

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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. 349/JP/2023
निर्धारण वर्ष/Assessment Years : 2014-15

Rohitabh Soni 19-D, New Colony, Gumanpura, Kota	बनाम Vs.	ITO, Ward 1(4), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DGQPS 3685 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Saurabh Harsh (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 29/08/2023
उदघोषणा की तारीख / Date of Pronouncement: 12/09/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the Commissioner of Income Tax, Appeal- Udaipur- 2 dated 26/03/2023 [here in after Id. CIT(A)] for assessment year 2014-15 which in turn arise from the order dated 21.12.2016 passed under section 143(3) of the Income Tax Act, by ITO, Ward-1(4), Kota.

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

“1. That in law and in the facts and in circumstances of the case, the Id. CIT(Appeals) grossly erred in passing ex-parte assessment order without providing sufficient opportunity of being heard as no notices of the hearing was served properly on the assessee appellant.

2. That on the law and in the facts and in the circumstances of the case the learned lower authorities grossly erred in making an addition of Rs. 86,80,096/ under section 56(2)(vii)(b)(ii) of the I.T. Act on account of suppression of purchase price of land in the hands of the assessee appellant.

3. That the learned lower authorities grossly erred in adopting the total purchase price at Rs. 1,47,80,096/- as against total registry value of Rs. 61,00,000/- of the land purchased by the assessee appellant.

3.1 That the learned lower authorities grossly erred in relying upon the DLC value adopted by the sub-registrar and in ignoring the facts of the instant case.

3.2 That the learned lower authorities grossly erred in not considering the fact that some litigation is pending in the civil court with relates to the property and the property was under heavy dispute therefore purchased under the actual market value but the learned lower authorities grossly erred in taking it otherwise.

3.3 That on the law and in the facts and in the circumstances of the case the learned lower authorities grossly erred in not considering the submissions made by the assessee appellant that the said property was a disputed property and some other person have encroached the same, therefore, the assessee appellant purchased the aforesaid property at the discounted rate.

4. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”

3. Succinctly, the fact as culled out from the records is that the assessee e-filed the return of income on 28.11.2014 declaring income of Rs. 17,69,920/-. In the return of income filed the assessee has disclosed income under the head salary, House property and interest earned. The

case of the assessee selected for scrutiny under CASS, notice u/s. 143(2) dated 28.08.2015 was issued to the assessee by ITO, ward 2 (1), Kota. Thereafter the case was assigned to ITO, Ward 1(4), Kota and therefore, again notices were issued to the assessee and in response the assessee filed the details as required and the assessment was completed u/s. 143(3) of the Act vide order dated 21.12.2016.

3.1 During the assessment proceeding the Id. AO noted that the assessee the assessee has sold the property for a consideration of Rs. 61,00,000/- whereas the stamp authority has valued the property for an amount of Rs. 1,47,90,996/-. The assessee was asked to show cause as to why the difference of Rs. 86,80,996/- should not be added to the income of the assessee u/s. 56(vii)(b)(ii) of the Act. The assessee filed the reply on 25.11.2016 stating that the property of plot no. C-1 & C-2, scheme no. 4 Lal Kothi, Jaipur was purchased by the assessee on which there was encroachment of some other party. Therefore, the seller has made the actual sales of 31 lacs and 30 lacs respectively. The assessee also contended that if the revenue intend to by with that right the assessee is ready to sell. The reply of the assessee was considered but not found

tenable and accordingly the assessment was finalised by making addition of Rs. 86,80,996/-.

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

“This appeal filed on 24.01.2017 against the order dated 21.12.2016 passed u/s 143(3) of the IT. Act, 1961 for A.Y 2014-15 by the Income Tax Officer, Ward-1(4)-Kota. In response to the notice of hearing u/s 250 of the Act Sh. Siddharth Ranka, Advocate of the appellant filed request for adjournment through online vide acknowledgement no 919939041120123 and 951077061080223 but no any reply was furnished by the appellant. In the absence of any compliance in appeal, the appeal is decided on the basis of material on record. Notice of hearing was also issued to the Assessing Officer. However, the AO was not present during the hearing.

4.2. I have considered the facts of the case and the observations/findings of the AO in the assessment order of the Income tax act, 1961 for the year under consideration. The AO has made addition as per provisions of section 56 (VII) (b)(ii). Section 56(2)(vii)(b)(ii) empowers the Assessing Officer to treat the excess value determined by the stamp duty authority over and above the declared sale consideration as the deemed sale consideration and add it as income at the hands of the person buying the property. Section 56(vii)(b)(ii) would get triggered once the stamp duty authority determines the value of a property in excess of the declared sale consideration. The AO has applied the provisions of this section which is found to be as per provisions of the Act. I found no infirmity in the order made by the AO. The appellant has not furnished any reply even after enough opportunities provided to him. Therefore, considering the facts of the case, the addition made by the AO is confirmed.

The ground of appeal raised by the appellant is dismissed.”

5. As the assessee did not find any favour and the appeal of the assessee was decided ex party even though the Id. AR of the assessee seek time to furnish the details and therefore, the Id. AR of the assessee prayed that the assessee was not given proper time by the Id. CIT(A) to represent the case before him and therefore, if given a chance the assessee would like to contest the merits on the addition made by the assessing officer.

6. Per contra, the Id. DR has objected to the prayer of the assessee and relied upon the finding of Id. CIT(A) who has based on the merits of the case and available information on the record decided the case of the assessee.

7. We have heard the rival contentions and perused the material placed on record. We found from the record that Id. CIT(A) has not decided the adjournment application and has not mentioned the date of hearing after the adjournment application filed by the assessee. The bench noted from the order of the Id. CIT(A) that the assessee was deprived from the justice so as to plead the merits of the case. Based on these set of facts we are inclined to accept the request of the Id. AR of the assessee to set aside the case to the file of the Id. CIT(A), so as to decide the case of the assessee

on merits after giving proper opportunity of being heard to the assessee. At the same time, the assessee is directed to represent and present all the facts before the Id. CIT(A) and should not ask for adjournment of trifles grounds. At this stage, we remand back the matter without commenting upon the merits of the case and Id. CIT(A) is directed to pass an order in accordance with law.

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

Order pronounced in the open court on 12/09/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/09/2023

*Ganesh Kumar, PS

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

1. The Appellant- Rohitabh Soni, Kota
2. प्रत्यर्था / The Respondent- ITO, Ward 1(4), Kota
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. 349/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar