

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3813/Del/2018
Assessment Year: 2009-10

Ramrati W/o Sh. Jaswant Singh, Vill & Post Raispur Ghaziabad PAN No.CMJPR3627M	Vs.	ITO Ward-2 (2) Ghaziabad
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. M.P. Rastogi, Advocate Sh. Rohit Tiwari, Advocate Ms. Tanya, Advocate Ms. Shivani, Advocate Sh. Jaund, Advocate
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	11/12/2023
Date of Pronouncement:	13/12/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-2, Noida dated 27.03.2018 pertaining to A.Y.2009-10.

2. The grievance of the assessee read as under :-

1. That the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in partly allowing the appeal

arbitrarily by overlooking incurable fundamental errors of law in assessment order.

2. That the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in failing to appreciate that since the Ld. A.O. was not having any tangible and specific relevant material such as sale deeds in question at the time of formation of belief, except vague AIR information, the impugned belief so entertained by him which not only specular in nature but also has resulted in inaccurate particulars and incorrect facts thereby rendering the assessment process void ab- initio.

3. That the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in failing to appreciate that issuance of notice u/s 148 of I.T. Act, after expiry of period of more than 6 years is barred by limitation.

4. That the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in failing to appreciate that valid service of notice u/s 148 of I.T. Act is pre-condition for proceedings u/s 147 of I.T. Act whereas in the present case, no supporting evidence had been brought on record to prove validity of service, as contemplated in law, mere issuance of notice does not itself prove validity of service.

5. That without prejudice to above legal grounds, the Ld. CIT(A), on the issue of source of investment erred in law, on facts and surrounding circumstances in bruising aside

the factual observations of Ld. A.O. in remand report merely on basis of assumption and presumptions.

6. That while confirming impugned addition of Rs. 4085000, the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in failing to appreciate the humane aspects of relationship of husband and wife thereby ignoring the fact that legally explainable funds have been utilized by her husband for the sacred and noble cause of providing financial security/financial independence to his wife in her old age out of marital love and affection, which cannot be termed "sin" of pr unexplained investment as per law.

3. At the very outset, the Counsel for the assessee did not press the grounds challenging the reopening of the assessment, therefore, the same are dismissed as not pressed.

4. On merits the assessee has challenged the addition of Rs.40.85 lacs.

5. Briefly stated the facts of the case are that on the basis of the AIR information the AO came to know that the assessee has purchased immovable properties for Rs.47 lacs and 31 lacs. During the course of the scrutiny assessment proceedings the assessee was asked to furnish the sources of investment in the immovable properties. On receiving no plausible reply the AO made the addition of Rs. 78 lacs.

6. Assessee challenged the addition before the CIT(A) and explained that her husband is an agriculturist/ farmer who sold

one property and purchased the impugned property in her name out of the sale consideration of the property sold by husband. It was further explained that in the properties purchased the assessee had 50% right and, therefore, her share of investment was Rs.40.85 lacs and the sources of investment is the cash received from sale of property of the husband.

7. In support additional evidences were filed copy of the same was provided to the AO by the CIT(A) providing an opportunity as required under rule 46A(iii) of the IT rules. A remand report was received on 26.03.2018. The remand report read as under :-

“4.7 The Remand report dt.26.03.2018 is as under:

"In this case, assessment was completed u/s 147/144 on an income of Rs. 78,00,000/- vide order dated 23/12/2016 on account of unexplained source of investment made in purchase of immovable properties. The assessee has raised certain objections and filed additional evidences during the appellate proceedings before the Ld. CIT(A), Ghaziabad. The objections inter alia pertain to non receipt of notices issued by this office, the assessee being illiterate and super senior citizen and her husband being a farmer were unaware of the provisions of the Income Tax Act. The additional evidences filed by the assessee are in respect of source of investment.

2. In this case, notice u/s 148 was issued on the basis of NON PAN AIR information received from Sub Registrar, Gabhana, Aligarh. The notices u/s 148, 142(1) and 144

have been issued in the name of the assessee on the same address which is written in the purchase deed as well as appearing in the letters/ replies filed by the assessee herself through her counsel pos assessment. In the second and final show cause notice dated 23.11.2016, the name of husband has also been written. It is a fact that notice u/s 148 and subsequent notices have been issued to the same assessee to whom the AIR informations pertain. The notice u/s 148 has also been issued within time. The assessee's claim that she did not receive the order u/s 147/144 dated 23/12/2016 is not acceptable as the order has not been returned by the postal department. If she had not received the order, how could she know about the order and the demand raised. It is beyond probability that the assessee was ignorant about the proceedings, but she deliberately chose not to respond to the notices issued. Further, ignorance of law cannot be used as an excuse. Hence, under the given facts & circumstances, the additional evidences filed by the assessee are not admissible.

3. However, without prejudice to the above and in compliance to the directions of the Ld. CIT(A) to comment on the merits of the additional evidence given by the assessee, the same is being discussed as under.

3.1 The assessee has stated that she has purchased the following two agricultural lands situated at village Roop

Nagar, Aligarh. Both these lands have been jointly purchased with Smt. Satveeri and the assessee's share of investment is half in each:-

(i) Land purchased from Sri Chandra Singh as per registered sale deed dated 10.11.2008 having sale consideration Rs.31,00,000/-, stamp duty Rs. 1,35,000/- and other expenses Rs.10,000/ Total expenses Rs.32,45,000/- out of which assessee's share is 50% ie. Rs.16,22,500/-.

(ii) Land purchased from Smt. Brij Rani Tomar as per registered sale deed dated 10.11.2008 having sale consideration Rs.47,00,000/-, stamp duty Rs.2,16,000/- and other expenses Rs.10,000/-. Total expenses Rs.49,26,000/- out of which assessee's share is 50% ie. Rs.24,63,500/-.

The assessee has stated that the source of aggregate investment of Rs.40,85,000/- is out of the sale proceeds of the land/ plots sold by her husband Sri Jaswant Singh on different dates and advance received in one case. The assessee has furnished copy of registered sale deeds in support. Sri Jaswant Singh also appeared before the undersigned and affirmed the same. The documents and facts presented by the assessee in respect of source of investment to the extent of Rs.40,85,000/-do not attract any adverse opinion. However, no evidence has been produced in respect of the remaining half investment."

8. A perusal of the above clearly show that the assessee has successfully discharged the onus cast upon her and explained demonstratively the source of investment in the purchase of the immovable properties and the same has been accepted by the AO in the remand report, therefore, we do not find any reason for not accepting the same by the CIT(A).

9. Considering the facts of the case in totality the assessee succeeds. The AO is directed to delete the impugned addition.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.12.2023

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .12.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI