

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 143/JP/2023
निर्धारण वर्ष / Assessment Years : 2015-16

Smt. Manju Gupta R/o A-104, Pukraj Lifestyle Station Road, Kota	बनाम Vs.	Income Tax Officer Ward-01, Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEOPG 4212 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajendra Agarwal (C.A.)
राजस्व की ओर से / Revenue by : Smt Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 24/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 14/06/2023

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 28/02/2023 [here in after (NFAC)] for assessment year 2015-16, which in turn arise from the order of the National Faceless Assessment Centre, Delhi dated 06.09.2021.

2. The assessee has marched this appeal on the following grounds:-

- “1. The Id. CIT(A) erred in dismissing the ground of appeal that the Id. AO erred in re-opening the assessment.
 2. The Id. CIT(A) erred in dismissing the ground of appeal that the Id. AO erred in not providing the reasons for re-opening of the assessment inspite of specific request made to provide the reasons for re-opening.
 3. The Id. CIT(A) erred in dismissing the ground of appeal that the Id. AO erred in making arbitrary addition of Rs. 2,87,673/-.
- The appellant reserves his right to amend, add, alter, change or delete any of the grounds of the appeal, either before or during the course of hearing.”

3. The fact as culled out from the records is that the return of income was filed by the assessee for the assessment year 2015-16 declaring total income of Rs. 11,08,700/-. As per information available with the AO that the assessee had entered into immovable property transaction on 28.02.2015 and sold an immovable property situated at E-310, 3rd Floor, Oxy Homez, Bhopura Tila Mod, New Dilshad Ext., Ghaziabad, UP to Sh. Amritanshu Tiwari Rajnagar, Ghaziabad, UP, for a sale consideration of Rs. 36,00,000/-. The indexed cost of acquisition of the aforesaid immovable property comes to Rs. 33,12,327/-. Therefore, a capital gain of Rs. 2,87,673/- arising on sale of land but the above transactions have been verified from the record available with the department and found that the assessee had declared NIL capital gains from the above transactions in her ITR for the year under consideration.

3.1 The information of the above assessee has been cross verified from the record available with the department. The assessee has taken sales consideration of Rs. 34,50,000/- in place of actual sales consideration of Rs. 36,00,000/- in ITR filed by her for the relevant year. Further, the assessee has wrongly claimed deduction u/s 54F of the I.T. Act, 1961 amounting to Rs. 1,60,865/- in her ITR filed for the year under consideration. Based on these observations the assessment was finalized.

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

“7.4 During the course of appellate proceedings also, the appellant has filed written submissions along with documentary evidence and the same were perused. The appellant has contended that the reasons for reopening of assessment were came to the appellant's knowledge after completion of the entire re-assessment proceedings u/s 147 of the Act. However, in response to the show cause notice issued by the Ld. AO, the appellant mentioned that some amount of bank interest during construction period not considered. The Ld. AO considered the reply and not accepted the same as the interest payments made to bank mentioned have already been accounted for the annexed calculation chart provided by her during the proceedings before I & CI and hence the appellant has failed to submit supporting documents to justify her claim. In view of the above, it is clear that the appellant was fully aware of the reasons recorded for reopening of assessment u/s. 147 of the Act and made submissions accordingly.

7.5 Further, during the course of appellate proceedings, the appellant has filed written submissions along with bank challan copy and a copy of allotment letter of newly purchased developed farm house at Kota under the Pt. Madan Mohan Malviya Farm House Scheme stating that she has submitted all the evidences of sale and cost of acquisition during the re-assessment proceedings before the Ld. AO. Therefore, it appears that there is no additional documentary evidence submitted during the course of appellate proceedings in support of her eligibility for claim u/s. 54F of the Act, other than the evidences submitted before the Ld. AO which were not accepted during the re-assessment proceedings. Thus, I am of the considered view that the Ld. AO concluded the re-assessment by disallowing the appellant's claim u/s. 54F of the Act, after proper examination of the documentary evidences submitted by the appellant during the course of re-assessment proceedings and material available on record. Hence, I don't find any fault with the action of the Ld. AO. Accordingly, the addition made by the Ld.AO is hereby upheld and the grounds of appeal filed by the appellant are dismissed.

8. In the result, the appeal for the AY 2015-16 filed by the appellant is dismissed.”

5. As the assessee has not found any favor from the appeal so filed before the Id. CIT(A)/NFAC, the assessee filed an appeal before this tribunal on the various grounds as reproduced here in above in para 2. To support the grounds so raised by the assessee the Id. AR of the assessee relied upon the following written submissions.

“Ground No.1:-

The Ld.AO re-opened the assessment on basis of the following reasons which had come to knowledge of the assessee after completion of the entire re-assessment proceedings from the assessment order u/s 147 (which is under appeal) at the first time, as the reasons for re-opening were not provided inspite of the specific request made vide written

submission dt. 11.11.2020 (PB-1) during the course of re-assessment proceedings and right of the assessee to file the objections has been cut unjudiciously, which has been narrated in detail in ground No.2 hereunder:-

“As per information available with this office that the assessee had entered into immovable property transaction on 28.02.2015 and sold an immovable property situated at E-310, 3rd Floor, Oxy Homez, Bhopura Tila Mod, New Dilshad Ext., Ghaziabad, UP to Sh. Amritanshu Tiwari Rajnagar, Ghaziabad, UP, for a sale consideration of Rs. 36,00,000/-. The indexed cost of acquisition of the aforesaid immovable property comes to Rs. 33,12,327/-. Therefore, a capital gain of Rs. 2,87,673/- is arisen on sale of land but the above transactions have been verified from the record available with the department and found that the assessee had declared NIL capital gains from the above transactions in her ITR for the year under consideration.

The information of the above assessee has been cross verified from the record available with the department. The assessee has taken sales consideration of Rs. 34,50,000/- in place of actual sales consideration of Rs. 36,00,000/- in ITR filed by her for the relevant year.

Further, the assessee has wrongly claimed deduction u/s 54F of the I.T. Act, 1961 amounting to Rs. 1,60,865/- in her ITR filed for the year under consideration.

On verification of such transactions with the record available with the department, it is found that the assessee had sold immovable property for a sale consideration of Rs.36,00,000/- and the indexed cost of acquisition of the aforesaid immovable property comes to Rs. 33,12,327/-. Therefore, a capital gain of Rs. 2,87,673/- is arisen on sale of such type of land, which is considered as the escapement of income in this case”

On perusal of the reasons recorded u/s 148(2) it appears that before re-opening of the assessment the Ld.AO had not applied his mind and there was no information before him for any escaped assessment as in these reasons recorded (as appearing from the reasons stated in the order under appeal) at the one place the Ld.AO has stated that the assessee *the assessee had declared NIL capital gains from the above transactions in her ITR for the year under consideration* and at another place the Ld.AO stated that *the assessee has wrongly claimed deduction*

u/s 54F of the I.T. Act, 1961 amounting to Rs. 1,60,865/- in her ITR filed for the year under consideration.

The re-opening of the assessment was made in suspicion and on whims only.

No needful enquiry or investigation was made by the Ld.AO before re-opening the assessment hence, the Ld.AO erred in re-opening the assessment, which is unjustified and bad in law.

Reliance has been placed on the following judgements: -

1. (JP-Trib) 2021 ITL 2057 Nilesh Agrawal HUF v.ITO ITA No.222-223/JP/2020 Dt. of Order 09.02.2021 wherein it has been decided by the Hon'le bench that "the mere suspicion cannot be a ground for treating the transaction as bogus in the absence of any evidence or material on record.
2. (Delhi High Court) ITA No.125/2020 PCIT v. Smt.Krishna Devi Dt. of Order 15.01.2021 wherein it has been decided that the Ld.ITAT being the last fact finding authority, on the basis of evidence brought on record, has rightly come to the conclusion that the lower tax authorities are not able to sustain the addition without any cogent material on record, we thus find no perversity in the impugned order. In this case of the Ld.ITAT decided that "*A perusal of the assessment order clearly shows that the Assessing officer was carried away by the report of the Investigation Wing Kolkata. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the Investigation Wing as well as information received from the Investigation Wing. It is apparent from the Assessment Order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the assessee. Even, the statement recorded by the Investigation Wing has not been got confirmed or corroborated by the person during the assessment proceedings.*

It is provided u/s. 142 (2) of the Act that for the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such enquiry as he considers necessary. In our considered view the Assessing Officer ought to

have conducted a separate and independent enquiry and any information received from the Investigation Wing is required to be corroborated and affirm during the assessment by the Assessing Officer by examining the concerned persons who can affirm the statements already recorded by any other authority of the department.

- 3.** (ITAT, Jaipur bench) in the case of M/s Shree Silika Product Pvt.Ltd. (JP-ITAT) 2020 ITL 162 dt.of order 07.01.2020 in which it has been decided that *“it is an admitted fact that the AO reopened the assessment on the basis of information received from the Investigation Wing that during the course of search & seizure operation of various premises of Sh. S.K. Jain Group of cases, money, books of accounts and documents belonging to M/s Singhal Securities Pvt. Ltd. were found and seized and the AO on this basis that the assessee received an accommodation entry from M/s Singhal Securities Pvt. Ltd. issued the notice u/s 148 of the Act while recording the reasons on 28.03.2013 that the assessee received accommodation entry from M/s Singhal Securities Pvt. Ltd. (copy of the said reasons recorded is placed at page no. 8 of the assessee's paper book). It is also noticed that on same date i.e. 28.03.2013, the AO of M/s Singhal Securities Pvt. Ltd., framed the assessment u/s 153C/153A of the Act at the same figure of the loss amounting to ? 51,528/- which was declared by the said assessee in its return of income. It is also noticed that Sh. S.K. Jain in whose premises search took place was not a shareholder of M/s Singhal Securities Pvt. Ltd. and was also not connected with the assessee. In the present case, when the assessment of M/s Singhal Securities Pvt. Ltd. from whom the assessee received share application money was assessed at the same figure of the loss which was declared by the said assessee, on the same date when the AO recorded the reasons that the income of the assessee escaped assessment for a sum of ? 14,00,000/- i.e. the amount received as share application money from M/s Singhal Securities Pvt. Ltd. In the present case, it cannot be said that the AO was having any material in his possession except the information received from the Investigation Wing. Therefore, the reopening was done by the AO only on the basis of the information received from Investigation Wing. In the present case also the AO in the reasons recorded mentioned that it had come to his knowledge that the persons from whom amount was received were entry operator and provided the entries to the assessee after receiving the amount in*

cash, however, nothing was brought on record that how and in what manner the persons from whom the assessee received the loans were entry operator and that as to how the cash was paid by the assessee. In fact the aforesaid conclusion of the A.O. is unhelpful in understanding as to whether the AO applied his mind to the material, particularly when he did not describe how and what manner it came to his knowledge that the assessee receive the accommodation entries. We, therefore, by keeping in view the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to case of Principal Commissioner of Income-tax vs. G & G Pharma India Ltd., are of the view that the reopening done by the AO u/s 147 of the Act was not valid and accordingly the ITA No. 491/Del/2016 Layak Fabrics Pvt. Ltd. 16 subsequent assessment framed by the AO was void- ab-initio and therefore the same is quashed”.

But the Ld.CIT(A) without considering the facts and circumstances and without considering the arguments and submissions made before him, arbitrarily dismissed the ground of the appeal.

Ground No.2:-

Vide response dt. 11.11.2020 (PB-1) (copy downloaded from the department website attached herewith) it was e-submitted that *“I had e-filled my return on 11.11.2020 in reponse to your notice und er 148. Kindly consider the same. Please provide the reasons recorded for reopening of my assessment and the sanction of reopening b y the competent authority”.*

But it is very much unfortunate that the required reasons were not provided to the assessee during the entire course of re-assessment proceedings violating the landmark judgement of Hon'le Appex Court in the case of GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC) wherein it has been decided that *“The AO is bound to furnish the reasons within a reasonable time. On receipt of the reasons, the notice is entitled to file objections to issuance of the notice and the AO is bound to dispose of the same by passing a speaking order.”*

In the absence of these reasons the assessee could not file the objections against re-opening of my assessment.

But the Ld.CIT(A) without considering the facts and circumstances and without considering the arguments and submissions made before him, arbitrary decided that the appellants were fully aware of the reasons recorded for re-opening of the assessment u/s 147 of the account and arbitrarily dismissed the ground of appeal.

Ground No.3:-

During the course of re-assessment proceedings the copy of computation of income (PB-2) stating the entire calculation of negative capital gain of Rs.2,02,940/- on the sale of the captioned immovable property alongwith all the evidences of sale and cost of acquisition were e-submitted on 15.02.2021.

Further immediate after the sale of the captioned immovable property for Rs.36,00,000/- on 28.02.2015 the assessee purchased a developed farm house No.F-96, in Pt.Madan Mohan Malviya Farm House Scheme at Kota vide allotment letter dt.09.03.2015 (PB-3) for Rs.1,05,05,700/- and deposited Rs.2,00,000/- as Registration Money as evident from this allotment letter dt.09.03.2015 and Balance Rs.1,03,05,700/- alongwith the Interest and other charges vide challan No.1080 dt.13.05.2015 (PB-4) to UIT, Kota.

For purchase of the above farm house only initial amount of Registration money of Rs.2,00,000/- was deposited on 23.8.2011 and the allotment itself was made on 09.03.2015 and the total consideration of Rs.1,03,05,700/- after deduction of registration amount of Rs.2,00,000/- was deposited on 13.05.2015 i.e., within the specified period of section 54F of the Income Tax Act,1961, hence the deduction u/s 54F is allowable and therefore the Ld.AO erred in not allowing deduction u/s 54F and calculating wrong capital gain, hence the addition of Rs.2,87,673/- needs to be deleted.

But the Ld.CIT(A) without considering the facts and circumstances and without considering the arguments and submissions made before him, arbitrary decided that it appears that there is no additional documentary evidence submitted during the course of appellate proceedings in support of eligibility for claim u/s 54F of the Act, other than the evidences submitted before the Ld.AO which were not accepted during the re-assessment proceedings and arbitrarily dismissed the ground of appeal.

We pray to your honor to please consider the above submissions and please allow the appeal.”

6. In addition to the above written submission in support of the ground no. 2 raised by the assessee, the Id. AR submitted that there is violation of the procedure to be followed as decided by the apex court in the case of GKN Driveshafts (I) Ltd. vs. ITO [(2003) 259 ITR 19(SC)] and therefore, the order so passed in violation of the procedure in dealing with the re-opened cases.

7. Per Contra, the Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A).

8. We have heard the rival contentions and persuaded the material available on record. Before us the revenue did not controvert the fact placed on record that in the reassessment proceeding the assessee vide online response submitted on 11-11-2020 requested the assessing officer to provide the reasons for reopening of the case. The relevant part of the submission response is extracted here in below:

“I had efiled my return on 11.11.2020 in response to your notice under section 148. Kindly consider the same. **Please provide the reasons recorded for reopening of my assessment and the sanction of reopening by the competent authority.**”

8.1 On this issue we have examined the orders of the lower authority and found that there is no reference to the granting of the reasons recorded in the order of the assessment and even the Id. CIT(A) has simply sheltered the error on the part of the AO stating that the assessee was fully aware of the reasons recorded for reopening of assessment u/s. 147 of the Act and has made submission accordingly. Thus, it is not disputed that even though there was specific request from the assessee after filling the return in response to notice u/s. 147/148 of the Act then in that case the Id. AO is bound to issue the reasons recorded for reopening of the case as held by the apex court in the case of GKN Driveshaft (India) Limited. Thus, it is noted by the bench noted there is specific request made by the assessee to have the reasons recorded for which there is a flow in the assessment order and even the Id. CIT(A) has not recorded specific finding on the issue. In the light of this non disputed fact that the assessee after filling the return of income in response to notice u/s. 148 requested for reasons of re-opening of the case which the Id. AO failed to do so.

Therefore, based on the decision of the apex court in the case of GKN Driveshaft (India) Limited wherein it has been decided that the AO is bound to furnish the reasons within a reasonable time. On receipt of the reasons, the assessee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing the speaking order. We see from the records and finding of the lower authorities that even though there is specific request of the assessee vide submission dated 11.11.2020, the assessing officer has passed an order dated 06.09.2021 without even dealing with that submission the order so passed is thereby in violation of the precedent established by the apex court and therefore, the assessment order passed in this case is quashed. Therefore, ground no. 2 raised by the assessee is allowed. Since we have allowed the appeal on technical ground the other grounds on appeal become educative in nature.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 14/06/2023

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 14/06/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Smt. Manju Gupta, Kota
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-01, Bharatpur
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 No. 143/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar