs. ITO (2020) 187 DTR 121 (Del.) (Trib.)

AO having reopened the assessment simply on the basis of information received from the Investigation Wing without applying his mind to the facts of the case and verifying the said information before recording the reasons for reopening the assessment, it is a clear case of non-application of mind by the AO and therefore, reopening of the assessment is illegal and bad in law.

In view of above, the assessment framed u/s 147 is illegal & bad in law and the same be quashed.”

“Ground No.2: The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.5,79,979/- u/s 68 of IT Act, 1961 on account of unexplained investment ignoring that as per the sale deed dt. 08.12.2011 Rs.5 lacs was paid in cash earlier which is claimed to be paid in FY 2007-08 (Rs.1,80,000/-), 2009-10 (Rs.35,000/-), 2010-11 (Rs.2,40,000/-) & 2011-12 (Rs.45,000/-) and Rs.79,979/- on account of expenses on registration was paid on 08.12.2011 and thus, in the absence of any evidence that such amount was paid in the year under consideration without having any source is bad in law.

Facts:-

1. The AO made addition of Rs.5,79,979/- for the reason that it is strange that assessee started paying the amount from the year 2007-08 whereas the property was purchased in FY 2011-12, nexus of withdrawal from bank account vis-à-vis acquisition of property is not proved and the assessee admitted before the I&CI Wing, Jaipur that advance of Rs.5 lacs and registration charges of Rs.79,979 was made in FY 2010-11.

2. It is submitted that the facts mentioned by the AO in the assessment order are factually incorrect. The assessee never admitted before the I&CI Wing, Jaipur that advance of Rs 5 lacs and registration charges of R\$ 79,979 was made in FY 2010-11 From the letter filed to I&CI Wing, Jaipur it can be noted that the assessee only stated that Rs 5 lacs was paid in earlier years. Nowhere it is stated that this amount was paid in FY 2010-11. Further the registration chargers of Rs.79,979/- was paid on 08.12.2011 which falls in FY 2011-12 and not in FY 2010-11 as is evident from the sale deed itself.

3. It may also be noted that in course of reassessment proceedings the assessee has specifically mentioned (PB 19-20) that he purchased the property from his grandfather for which amount was paid in part in various years by making withdrawal from the bank account. From the same it can be noted that assessee paid Rs. 1,80,000/- in FY 2007-08,

Rs.35,000 in FY 2009-10, Rs.2,40,000 in FY 2010-11 and Rs.45,000 in FY 2011-12. Thus, the assessee only stated that in AY 2011-12 he only paid Rs.2,40,000/- The source of these payments are out of the cash withdrawn from the bank account in support of which the bank pass book was filed. AO has nowhere proved that the cash so withdrawn has been used elsewhere and not for purchase of property. Therefore, addition made by the AO is illogical and unjustified.

In view of above, addition made by AO be directed to be deleted.”

2.3 On the other hand, the ld. DR supported the order of the lower authorities.

2.4 After hearing both the parties and perusing the materials available on record, the Bench feels that grounds raised by the assessee (supra) need afresh consideration by the ld. CIT(A) as the order passed by the ld. CIT(A) is ex-parte because of non-submission of any documents/ evidences/ written submission/ paper book by the assessee. Hence, the assessee is deprived off to contest the case before the ld. CIT(A). Therefore, the Bench feels in the interest of equity and justice that one more chance may be given to the assessee to substantiate its case before the ld. CIT(A) by submitting necessary evidence/ written submission etc. but the assessee will cooperate in the appellate proceedings and also will not demand further adjournment on frivolous grounds. In this situation, the Bench restore the appeal of the assessee to the file of the ld. CIT(A) for afresh hearing but by providing adequate opportunity of hearing to the assessee. Thus the appeal of the assessee is allowed for statistical purpose as per the directions mentioned hereinabove.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14 /12/2022.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14 /12/2022

*Mishra

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

1. The Appellant- Shri Dileep Gangwal, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(1), 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. 348/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar