

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 61/RPR/2020
निर्धारण वर्ष / Assessment Year : 2013-14

Ganpat Sahu
S/o. Late Shri Sattusahu, Dabripara,
Near Krishna Public School,
Village-Dunda, P.O. Sejbahar,
Raipur (C.G.)-492015
PAN : FZXPS0022R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-4(5),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : None

सुनवाई की तारीख / Date of Hearing : 07.06.2023

घोषणा की तारीख / Date of Pronouncement : 09.06.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur dated 23.01.2020, which in turn arises from the order passed by the A.O. u/s.143(3) r.w.s. 147 of the Income-tax Act, 1961 (for short 'Act'), dated 26.12.2016 for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. In the facts and circumstances of the case, Ld. CIT(A) erred in ignoring the submissions made by appellant vide letter 26.12.2019 in totality and dismissing of the appeal without considering the submissions of the appellant. The action of CIT(A) dismissing the appeal is arbitrary, unlawful and not justified.
2. In the facts and circumstances of the case, Ld. CIT(A) erred in upholding the action of the A.O denying deduction u/s.54B without appreciating the facts of the case properly and judiciously. The conclusion drawn by the A.O and upheld by the CIT(A) is not justified.
3. Ld. CIT(A) erred in confirming the addition of Rs.49,51,437/- made by the A.O without appreciating that assessment order passed without issuance of mandatory notice u/s.143(2) is ab-initio void and not sustainable. Ld. CIT(A) erred in confirming the addition made vide an illegal and void order.
4. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

Also, the assessee has raised an additional ground of appeal before us which reads as under:

“The reassessment order passed by the A.O is illegal and unsustainable inasmuch as the reassessment was completed without providing copy of the reasons recorded for reopening of the case. The reassessment order is liable to be quashed.”

2. On the basis of information gathered by the A.O, viz. (i) that the assessee had sold 0.863 hectare land situated at Village: Sejbahar, Khasara No.5/2 & 10/1, P.H. NO.119/50, Raipur-1 for Rs.69.04 lacs on 26.07.2012; and (ii) that the assessee had made cash deposits aggregating to Rs.35.11 lacs in his bank account, but had not filed his return of income either for the year under consideration or that for the preceding years, the A.O initiated proceedings u/s.147 of the Act. Notice u/s.148 of the Act dated 29.03.2016 was issued to the assessee. In compliance, the assessee e-filed his return of income on 04.05.2016 declaring an income of Rs.73,630/-.

3. During the course of assessment proceedings, it was observed by the A.O that the assessee, an agriculturist, had vide a registered sale deed dated 25.07.2012 sold 0.863 hectare of agricultural land situated at Village: Sejbahar, Khasara No.5/2 & 10/1, P.H. NO.119/50, Raipur-1 for a consideration of Rs.69.04 lacs to M/s. R.L. Developers, Naya Raipur. On a perusal of the records, it was gathered by the A.O that the aforesaid piece of land was purchased by the assessee in two tranches, viz. (i) F.Y. 2006-07 : Rs.3,32,063/-; and (ii) F.Y.1993-94 : Rs.43,335/-. It was further observed by the A.O that as the agricultural land sold by the assessee

being situated within the specified distance from the municipal limits of Raipur Nagar Nigam was a capital asset as per clause (b) to Section 2(14)(iii) of the Act, therefore, the consideration received on the sale of the same was exigible to capital gain tax in his hands. The aforesaid factual position was further fortified by the A.O on the basis of a report dated 20.12.2016 that was obtained by him u/s.133(6) of the Act from the *Patwari*, wherein, it was stated by him that the land in question was situated within a distance of $\frac{1}{2}$ km from the local limits of Raipur Municipal Corporation.

4. On being called up to put forth an explanation as to why the gain on the transfer of the aforesaid agricultural land may not be brought to tax, it was claim of the assessee that as he had purchased new agricultural lands for a consideration of Rs.62.46 lacs (approx.) [out of the aforesaid sale consideration of Rs.69.04 lacs], therefore, he was entitled for deduction u/s.54B of the Act as regards the said fresh investments, as under:

Village	Agricultural land purchased in the name of	Khasara No.	Date of purchase	Amount
Rakhi	In the name of Ram Kumar Sahu	246	27.02.2012	33,64,046/-
Alekhunta	In the name of Ganpat Sahu	273/2	26.05.2012	2,52,808/-
Alekhunta	In the name of Ganpat Sahu	381/2	28.09.2012	12,56,125/-
Bakhara	In the name of Ganpat Sahu	794	21.05.2012	4,55,652/-
Semra	In the name of Ganpat Sahu	1615	03.08.2015	5,60,580/-

Siltara	In the name of Ganpat Sahu	198	21.05.2012	1,93,938/-
Bhendsaar	In the name of Yashwant Sahu	139	19.04.2012	1,63,430/-
			Total	62,46,579/-

However, the aforesaid claim of the assessee was not fully accepted by the A.O. It was observed by the A.O that except for the agricultural land purchased by the assessee in his own name at Village: Alekhunta, Khasra No.381/2 on 28.09.2012, other investments in land did not qualify for deduction u/s.54B of the Act, for the following reasons:

“(i) The details of land purchased in the name of his brother as under:

Village	Agricultural land purchased in the name of	Khasara No.	Date of purchase	Amount
Rakhi	In the name of Ram Kumar Sahu	246	27.02.2012	33,64,046/-
Bhendsaar	In the name of Yashwant Sahu	139	19.04.2012	1,63,430/-
			Total	35,27,476

As the above land has not purchased the agricultural land in his name. As per the provisions laid down u/s 54B, where the sold an agricultural land and purchased another agricultural land in the name of other, the assessee will-not be eligible for exemption u/s 54B as the land should have been bought in the assessee's own name. In view of the above, the claim of the assessee for deduction u/s 54B of the Income Tax Act, 1961 for Rs. 35,27,476/- is not acceptable.

(ii) On perusal of above submission/ details, it is seen that the agricultural lands were purchased by the assessee on dated 26.05.2012 (Khasara No. 273/2 at village Alekhunta), 21.05.2012 (Khasara No. 794 at village Bakhara), 21.05.2012 (Khasara No. 21.05.2012 at village Siltara),. Total of Rs. 9,02,398/- , whereas ,

the agricultural land situated in village- Sejbahar, was sold on 25.07.2012 i.e. subsequent to the purchases of agricultural lands. Further, the assessee has purchased agricultural land at village-Semra on 03.08.2015 i.e. after the two year from the date of agricultural land sold. In view of the above, the claim of the assessee for deduction u/s 54B of the Income Tax Act, 1961 is not acceptable for the above said land.”

Accordingly, the A.O on the basis of his aforesaid observations computed the long term capital gain (LTCG) on the aforementioned sale transaction at Rs.49,51,437/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. As the Ld. Departmental Representative (“DR” for short) despite having been intimated about the hearing of the appeal had neither put up an appearance nor sought for any adjournment, therefore, we are constrained to dispose off the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963, i.e. after hearing the Ld. AR and perusing the orders of the lower authorities.

8. We have heard the ld. AR and perused the orders of the lower authorities as well as considered the material available on record.

9. Shri R.B Doshi, Ld. Authorized Representative (for short "AR") for the assessee at the very outset assailed the validity of the jurisdiction that was assumed by the A.O for framing the assessment vide his order passed u/s.143(3) r.w.s.147 of the Act dated 26.12.2016. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that as the A.O had framed the impugned assessment without issuing a notice u/s.143(2) of the Act, therefore, the same was liable to be struck down on the said count itself for want of valid assumption of jurisdiction on his part. Our attention was drawn by the Ld. AR to the assessment order. It was submitted by the Ld. AR that the A.O had no where in the assessment order referred to issuance of a notice u/s.143(2) of the Act. Taking us through the observations of the A.O, it was submitted by the Ld. AR that the A.O after issuing notice u/s.148 of the Act dated 29.03.2016 had, thereafter, proceeded with the assessment on the basis of a notice u/s.142(1) of the Act dated 11.05.2016 and framed the assessment vide his order passed u/s.143(3) r.w.s. 147 of the Act dated 26.12.2016.

10. As the Ld. AR had assailed the validity of the jurisdiction assumed by the A.O for framing of the assessment vide his order passed u/s.143(3) r.w.s. 147 of the Act dated 26.12.2016, therefore, the Ld. Departmental Representative (for short 'DR') was directed to verify the assessee's claim that no notice u/s.143(2) of the Act was issued by the A.O prior to framing of the assessment. The Ld. DR in the course of hearing before us, i.e. on

07.06.2013 had placed on record a letter dated 19.04.2023 of the ITO-4(1), Raipur, wherein it was, inter alia, stated by the A.O that after issuance of notice u/s.148 of the Act dated 29.03.2016 other statutory notices were issued from time to time. At this stage, we may herein observe that the aforesaid report of the A.O is absolutely vague and is not specific on the aspect, i.e. as to whether or not any notice u/s.143(2) of the Act was issued by the A.O prior to framing of the assessment vide his order passed u/s.143(3) r.w.s. 147 of the Act dated 26.12.2016.

11. During the course of hearing of the appeal, the Ld. AR had submitted that though the assessee had assailed the validity of the jurisdiction that was assumed by the A.O for framing of the impugned assessment *de-hors* issuance of a notice u/s.143(2) of the Act before the CIT(Appeals), but the latter had failed to deal with the said aspect. Our attention was drawn by the Ld. AR to a letter dated 26.12.2019 that was filed by the assessee in the course of the proceedings before the CIT(Appeals), wherein it was categorically stated by the assessee that no notice u/s.143(2) of the Act was ever issued by the A.O for the year under consideration. It was averred by the Ld. AR that now when the assessee vide the ground of appeal No.1 r.w. his written submissions that were filed with the CIT(A), had specifically assailed the validity of the jurisdiction that was assumed by the A.O for framing of the impugned assessment, therefore, the latter had grossly erred in law and the facts of the case in

not adverting to and adjudicating the same. It was submitted by the Ld. AR that as the impugned assessment had been framed by the A.O *de-hors* issuance of a notice u/s.143(2) of the Act, therefore, the same could not be sustained and was liable to be struck down.

12. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the order passed by the A.O u/s.143(3) r.w.s. 147 of the Act dated 26.12.2016 *de-hors* issuance of a notice u/s.143(2) of the Act.

13. As stated by the Ld. AR, and, rightly so, as held by the Hon'ble Supreme Court in the cases of ACIT & Anr. Vs. Hotel Blue Moon [2010] 321 ITR 362 (SC) and CIT v. Laxman Das Khandelwal (2019) 417 ITR 325(SC), issuance of notice u/s.143(2) of the Act forms the very foundation for framing of a valid assessment u/s.143(3) of the Act. Although, we are principally in agreement with the aforesaid contention of the Ld. AR, but at the same time cannot remain oblivion of the fact that adjudication of his claim would require verification of the correct factual position, i.e. as to whether or not any notice u/s.143(2) of the Act was issued by the A.O prior to framing of the assessment. Considering the fact that the veracity of the aforesaid claim of the assessee, i.e. framing of the assessment *de-hors* issuance of a notice u/s.143(2) of the Act is required to be verified and cannot be summarily accepted on the very face of it; coupled with the

fact that though the assessee had vide his submission dated 26.12.2019 specifically assailed the jurisdiction assumed by the A.O for framing the impugned assessment without issuing any notice u/s.143(2) of the Act before the CIT(Appeals), which, however, was not adjudicated by him, we are of the considered view that the matter in all fairness requires to be restored to the file of the CIT(Appeals) who shall re-adjudicate the same. In case the contention of the Ld. AR that the A.O had framed the assessment u/s.143(3) r.w.s. 147 of the Act dated 26.12.2016 without issuing of notice u/s.143(2) of the Act, is found to be in order, then the assessment order therein passed shall stand quashed. Needless to say, the CIT(Appeals) in the course of the set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee. Thus, the **Ground of appeal No. 3** a/w. **additional ground of appeal** is allowed for statistical purposes in terms of our aforesaid observations.

14. As we have set-aside the matter to the file of the CIT(Appeals) for fresh adjudication, therefore, we refrain from dealing with the other grounds on the basis of which the impugned assessment has been assailed before us, which, thus, are left open.

15. In the result, appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 09th day of June, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 09th June, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G.)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	07.06.2023	Sr.PS/PS
2	Draft placed before author	08.06.2023	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		