

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर, जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
JODHPUR BENCH : : JODHPUR

BEFORE SHRI PAVAN KUMAR GADALE,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.29/JODH/2022
निर्धारण वर्ष / Assessment Year : 2012-13

Leela Devi Golecha, 27, Gundochiya Bas, Rajasthan – 306401. PAN: ABDPG 9661 K	V s	The Assistant Commissioner of Income Tax, Central Circle-2, Jodhpur.
Appellant / Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Ms. Nidhi Nair – JCIT(DR)
Date of hearing	10/08/2023
Date of pronouncement	30/10/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of ld.CIT(A)-2, Udaipur dated 27.08.2019 emanating from assessment order under section 153C r.w.s 143(3) of the Income Tax Act, 1961 dated 24.12.2017. The grounds of appeal are as under :

“01. The order passed by the Lord A O is bad in law and bad on facts.

02. The LD AO has erred in initiating re opening proceedings u/s 250 which is bad in law and on facts. The proceeding initiated on the basis of borrowed satisfaction is not justified as the copy of the satisfaction note was also not supplied to the

appellant.

03. *The lord A O has not given any opportunity of hearing to the applicant and his representative, nor has any order been issued to issue any notice of hearing.*

04. *The lord A O Has erred in making addition of Rs.2321600/- on account of unexplained investment in purchases of property. The addition so made is bad in law⁷ and bad on facts.*

05. *The Lord A O has erred in charging Interest u/s 234A, 234B, 234C.*

06. *The appellant crave liberty To Add, Amend, Alter or Modify any of the grounds of appeal on or before its hearing before your honors.”*

Findings & Analysis :

2. We have heard both the parties and perused the records. The Id.Authorised Representative(Id.AR) has raised the legal ground that satisfaction recorded by the Assessing Officer(AO) does not fulfill requirement of section 153C of the Act and hence assessment order under section 153C is *void-ab-initio*.

3. The Id.Departmental Representative(Id.DR) for the Revenue was directed to file copy of the satisfaction recorded by the AO, ACIT, Central Circle-2, Jodhpur the same is reproduced here as under :

“Satisfaction recorded on the basis of information contained in the documents annexures seized during the course of search and seizure u/s 132(1) conducted on 19/12/2015 at 27, Gundochiyon Ka Bass, Pali in the case of Shri Raj Kumar Golccha, for initiation of proceeding u s 153C in the case of Smt. Leela Devi Golecha as per provisions of section 153A for Asstt. Years 2010-11 to 2015-16

A search and seizure action u/s 132(1) of the Income Tax Act 1961 was conducted in the case of Balar/Golecha group of Pali on 17/12/2015 During the search proceedings on 17/12/2015 at — 27 Gundochiyon Ka Bas, Pali in the case of Shu Raj Kumar Golecha various incriminating documents were seized.

The jurisdiction of Shri Raj Kumar Golecha was assumed by this Circle by virtue of order u/s 127(2) of the Income Tax Act 1961 passed by the Pr. Commissioner of Income Tax - 1, Jodhpur issued vide letter No Pr CIT-1/Ju/ITO(Tech.)/2015-16/3512 dated 30/03/2016.

Page no. 1 to 41 of Annexure AS - 1 seized from 27. Gundochiyon Ka Bas Pali during the search proceeding dated 17/12/2015. is a mortgage agreement for cutting some properties as mortgage with State Bank of India Overseas Branch. Ahmedabad against loan of Rs. 11.20 Crore taken by Shri Lalit Kumar Golecha S/o Labh Chand Golecha Details of the mortgaged properties are as under —

- a) Flat No B/102 at owned by Lalit Kumar Golecha*
- b) Commercial Assessing Officer Plots No 1,2,3,8,9,10 at Kalpa Vriksha Grha Nan Samiti, Pali owned by Leela Devi Golecha*
- c) Residential Plots No. 14,15 16. 17, 18, 19, 20 at Kalpa Vriksha Griha Nirman Samiti Pali owned by Leela Devi Golecha*
- d) Commercial Plots No 11,12,13 at Kalpa Vriksha Griha Nirman Samiti Pali owned by Nayana Devi Golecha w/o Lalit Kumar Golecha*

Besides Page No. 47 to 51 is a photocopy of a patta of a plot owned by Smt Leela Devi Golecha at Kalpa Vriksha Griha Nirman Samiti, Pali During the search, Smt Leela Devi was asked to explain source of investment in the above said her immovable properties She stated that her husband Shri Labh Chand Golecha would explain Shri Labh Chand Golecha in his statement dated 19/12/2015 stated that Smt Leela Devi possessed around 17500 Sq. Feet land in Pali city. Shri Labh Chand Golecha was asked to explain the source of investment I these properties by his family members at the time of search. In his reply, the stated that he would explain later but no explanation for the source of investment was furnished during the post search investigation also. Thus, the source of investment in various properties owned by Smt. Leela Devi Golecha remains unexplained.

In view of the aforesaid facts, I am satisfied that provisions of section 153C of the Income Tax Act, 1961 has to be invoked in the case of Smt. Leela Devi Golecha for A.Ys 2010-11 to 2015-16 as per provisions of section 153A of the Income Tax Act, 1961.”

4. On carefully reading the satisfaction recorded by the ACIT, it is observed that nowhere the ACIT has mentioned that the documents relates to or pertains to or belongs to the assessee .

5. For ready reference, section 153C is reproduced here as under :

“153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to.”

6. Thus, as per section 153C, the AO has to satisfy himself that the documents relates to or pertains to the assessee. In this case, AO has not satisfied himself that the documents relates to or pertains to the assessee. AO has not recorded the said satisfaction. This goes to the root initiation of proceedings under section 153C of the Act. Since the AO failed to record the satisfaction that the document relates to or pertains to the assessee the assumption of jurisdiction under section 153C of the Act is *void-ab-initio*, therefore, assessment order under section 153C of the Act is bad in law.

6.1 Thus, the legal ground raised by the assessee is allowed.

7. Since we have decided the legal ground in favour of assessee, the other grounds which are on the merits of the addition becomes academic in nature. Therefore, these grounds are not adjudicated.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 30th October, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th Oct, 2023/ SGR*

आदेश की प्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, जोधपुर बेंच,
जोधपुर / DR, ITAT, Bench, Jodhpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.