

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC " JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 624/JP/2023
निर्धारणवर्ष / AssessmentYear :2012-13

Smt. Bhawani Devi House No. 63, Gyan Prakash Mohalla MilakpurGoojar Tehsil Tijara, Alwar-301 018	बनाम Vs.	The ITO Ward-Bhiwadi, Alwar
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: GGVPD 6808 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby :Shri Devang Gargieya, Adv.
राजस्व की ओरसे / Revenue by : Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 08/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 04 /12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 11-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as ld.CIT(A)/(NFAC)] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. The impugned order u/s 147 r.ws.144 dated 18.09.2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. The Id. CIT(A) erred in law as well as on the facts of the case in passing the impugned order in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, hence the same kindly be quashed or alternatively be restored to the file of the Id. CIT(A).

3. Rs. 18,04,980/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming addition made u/s 69B of the Act at Rs. 18,04,980/- as undisclosed investment in purchasing immoveable property. The addition so made, being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

4. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B, 234C & 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.

5. The Id. AO further erred in law as well as on the facts of the case in imposing tax, surcharge, cess etc. as per provision of S. 115BBE of the Act. The invoking of Sec 115BBE is contrary to the provisions of law, on facts and without jurisdiction. The appellant totally denies its liability. The tax liability so created, kindly be deleted in full.”

2.1 Brief facts of the case are that as per the information available with the Department, it is noticed that the assessee had purchased property along with other co-owner valuing at Rs.2.00 crores and also incurred an amount of Rs.18,10,180/- as stamp duty expenses and other charges. Thus, total investment was made of Rs.2,18,10,180/- during the year under consideration wherein assessee's share of investment in purchase of the property comes to Rs.18,04,980/-. The AO on verification of record found that the assessee had not filed her ITR for the year under consideration for which request letters were sent to file reply regarding the above transactions but the assessee did not make compliance thereof and thus the

source of investment could not be verified which resulted into escapement of assessment to the tune of Rs.18,04,980/-. Hence proceedings u/s 147 of the Act were initiated after recording proper reasons and notice u/s 148 of the Act was issued to the assessee on 22-03-2019 after obtaining the prior approval of the Id. Pr. CIT, Alwar which was sent through speed post to the assessee on 23-03-2019 requiring the assessee to furnish return of income for the year under consideration but no compliance was made. In spite of issuance of notice u/s 142(1) dated 4-07-2019 & 16-08-2019 to the available address of the assessee, no requisite details/information was made available to the fixed date of hearing on 17-07-2019 and 01-09-2019 and thus no compliance was made by the assessee. Since no compliance was made by the assessee, a final show cause notice u/s 144 of the Act dated 02-09-2019 fixing the date of hearing on 16-09-2019 along with notice u/s 142(1) of the Act was issued to assessee to furnish her explanation as to why the investment in purchase of property of Rs.18,04,980/- should not be treated as unexplained investment u/s 69B of the Act. The AO observed that no communication was received from the assessee relating to the amount of Rs.18,04,980/- in spite of providing sufficient opportunities and being time barring assessment the AO had no option but to complete the assessment ex-parte on the basis of

material/information available on record. Thus the AO made an addition of Rs.18,04,980/- u/s 69B of the Act in the hands of the assessee by observing as under:-

‘‘4. Addition on account of unexplained investment u/s 69B of the Act.

The Department has concrete and enough evidence that the assessee has purchased immovable property alongwith other co-owner for value at Rs.2,00,00,00/-and also incurred an amount of Rs.18,10,180/- as stamp duty expenses and other charges. Thus, total investment was made of Rs.2,18,10,180/- during the financial year 2011-12 wherein assessee’s share of investment in purchase of above property comes to Rs.18,04,980/- in purchase of immovable property whereas the assessee had not filed her ITR, for the relevant year. Plenty of notices were also issued to the assessee but no compliance were made. Therefore, in the absence of any explanation/ evidences filed by assessee, the sources of amount invested in respect of purchase of property remained unverified and the same is treated as unexplained investment u/s 69B of the I.T. Act, 1961.

In the light of above discussion, an amount of Rs.18,04,980/- is hereby added u/s 69B of the I.T. Act, into total income of the assessee.’’

2.2 In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee in limine applying the decision of ITAT Delhi Bench in the case of CIT vs Multiplan

India (P) Ltd. (1991) [38 ITD 320] that the assessee is not interested in pursuing its appeal. Further the ld. CIT(A) has also dismissed the appeal ex-parte on merit by holding as under:-

“.... Since, the appellant has not discharged her burden of proof to explain source of investment made in immovable property, respectfully following the decisions of Supreme Court in various cases, I hold that the AO’s action is correct in making the addition of Rs. 18,04,980/-. Ground of appeal are dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee prayed that both the lower authorities have passed ex-parte orders and the assessee remained deprived of availing of adequate opportunity of being heard by the lower authorities. Hence, one more chance may be given to the assessee to contest the case before the AO and advanced the necessary papers concerning the issues in question.

2.4 On the other hand, the ld. DR objected to the prayer but left the decision upon bench on the prayer made by the ld. AR of the assessee.

2.5 We have heard both the parties and perused the materials available on record. It is noted from the orders of the lower authorities that they have passed the ex-parte orders in the case of the assessee while as the assessee during the course

of hearing prayed to give one more chance to contest the case of the assessee before the AO with a view to getting one more opportunity of being heard. We find from the orders of the lower authorities that the assessee is deprived off in contesting the case. However, the ld. DR has no objection in case the appeal of the assessee is restored to the file of the AO in that case for afresh adjudication instead of CIT(A). In view of the above facts and circumstances of the case, the appeal of the assessee is restored to the file of the AO for afresh adjudication but by providing adequate opportunity of being heard. The assessee is also directed not to take unnecessary adjournment on frivolous ground and submit the documents concerning the issue in question. Thus the appeal of the assessee is allowed for statistical purposes.

2.6 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 and if the assessee still did not comply to the notices or did not file details the ld. AO can take resort to levy penalty of non-compliance against the assessee.

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

Order pronounced in the open court on 04 /12/2023.

Sd/-

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 04 /12/2023.

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Bhawani Devi, Alwar
2. प्रत्यर्थी / The Respondent- The ITO, Ward 6(1), Bhiwadi, Alwar
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 624/JP/2023}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar