

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

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

आयकर अपील सं./ITA No. 193/JP/2021
निर्धारण वर्ष/Assessment Years : 2011-12

Pramod Modi Seth Balwant Rai Market Lal Bazar, Dholpur	बनाम Vs.	Income Tax Officer Ward-04, Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AWEPM 0657 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Jaideep Malik (Adv.)
राजस्व की ओर से / Revenue by : Smt Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 29/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 20/04/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 31/08/2021 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2011-12 which in turn arise from the order dated 15.11.2018 passed under section 144 r.w.s 147 of the Income Tax Act, by ITO, Ward -04, Bharatpur.

2. In this appeal, the assessee has raised following grounds: -

"1. The the Ld. Assessing Officer has grossly erred in reopening the assessment in the case of assessee u/s 148 of the Income Tax Act, 1961 without there being any reason to believe that the income of the assessee had escaped assessment and the Assessing Officer has not applied his own mind before issuance of notice u/s 148 and acted only on borrowed satisfaction which is not permitted in law. Therefore, the action of the Id. AO in reopening the assessment u/s 148 deserves to be quashed.

1.1 That, the Ld CT(A) has further erred in confirming the action of Id. AO in completing the assessment u/s 147 r.w.s. 144 of the income Tax Act, 1961 without considering the fact that there was no material available on record leading to formation of belief that any income has escaped assessment. Therefore, the action of Ld. AO in completing assessment u/s 147 deserves to be quashed.

2. That, the Ld. AO has grossly erred in completing the assessment ex parte u/s 144 of the Income Tax Act, 1961 without providing proper opportunity to assessee for presenting his case. Therefore, the ex parte assessment order passed by Id. AO u/s 144 r.w.s. 147 of the Income Tax Act, 1961 deserves to be quashed

3. That, the CIT(A) has erred in confirming the addition of Rs. 12,34,383/- made by Ld. AO by assuming the amount of cash as well as cheque deposits in the bank account of assessee during the financial year relevant to assessment year under appeal, as income from undisclosed sources, without appreciating the fact that the said deposits in bank account were made out of the sale proceeds of property jointly owned and sold by assessee alongwith his family members. Thus, the addition of Rs. 12,34,383/- deserves to be deleted.

3.1 That, the Ld. CIT(A) has further erred in completely ignoring the documents submitted before him in the share of Sale Deed as well as bank statements, which bear evidence of the fact that the source of deposits made in the bank account of assessee was the sale proceeds of land jointly sold by him alongwith his other family members. Thus, the addition of Rs. 12,34,383/- deserves to be deleted.

3.2 That the Ld CIT(A) has failed to appreciate the fact that the assessee jointly with four other persons had sold a piece of land inherited from their father to three persons namely, Shri Rajkumar Agarwal, Narendar Singh and Mukesh Kumar Sharma for sale consideration of Rs. 15,60,000/- on 04.03.2011. Out of the sale proceeds, the assessee received Rs. 1,95,000/- as his share. Therefore, the addition of Rs. 12,34,383/-entirely is not sustainable in the hands of assessee.

4. That, the Ld. CIT(A) has grossly erred in upholding the action of Ld. AO in making the impugned addition under the head income from other sources, by completely ignoring the fact that addition, if any, could have been made on account of capital gain, and that too only to the extent of assessee's 1/12 share of sale consideration reduced by the indexed cost of acquisition.

5. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal ”

3. Succinctly, the fact as culled out from the records is that the assessee, Shri Pramod Modi, an individual, had inherited 14826 square feet of land from his father Late Omprakash Modi, along with three others i.e. Smt. Prabha Modi, Shri Ashok Modi, Shri Dharmendra Modi and Smt Rajini Modi. All the five persons including the assessee decided to sell the land and divide the proceeds. Subsequently, the land was sold through sale deed dated 04.03.2011 for a consideration of Rs. 15,60,000/- to Rajkumar Agarwal, Narendra Singh and Mukesh Kumar Sharma, out of which, the appellant, Shri Pramod Modi, received his share of Rs. 1,95,000/- as sale proceeds.

3.1 The assessee did not file return of income of A.Y 2011-12. The AO issued notice u/s 148 of the Income Tax Act 1961 dated 28.03.2018 to the assessee on the ground that the assessee had deposited cash of Rs. 5,00,000/- in Dholpur Co-operative Bank during the F.Y 2010-11. The assessee did not file any return of income in response to Notice u/s 148 of the Income Tax Act. The AO provided a final opportunity to the assessee on 01.11.2018 to show cause why the cash deposit of Rs. 12,32,100/- during

the F.Y 2010-11 be not treated escaped income under the head 'income from other sources' for Asstt. Year 2011-12. Since, the assessee did not file the return in response to notice u/s. 148 of the Act and also not responded to the notices, Id. AO passed assessment order u/s. 144 of the Act, determining the total income at Rs. 12,34,383/-.

4. Aggrieved from the order of the assessment assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds of the appeal so raised the relevant finding of the Id. CIT(A) is reiterated here in below :

"5.1 I have considered the observations made by the Assessing Officer and the submissions of the appellant. Ground no.1 is with regard to assessment of escaped income. The appellant produced copies of the statement of Dholpur Cooperative Bank and the Sale Deed. The appellant jointly with other four persons sold piece of land inherited from their father to three persons namely, Shri Rajkumar Agarwal, Narender Singh and Mukesh Kumar Sharma for a consideration of Rs.15,60,000/- on 04.03.2011. Out of ne Sale proceeds, the appellant received Rs. 1,95,000/- as his share. The appellant failed to file the return of income and therefore the Assessing Officer had the right reason to come to prima facie belief that income assessable to tax has escaped assessment. The Assessing Officer's action is strictly in accordance with law. This ground of appeal is dismissed.

5.2 Ground no.2 is with regard to the cash deposit of Rs 5,00,000/- in the bank account made by the appellant. From the Bank statement produced by the appellant, it is seen that the appellant had deposited Rs.5,00,000/- on 07.03.2011 and Rs.5,01,100/- on 08.03.2011. When the appellant was questioned about the source of these deposits by the Assessing Officer, the appellant did not produce any reply or documents to prove the source of these credits. Despite several opportunities given by the Assessing officer, the appellant failed to submit any replies. In the absence of any documentary evidence or return of income from the appellant, the Assessing officer has rightly completed the assessment u/s 144 based on facts and materials available on record. Te appellant fails on this ground.

5.3 In Ground no.3, the appellant alleges that the Assessing Officer has treated all credit entries appearing bank account amounting to Rs.12,34,383/- as income from other sources. It is seen that the appellant had failed to produce any documentary evidence to support the transactions made by him, inspite of repeated reminders and opportunities given by the Assessing Officer. Hence, I have no hesitation in holding that the Assessing Officer rightly brought the amount of Rs. 12,34,383/- to tax. The appellant fails on this ground.

5.4 In Ground No. 4, the appellant requests to delete interest of Rs.4,15,837/- charged u/s 234A and 234B by the Assessing Officer. Interest charged under section 234A & 234B is statutory and thereby mandatory in nature. The Assessing Officer has charged interest in accordance with law. The appellant fails on this ground.”

5. The Id. AR appearing on behalf of the assessee submitted that though the assessment order was ex-party and that is why in the first appeal the assessee has submitted the relied upon the documents but the Id. CIT(A) has not admitted those records and rejected the explanation of the assessee about the amount added in the assessment order. The Id. AR submitted that Id. CIT(A) has not dealt with the additional evidence and therefore, in the interest of the justice considering the evidence placed on record of the Id. CIT(A) file, he should have decided the appeal of the assessee on merits calling for the remand report of the Id. AO. Since the same is not done Id. AR of the assessee prayed to remand the matter to the file of the Id. CIT(A) to decide the matter a fresh.

6. The Id DR is heard who has relied on the findings of the lower authorities. The Id. DR objected to the prayer of the Id. AR of the assessee that there is causal approach of the assessee and has not placed the additional evidence by making the petition to admit the same and therefore, based on that the Id. CIT(A) rightly dismissed the appeal without taking any cognizance of the evidence.

7. We have heard the rival contentions and perused the material placed on record. The bench noted the assessment order was ex-party, the assessee has already submitted the additional evidence before the Id. CIT(A) which has been not been considered by the Id. CIT(A). Even the order is silent as to why the same is not admitted. The Id. CIT(A) should have dealt with the reasons as to why the same is not admitted. This action of the Id. CIT(A) is against the principles of natural justice. The similar view is taken by the co ordinate bench D Bench of Mumbai ITAT in the case of Shri Dinesh Khemabhai Patel Vs. ITO in ITA No. 2131/Mum/2009 where in the co-ordinate bench held as under:

6. We have carefully considered the rival submissions and perused the record. It is not the case of the assessee, at this stage, that the AO has not given sufficient opportunity; the case of the assessee is that the additional evidence produced before the CIT(A) ought to have been admitted under Rule 46A. If additional evidence is not admitted, the Id. CIT(A) ought to have furnished reasons for non-admission so that the assessee could explain properly as to

whether the reasons for non-admission of additional evidence are in accordance with law or not. In the instant case, the Id. CIT(A) completely ignored to take notice of the additional evidence. Under these circumstances, we are of the view that in the interests of substantial justice the matter requires to be sent back to the CIT(A), who is directed to give the assessee a reasonable opportunity of heard. Suffice to say that the Id. CIT(A) should consider the additional evidence in accordance with law. If there are no justifiable reasons for admission of the additional evidence, the Id. CIT(A) has to pass a speaking order so that a superior forum can consider the correctness of the reasons mentioned therein. With these observations, the issue concerning the disallowance u/s.68 of the Act, other than Rs.6,97,688/-, is hereby set aside to the file of CIT(A).

7.1 Respectfully, following the said observation and considering the arguments of the Id. DR that the assessee has made a petition u/r 46A or not is not evidence from the finding of the Id. CIT(A). Be that it may so, considering the above finding of the co ordinate bench the Id. CIT(A) should mention the reason of not accepting the additional evidence.

7.2 In the light of these facts, circumstances of the case and considering the interest justice assessee is directed to file a petition for the additional evidence to be relied upon in accordance with law and rules thereof and the Id. CIT(A) based on the said fact may decide the appeal of the assessee on merits in accordance with law.

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

Order pronounced in the open court on 20/04/2023.

Sd/-

Sd/-

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

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

जयपुर / Jaipur

दिनांक / Dated:- 20/04/2023

*Ganesh Kumar

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

1. The Appellant- Sh. Pramod Modi, Dholpur
2. प्रत्यर्थी / The Respondent- ITO, Ward-04, Bharatpur
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. 193/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar