

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 159 & 158/JP/2022
निर्धारण वर्ष/Assessment Years : 2015-16 & 14-15.

Hema Kanwar Narendra Singh Rathod, 207, Gomes Defence Colony, Avenue-4, Jaipur.	बनाम Vs.	The DCIT, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AASPR 0262 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhatra, CA.

राजस्व की ओर से / Revenue by : Shri Anup Singh, Addl. CIT.

सुनवाई की तारीख / Date of Hearing : 12/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 7/11/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These two appeals by the assessee are directed against two separate orders both dated 10.02.2022 of Id. CIT (A)-4, Jaipur passed under section 250 of the IT Act for the assessment years 2015-16 & 14-15. The grounds raised by the assessee in both the appeals are exactly common except change in figures. Therefore, the grounds raised in ITA No. 159/JP/2022 for the Assessment Year 2015-16 are reproduced as under :-

" 1. That on the facts and in the circumstances of the case, the Id. CIT (A) is wrong, unjust and has erred in law in sustaining on protective basis the addition of Rs. 87,15,881/- and Rs. 1,74,318/-

made to the income of the appellant by the Id. AO on substantive basis on account of (a) alleged bogus capital gain on sale of shares u/s 68 and (b) commission allegedly paid to obtain the said income from capital gain u/s 69C of the I.T. Act, 1961 respectively even though said income has been accepted and owned by her husband Sh Narendra Singh in application filed by him before the Income Tax Settlement Commission (ITSC) u/s 245C of the I.T. Act, 1961 and said application has been accepted by the Hon'ble ITSC u/s 245D of the IT Act, 1961 vide order dt. 24.02.2022.

2. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them."

Since common grounds are raised in both the appeals, therefore, for the sake of convenience, we dispose off both the appeals by this combined order. We first take up appeal in ITA No. 159/JP/2022 for the assessment year 2015-16.

2. The brief facts of the case are that the assessee derives her income from salary and other sources. Assessee filed her original return of income under section 139(1) of the IT Act, 1961 on 29.01.2016 for the assessment year 2015-16 declaring a total income at Rs. 3,14,250/-. Assessee belongs to Kiran Fine Jewellers Group, on whose premises, a search and seizure under section 132 and/or survey action under section 133A of the Act was carried out on 02.08.2017. Pursuant to this, AO issued a notice under section 153A of the Act to the assessee. In compliance, the assessee filed her return of income on 20.10.2018 for the assessment year 2015-16 declaring a total income of Rs. 3,14,250/-. Finally, the AO completed the assessment under section 144 read with section 153A of the IT Act vide order dated 29.11.2019 at a total income of Rs. 92,04,450/- by making an addition of Rs. 87,15,991/- under section 68 of the IT Act on account of undisclosed income earned through bogus long term capital gain and Rs. 1,74,318/- under section 69C of the Act on account of

commission paid on the aforesaid bogus long term capital gain taxed at the rate of 30% as per provisions of section 115BBE of the Act. Aggrieved by the order, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) taking into consideration all the relevant facts and placing reliance on the statement recorded on oath under section 132 of the IT Act, dismissed the appeal of the assessee.

Now the assessee is in appeal before us.

3. We have heard the rival contentions, perused the material on record and gone through the orders of the lower authorities. The controversy before us is regarding the addition made by the AO on account of undisclosed long term capital gain and further on account of commission paid on aforesaid long term capital gain. The said additions were also upheld by the Id. CIT (A) on protective basis. It was rightly submitted before us by Id. A/R that without prejudice to ground raised by the assessee in the present appeal, Shri Narendra Singh Laxman Singh Rathod, husband of the assessee from the date of search accepted that long term capital gain declared in the return of his wife i.e. present assessee is from his own sources of income and accordingly assessable in his hands. It was also submitted by Id. A/R that after search, the husband of the assessee filed settlement application under section 245C of the IT Act before the Income Tax Settlement Commission on 24.01.2020. A copy of the said settlement application filed also included the capital gain income declared in the income tax return of present assessee i.e. Smt. Hema Kanwar and the same has been placed on record by way of paper book. It was also submitted that Shri Narendra Singh Laxman Singh Rathod has also paid due taxes thereon and the copies of challan receipts have also been placed on record. We

have perused the documents placed on record before us in the shape of settlement application under section 245C of the IT Act filed before Income Tax Settlement Commission and further we also noticed that the Income Tax Settlement Commission has accepted the said settlement application filed by the assessee and an order under section 245D(2C) of the IT Act, 1961 was passed on 20.03.2020. The copy of the said order has also been placed by the assessee in paper book. However, the Id. CIT (A) dismissed the appeal of the assessee by holding that the final order of Income Tax Settlement Commission under section 245D has not been passed till now and, therefore, in order to protect the interest of revenue addition so made by the AO are sustained in the hands of the present assessee on protective basis.

3.1 After analyzing and scrutinizing the facts as well as the legal proposition of the present case, we find that it is an undisputed fact that Shri Narendra Singh Laxman Singh Rathod i.e. husband of the assessee has already accepted that long term capital gain declared in the return of his wife i.e. present appellant is from his own sources of income and is thus accordingly assessable in his hands. In order to support the said contention, Shri Narendra Singh Laxman Singh Rathod has filed Settlement Application under section 245C of the IT Act before the Income Tax Settlement Commission on 24.01.2020 wherein the capital gain income declared in the ITR of present appellant has been included by her husband in his own hand on which due taxes have also been paid by him, but the Id. CIT (A) dismissed the grounds raised by the assessee by holding that the final order of Income Tax Settlement Commission has not been passed till now. Therefore, keeping in view

the peculiar set of facts of the present case and also keeping in view the interest of justice, we set aside the order of the Id. CIT (A) and restore the matter to the file of the AO with a direction that in the event of passing final order by the Income Tax Settlement Commission under section 245D, the addition so made in the hands of the assessee be deleted forthwith with an intimation to the assessee.

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4. Since in the assessee's own case in ITA No. 159/JP/2022 for the assessment year 2015-16, we have set aside the order of the Id. CIT (A) and restore the matter to the file of the AO with the direction that in the event of passing final order by the Income Tax Settlement Commission, the addition so made in the hands of the assessee be deleted, therefore, keeping in view similar grounds/facts are involved in the present appeal, we set aside the order of the Id. CIT (A) and restore this issue also to the AO with similar direction, supra.

5. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 7/11/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 7/11/2023.

Das/

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

1. अपीलार्थी / The Appellant- Smt. Hema Kanwar Narendra Singh Rathod, Jaipur.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 159 & 158/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar