

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPURश्री संदीपगोसाई, न्यायिकसदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AMआयकरअपील सं./ITA No. 335/JP/2023
निर्धारणवर्ष/AssessmentYear :2009-10

Shri Ram Niwas Verma A Block 701, Mangalams Aroma, Near Patrakar Colony, Mansarovar, Rampura, Jaipur	बनाम Vs.	The ITO Ward 2(4) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACAPV 5640 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajni Kant Bhatra, CA
राजस्व की ओर से / Revenue by: Ms. Monisha Choudhary, Addl. CIT-DRसुनवाई की तारीख / Date of Hearing : 01/08/2023
उदघोषणा की तारीख / Date of Pronouncement: 29 /08/2023आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 24-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2009-10 wherein the assessee has raised the following grounds of appeal.

"1. That the impugned appellate order passed by the Id CIT(A), NFAC, Delhi as ex-parte basis u/s 250/144 of the I.A. Act, 1961 is wrong and bad in law in as much as it has been passed without considering submission made by the appellant on 26-12-2017 and statement of facts submitted with appeal.

2. That without prejudice to the ground No (1) above on the facts and in the circumstances of the case the Id CIT(A) is wrong, unjust and has erred in law in not accepting submission of the appellant that he was not real seller of the immovable property at plot No. 107, Vardhman Sarovar, Ganpatpura, Sanganer, Jaipur and that he executed the sale deed simply as Power of Attorney of real owner Sh. Manish Agarwal and thereby confirming action of the assessing officer is assessing capital gains on sale of the said property in the hand of the appellant.

3. That without prejudice to the ground No (1) and (2) above the Id CIT(A) is wrong and has erred in law in confirming application of provisions of sec. 50C of the I.T. Act, 1961 by the Id assessing officer and thereby adopting sale consideration on sale of above said immovable property at Rs. 7,96,530/- on in basis of valuation by stamp authority as against sale consideration of Rs. 3,80,000/- actually received and declared in the registered sale deed.

4. That without prejudice to the ground No. (1) to (3) above the Id CIT(A) is wrong and has erred in law in upholding charging whole of stamp duty value of the property by the Id AO as deemed sales consideration without allowing benefit of cost of acquisition.

5. That without prejudice to the ground no. (1) above the Id CIT(A) is wrong and has erred in law in confirming disallowance of deduction of Rs. 43000/- claimed by appellant u/s 80C of the I.T. Act, 1961.’’

2.1 At the outset of the hearing, the Id. AR of the assessee vide his application dated 29-07-2023 prayed for adjournment in the case on the ground that details and documents for preparation of arguments in appeal could not be collected and thus written submissions could not be prepared. Thus, in the absence of these papers, the Id. AR of the assessee will not be able to argue the case before the Bench.

2.2 On the other hand, the Id DR objected to the adjournment application of the assessee.

2.3 The Bench heard both the parties and perused the materials available on record. The Bench has taken into consideration the adjournment

application of the ld. AR of the assessee but did not find merit to consider the same on flimsy ground which is rejected.

3.1 Apropos Ground No. 1 to 5 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“2. The facts of the case are that the case was reopened u/s. 147 of the IT Act, 1961 on the basis of the information relevant to A.Y. 2009-10, that the assessee had sold an immovable property on 28.04.2008 for sale consideration of Rs. 3,80,000/-, however, the stamp authority evaluated the value of property at Rs. 7,96,530/-. In response to the notice u/s. 142(1) of the IT Act, 1961, issued to the assessee, he replied that the property was registered through power of attorney by him to Smt. Raj Bala and the sale transaction took place between Smt. Raj Bala and Shri Manish Agarwal.

The AO is of the opinion that the assessee's reply was not satisfactory and hence added the STCG of Rs. 7,96,530/- to the total income of the assessee.

During the year under consideration, the assessee had claimed deduction of Rs. 43,000/- u/s. 80C of the IT Act, 1961. The assessee failed to substantiate his claim. Hence, the amount of Rs. 43,000/- was added to the total income of the assessee.

The assessment was completed u/s. 147/144 with an assessed income of Rs. 10,12,260/-.

3. The appellant was requested repeatedly to file reply. During the course of appellate proceedings vide notice dated 17/02/2021, 27/04/2022, 06/02/2023 & 03/03/2023. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings did not comply with the notices and hence made no submission

in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.

3.1 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.

4. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly added the amount of Rs. 8,39,530/- to the total income of the assessee. Since no compliance was received from the part of the assessee after repetitive issuance of notices by the Department, therefore, the addition made by the Assessing Officer of Rs. 8,39,530/- is hereby confirmed.

5. Grounds of the appeal are dismissed.”

3.2 In this case, it is noted that the case of assessee was reopened u/s 147 of the Act after prior approval of worthy Pr. CIT-Jaipur-1 vide letter No. 1590 dated 21-03-2016 on the basis of information that during the A.Y. 2009-10 the assessee had sold an immovable property on 28-04-2008 situated at Plot No. 107, Vardhman Sarovar, Ganpat Pura, Sanganer, Jaipur for sale consideration of Rs.3.80 lacs and the stamp authority evaluated the

property at Rs.7,96,530/- for the purpose of stamp value. Notice u/s 148 of I.T, Act, 1961 was issued to the assessee on 23-03-2016 for which the assessee submitted copy of return filed on 10-07-2009 on 29-06-2016. Notices u/s 142(1) of the I.T. Act alongwith questionnaire issued on 19-08-2016 fixing the date of hearing on 05-09-2016. The assessee replied to the notice u/s 142(1) and in his reply the assessee stated that the property was registered through power of attorney by him to Smt. Raj Bala and the sale transaction took place between Smt. Raj Bala and Shri Manish Agarwal for Rs.3.80 lacs. The AO noted that the reply of the assessee is not satisfactory as he did not produce the proof of passing of sale consideration to Shri Manish Agarwal and to this effect, the assessee was issued a final show cause alongwith notice u/s 142(1) which is mentioned at page 1 and 2 of the assessment order. It is also noted that the AO made disallowances of Rs.7,96,530/- as per Section 50C of the Act and Rs.43,000/- as to claim deduction u/s 80C of the Act by observing that the assessee neither attended nor filed any written submission or sought adjournment and thus made the additions in the hands of the assessee for which relevant para 5 & 6 of assessment order is reproduced as under:-

“5. Neither attended nor filed any written submission or sought adjournment. Therefore, in view of the assessee have nothing to file any submission or supporting evidences in his claim. Hence,

the short term capital gain is computed at Rs.7,96,530/- as per section 50C of the Act.....

6. Disallowed deduction under Chapter VI of the Act

During the year under consideration, the assessee has claimed deduction u/s 80C of the Act. The assessee was asked to furnish the proof for any investment of Rs.43,000/- was made during the year and claim deduction u/s 80C of the Act vide final show cause notice issued on 19-10-2016. The assessee has failed to furnish the same, therefore, in view of the above, the claim of the assessee u/s 80C of the Act is disallowed and added to the total income of the assessee...’’

3.3 After hearing the hearing both the parties and perusing the materials available on record including the adjournment application of the assessee whereby the assessee prayed that *details and documents necessary for preparation of arguments could not be collected and also written submissions could not be prepared and thus the ld. AR of the assessee was unable to attend the hearing of the case while as the ld. DR relied upon the orders of the lower authorities*, the Bench noticed that the ld. AR of the assessee could not advance / submit the documents concerning the issue in question before the lower authorities to safeguard the interest of the assessee in spite of various opportunities by lower authorities. From the conspectus of the above case, the Bench feels that one more chance should be given to the ld. AR of the assessee to safeguard the interest of the assessee and thus the appeal of the assessee is restored to the file of the

AO to decide it afresh but by providing adequate opportunity of being heard to the assessee. Thus the appeal of the assessee is allowed for statistical purposes.

3.4 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

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

Order pronounced in the open court on 29 /08/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2023

Mishra

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

1. The Appellant- Shri Ram Niwas Verma
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(4), Jaipur.
3. आयकर आयुक्त / The Id CIT (
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.335/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar