

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.7747/Del/2018
Assessment Year: 2014-15

Daksha Bharadwaj,
C-58, Defence Colony,
New Delhi – 110 024.

Vs ACIT,
Central Circle-6,
New Delhi.

PAN: AFGPB6995N

(Appellant)

(Respondent)

Assessee by : Shri Satyen Sethi &
Shri A.T. Panda, Advocates
Revenue by : Shri T. James Singson, CIT, DR
Date of Hearing : 13.09.2023
Date of Pronouncement : 11.12.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the Assessee against the order dated 28.09.2018 of the Commissioner of Income Tax (Appeals)-24, New Delhi, (hereinafter referred to as ‘the Ld. First Appellate Authority or in short as ‘ the Ld. ‘FAA’) in appeal No.55/16-17 arising out of an appeal before it against the order dated 22.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the ACIT, Central Circle-06, New Delhi (hereinafter referred to as ‘the Ld. AO’).

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeal) [herein after referred to as “Ld. CIT(A)”] erred in confirming action of the Ld. Assessing Officer [herein after referred to as “Ld. A.O.”] in terms of making addition of Rs. 48,31,861/-.

1a. That on the facts and in the circumstances of the case and in law, Ld. CIT(A), erred in upholding unjustified action of Ld. A.O. in adding jewellery found during the search and seizure operation in spite of submission of reply that it is ancestral in nature and purchased over the 50 years period.

2. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in rejecting following additional grounds raised by the appellant:

a. “The Ld. AO has erred in law and facts of the case by invoking the provisions of Section 153C of the Act without recording any satisfaction and without issuing any requisition to the assessee in this regards, which is highly unjustified, uncalled for and bad in law.

b. The Ld. AO has erred in law and facts of the case by assessing the jewellery pertaining to the appellant’s wife in the hands of appellant and also conducting the search of appellant’s locker without having any search warrant or requisition in appellant’s name which is highly arbitrary, uncalled for, against the law of natural justice and is bad in law.”

3. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erroneously dismissed interest levied by Ld. A.O. under section 243A and 234B of the Income Tax Act, 1961 at any rate, which is very excessive.

4. That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erroneously dismissed action of Ld. A.O. of initiating penalty under section 271(l)(c) of the Act.

5. That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.”

3. Heard and perused the record. The ld. AR has heavily argued on the question of rejecting the additional grounds raised by the appellant before the ld.CIT(A) which have been defended by the ld. DR by submitting that there is no error in the findings of the ld.CIT(A) in that regard as the assessee failed to demonstrate reasons for admission of additional grounds.

4. We are first inclined to decide ground No.2 and what is relevant in regard to this ground is that admittedly, the search and seizure operation u/s 132 of the Act was carried out on Three C Group by the Investigation Wing on 29.10.2013 and one Shri Vidur Bhardwaj, who is son of the assessee/appellant was one of the persons covered in the search on this group. Admittedly, during the search of Shri Vidur Bhardwaj, certain jewellery was seized which was alleged to be of the assessee. The ld. AO observes in the assessment order that after recording satisfaction, proceedings u/s 153C of the Act were initiated, but, being the current year of the search, proceedings u/s 143(3) were initiated. The copy of assessment order filed with the appeal set, mentions that in compliance of the notice the assessee had filed return declaring income of Rs.30,48,590/- on 03.09.2015. This copy of assessment order in the appeal set shows that certain part of it is erased with a black pen. The ld. DR has also filed a paper book containing this assessment order which is made available at pages 12-14 and the same shows that the erased part in the copy supplied to the assessee which is part of the appeal set, had words, 'notice u/s 153C.' Thus, there is some

discrepancy which makes it ambiguous that if any notice was issued under section 153C of the Act. However, considering that the one filed by the Revenue to be correct, it establishes that it was in compliance with the notice u/s 153C the assessee filed return of income of Rs.30,48,590/- on 03.09.2015.

5. It further comes up that before the Id.CIT(A) the assessee has taken up a very specific additional ground No.1 as follows:-

“a. “The Ld. AO has erred in law and facts of the case by invoking the provisions of Section 153C of the Act without recording any satisfaction and without issuing any requisition to the assessee in this regards, which is highly unjustified, uncalled for and bad in law.

b. The Ld. AO has erred in law and facts of the case by assessing the jewellery pertaining to the appellant’s wife in the hands of appellant and also conducting the search of appellant’s locker without having any search warrant or requisition in appellant’s name which is highly arbitrary, uncalled for, against the law of natural justice and is bad in law.”

6. As we appreciate the order of the Id.CIT(A), it comes up that he has primarily not entertained the additional ground for the following reasons as mentioned at paras 2.3.7, 2.3.9, 2.40, 2.42 and 2.43:-

“2.37 From the above, it can be summarized that this power can only be exercised in the cases where assessee (appellant) proves that (at least) all the following conditions are satisfied:

1) There are really exceptional circumstances to exercise the power vested in the Appellate Authority.

2) There were circumstances beyond control of the appellant (assessee) due to which claim could not be made at the earliest possible opportunity.

3) *All the facts related to the issue are already before the appellate authority.*

4) *No prejudice would be caused to the revenue by entertaining the claim at this stage vis-a-vis the time when it should have been made for the first time as per prescribed procedure.*

2.38 *The appellant made no case that there are really exceptional circumstances to exercise the power vested in the Appellate Authority.*

2.39 *The appellant is heading a big business empire. He is having luxury of best professional advice. Therefore, there are absolutely, normal circumstances.*

2.40 *Appellant made no case that he was stopped by the circumstances beyond its control to raised the issues being sought to be raised by these (additional) grounds before the appropriate Appellate Authority at the prescribed time and after that the factors continued to stop him from making such claim till date the claim was made by the appellant (assessee) by way of the application under consideration.*

2.42 *Certainly prejudice would be caused to the revenue by entertaining the pleas at appellate stage because*

i. *Claims made by the appellant are supposed to be put in the right context by the AO and checked/verified/investigated by the AO who has limited resources at his command.*

ii. *Depending upon the position adopted by the appellant, the AO may require to initiate certain processes however, powers of AO (and other revenue authorities) are circumvented by time limitation in these respects.*

2.43 *In view of the above discussion, the application for admission of additional ground is rejected.”*

7. We are not satisfied with the reasoning of Id. CIT(A) for not admitting the additional ground as the Id.CIT(A) having coterminous powers with AO, on the basis of lack of facts about irregular exercise of jurisdiction cannot lay the burden of assessee and reject admission of such legal ground. It appears that the

ld.CIT(A) in spite of taking note of the judgement of the Hon'ble Supreme Court in the case ***Goetze India Ltd. vs. CIT 2006-TIOL-198-SC-IT***, Ld. CIT(A) failed to appreciate that the assessee was very much in its right to question the exercise of jurisdiction before the ld.CIT(A) irrespective of the fact that it was not raised at first instance. It comes up from the application for additional ground made available at pages 31-32 of the paper book of the assessee that taking rescue to the judgement of the Hon'ble Supreme Court in the case of ***National Thermal Power Corporation Ltd. vs. CIT, 229 ITR 383***, the assessee had called for indulgence of ld. CIT(A) in raising the aforesaid ground for invoking jurisdiction u/s 153C without recording any mandatory satisfaction. It is very much apparent from the findings of the ld.CIT(A) on the merits that the fact that the assessee was not the searched person is an admitted fact and he specifically observes in para 4.8 as follows:-

“4.8 It is a very important factor that all the premises and bank lockers of the appellant and his wife were not subjected to search. The key of the locker belonging to the appellant (locker no. 77 maintained with Indian Overseas Bank 70, Golf Links, New Delhi from where jewellery worth Rs. 22,24,141/- was found), was found during the search at the residence of Sh. Vidur Bhardwaj. Similarly the other part the jewellery (worth Rs.26,07,720/- other than what was found in the locker no. 77 with Indian overseas bank) was found at the residence of Sh. Vidur Bhardwaj.”

8. In the light of the aforesaid, we are of the considered view that the ground No.2 before us deserves to be allowed as the ld.CIT(A) has fallen in error in rejecting the additional grounds. Accordingly, the appeal of the assessee is allowed for statistical purposes and the ld.CIT(A) is directed to admit the

additional ground of the assessee and decide the additional grounds. The issue to this extent is restored to the file of the Id.CIT(A).

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

Order pronounced in the open court on 11.12.2023.

Sd/-

(NARENDER KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 11th December, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi