

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.710/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2015-16)

(Hybrid Hearing)

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| Manojkumar Ishwarbhai Patel 2/917 Sahil Bungalow, Vallabhwadi, Bardoli-394601 | Vs. | Income Tax Officer, Ward-1, Bardoli, 2 nd Floor, Income Tax Office, BSNL Building, Station Road, Bardoli-394601 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BHLPP 2872 G | | |
| (अपीलार्थी /Appellant) | | (प्रत्यर्थी /Respondent) |

निर्धारिती की ओर से /Assessee by : Shri Jayraj Dhakan, CA

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाईकीतारीख/ **Date of Hearing** : 20/12/2023

घोषणाकीतारीख/**Date of Pronouncement** : 28/12/2023

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2015-16, is directed against the order passed by the National Faceless Appeal Centre, Delhi, [‘NFAC/Ld.CIT(A)’ for short] dated 02.08.2023, which in turn arises out of an assessment order passed by the Assessing Officer under section 144 of the Income Tax Act, 1961 (in short ‘the Act’), dated 28.03.2023.

2. The grounds of appeal raised by assessee are as follows:-

“1. That on facts and circumstances of case as well as law on subject the learned CIT(A) erred in confirming the action of Assessing Office in assessing total income at Rs.56,48,120/-.

2. That on facts and circumstances of case as well as law on subject the learned CIT(A) erred in confirming the action of Assessing Officer of making addition u/s 69 of Rs.53,83,700/-.

3. On facts and circumstances of case as well as law on subject learned AO erred in reopening the assessment in gross violation of provisions of Income Tax Act.

4. That assessment order passed by learned AO u/s 147 is bad in law when notice u/s 143(2) dated 30.09.2022 is barred by limitation.

5. It is therefore prayed that the assessment order be quashed or addition may be deleted.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal.”

3. The appeal filed by the assessee for Assessment Year 2015-16, is barred by limitation by 17 days. The assessee has moved a petition requesting the Bench to condone the delay. The Ld. Counsel submitted that assessee filed an affidavit to explain sufficient cause and stated that such minor delay may be condoned.

4. However, Ld. Senior DR for the Revenue opposed the prayer of assessee for condonation of delay and stated that delay should not be condoned.

5. We have heard both the parties on this preliminary issue. The assessee explained the reasons for delay stating that the consultant who handled the assessee's appeal never appeared before ITAT, therefore, the said consultant approached another Chartered Accountant to prepare Form No.36 and other papers and in this process such minor delay has occurred. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay.

6. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is an Individual. In

assessee's case a notice u/s 148 of the Act, was issued for the assessment year 2015-16, after prior approval of the competent authority on 29.03.2022, vide DIN & Notice No.ITBA/AST/S/148-1/2021-22/1041910415(1) after recording the reasons to file return of income for the relevant assessment year within 30 days from the service of this notice. In response to the notice u/s 148 of the Act, dated 29.03.2022, the assessee filed his return of income declaring total income of Rs.2,64,420/-. The details of opportunities given to the assessee during assessment stage, are reproduced below:

| Type of notice/com munication | Date of notice/communication | Date of compliance given | Response of the assessee received and not received | Date of response if received | Reasons type (full/part/adj ournment) | Remarks if any |
|-------------------------------|---|---------------------------------------|--|------------------------------|---------------------------------------|----------------|
| Notice u/s 148 | 29.03.2022 vide DIN & Notice ITBA/AST/S/148-1/2021-22/1041910415(1) | Within 30 days from service of notice | - | - | - | - |
| Notice u/s 142(1) | 25.08.2022 vide DIN:ITBA/AST/F/142(1)/2022-23/1044917800(1) | 07.09.2022 | Received | 06.09.2022 | Part | - |
| Notice u/s 143(2) | 30.09.2022 vide DIN: ITBA/AST/F/143(2)5-2022-23/1046137186(1) | 13.10.2022 | Received | 12.10.2022 | Part | - |
| Letter | 11.01.2023 vide DIN & Letter No. ITBA/ AST /F/ 17/2022-23/1048613893(1) | 17.01.2023 | Received | 17.01.2023 | Adjournment | - |
| Letter | 17.01.2023 vide DIN & Letter No. ITBA /AST /F/ 17/2022-23/1048860338(1) | 30.01.2023 | Received | 29.01.2023 | Part | - |
| Letter | 20.02.2023 vide DIN & Letter No. ITBA/ AST /F /17/2022-23/1049922846(1) | 27.02.2023 | Received | 24.02.2023 | Part | - |
| Show cause | 04.03.2023 vie DIN: ITBA/ ASFT/F/147(SCN)/2022-23/1050399636(1) | 09.03.2023 | Received | 08.03.2023 | Part | - |

7. The Assessing Officer observed that assessee had entered into certain financial transactions during the FY 2014-15 relevant to AY 2015-16. Further, the assessee had not filed his ROI for AY 2015-16. On the basis of financial transactions, case of the assessee was populated on AIMS module of ITBA under 5th cycle of NMS (Non-filer Management System). In this regard, a system generated letter was issued to the assessee through ITBA vide letter No.ITBA/AIM/S/95/2016-17/1002316625(1) dated 02.03.2017.In the letter, summary of the financial transactions carried out

by the assessee during FY 2014-15 was provided and the assessee was requested to submit his response electronically within 20 days of receipts of this letter in the compliance module on the e-filing portal. However, on perusal of ITBA/e-filing portal it is noticed that neither the assessee had filed ROI for AY 2015-16 nor submitted response against the query letter. Thus, the assessee had failed to avail this opportunity.

8. Thereafter, basket of cases appearing under 5th cycle of NMS pertaining to the AY 2015-16 was executed under RMS (Risk Management System) for identifying potential cases for action u/s 148 of the Act. On the basis of this exercise, case of the assessee was identified as high risk non-filer and populated on insight portal under the category “Non Filing of Return (NMS) for FY 2014-15”. As per details appearing on Insight Portal, assessee had entered into certain financial transaction during the year under consideration. Details of transactions are as under:

| <i>Sr.No.</i> | <i>Description of transaction</i> | <i>Name of agency/party</i> | <i>Amount (In Rs)</i> |
|---------------|-------------------------------------|-------------------------------------|-----------------------|
| 1 | <i>Purchased immovable property</i> | <i>Sub-register Palasna</i> | <i>Rs.32,73,700/-</i> |
| 2 | <i>Purchased immovable property</i> | <i>Sub Registrar Office Bardoli</i> | <i>Rs.72,10,000/-</i> |
| 3 | <i>Purchased immovable property</i> | <i>Sub registrar Palsana</i> | <i>Rs.32,73,700/-</i> |

As per the details mentioned above, the assessee had not filed ROI for the AY 2015-16 and purchased immovable properties aggregating to Rs.1,37,57,400/- during the FY 2014-15, relevant to AY 2015-16. Thus, in absence of return of income for A.Y. 2015-16, source of purchase of immovable property aggregating to Rs.1,37,57,400/- remained undisclosed and unexplained.

9. On the basis of above information a notice u/s 148A(b) of the Act was issued to assessee on 18.03.2022 requiring the assessee to show cause as to why a notice u/s 148 of the Act should not be issued on the basis of above information. The notice under clause (b) of section 148A was issued after obtaining prior approval of PCCIT, Gujarat vide reference No.100000029179795 dated 17.03.2022. AS per records, the above notice was duly served upon the assessee through notice server.

10. As per term of the show cause notice dated 18.03.2022, the assessee was required to file his reply on or before 20.03.2022, however, on perusal of ITBA, it was noticed by AO that no response has been filed by the assessee till date. In absence of reply, it is clear that the assessee has nothing to say in this regard and source of purchase of immovable property aggregating to Rs.1,37,57,400/- remained undisclosed and unexplained. Thus, the income chargeable to tax to tune of Rs.1,37,57,400/-, represented in the form of assets (assets in form of immovable property purchased by the assessee) has escaped assessment in this case for AY 2015-16. Accordingly, after considering the material/information available on record, it is hereby concluded that case of the assessee is fit for issue notice u/s 148 for AY 2015-16

11. The order u/s 148A(d) of the Act is passed after obtaining prior approval from the competent authority i.e. PCCIT, Gujarat.

12. Synopsis of all submissions of the assessee relating to the issue and indicating the dates of submission:

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| 06.09.2022 | <i>Purchase deed, forwarding letter, ITR, computation of income, bank statement</i> |
| 12.10.2022 | <i>Reply of assessee</i> |
| 17.01.,2022 | <i>Adjournment letter</i> |
| 29.01.2023 | <i>covering letter, statement of shree khedut sahkari khand udyog</i> |

| | |
|------------|---|
| | <i>mandali, power of attorney, bank statement, notarized confirmation of Khushalbhai, affidavit of Ishwarbhai Jitendrabhai Summarized cash book, notarized confirmation of Mrs. Kusum, bills of vegetable, statement of SKSKUM Ltd.</i> |
| 24-02-2023 | <i>Forwarding Letter, Notarized Confirmation of Nitinbhai, Notarized confirmation of Khushalbhai, Notarized Confirmation of Kusum R Patel, Cash Book, Bank Statement, copy of Power of Attorney</i> |
| 08-03-2023 | <i>Written submission, case laws</i> |

13. Purchase of property amounting to Rs.1,04,83,700/- in this case there was the information available through INSIGHT portal that the assessee had purchased immovable property amounting to Rs.1,37,57,400/- during the year under consideration. Accordingly, a notice u/s 142(1) of the I.T. Act, 1961 was issued to the assessee requesting therein to furnish certain information/documents in connection with the assessment proceedings as well as in connection with the transaction of property. In response thereto the assessee has furnished his reply from time to time. On perusal of reply of the assessee, it has been found that the assessee has purchased immovable property amounting to Rs.1,04,83,700/- during the year under consideration. Out of total payment of Rs.1,04,83,700/- an amount of Rs.53,83,700/- were paid in cash and Rs.51,00,000/-were through cheque of Indusind Bank, Bardoli Branch. On perusal of bank account statement of Indusind Bank bearing account No.100006450325 for the FY 2014-15, it has been found that two payments of Rs.25,50,000/- each were paid through cheque Nos.340658 and 340659 dated 17.04.2014 to Smt. Kusumben Ratilal Patel.

14. Further it has been noted by AO from the submission of assessee that he has paid the remaining purchased consideration of Rs.53,83,700/- in cash on different dates during the year 2011 to 2014. Accordingly, the assessee was requested to furnish the money receipt as well as purchased

agreement so that it can be established that the actually payments were made during the year 2011 to 2014 and that cash payments as claimed by the assessee were made in accordance with any agreement. But the assessee failed to furnish the money receipt on the ground that it has been almost a decade since last payment, hence as the record is too old, therefore, assessee did not have a copy of the money receipt now. As far as the copy of agreement is concerned, the assessee has submitted that there was oral agreement between the party and so there was no written agreement. In support of written agreement, the assessee has furnished the notarized confirmation from the seller. On perusal of notarized confirmation, it has been found that all the confirmations were executed on 24.01.2023, 27.01.2023 and 29.01.2023 i.e, much after the actual transaction of the property. Further, the assessee has also completely failed to furnish the PAN of the seller so that confirmations from the seller can be made. In respect of payment schedule, the assessee has submitted that we are not aware how sale deed should have been drafted. But it is how it was drafted, we only cross verified that amount paid by us is recorded in the deed and it was there. But, for your satisfaction, payment schedule is being confirmed by the seller on stamp paper notarized before the advocate. All the documents submitted by the assessee are nothing but an after-thought and attempt to eye wash the revenue. The assessee failed to furnish any leading and corroborative evidence which can lead to conclusion that the assessee has made the payments to the seller as per schedule furnished by him during the course of assessment proceeding. There is no receipt of on account of payment to the seller, no PAN furnished by the assessee in respect of seller. Hence it is established that the assessee has made withdrawal during the different financial years and claimed/related it with the payment to seller on account of purchase of property only. Then after

assessing officer narrated the provisions of section 69 of the I.T Act. 1961 which clearly states that where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of investment or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee for such financial year. Considering all the above facts the assessing officer held that the total amount of investment amounting to Rs.53,83,700/- is deemed to be unexplained investment u/s 69 and added to the total income of the assessee.

15. Aggrieved by the order of Assessing Officer the assessee carried the matter in appeal before Ld. CIT(A) who has dismissed the appeal of assessee observing as follows:

“4. Decision:

In this case, the addition has been made by the Assessing Officer worth Rs.53,83,700/- u/s 69 of the Income Tax Act, 1961 as unexplained investment. The appellant did not file the Return of Income and the case was selected as per NMS report that the appellant has purchased immovable property but not filed the Return of Income. The case was reopened u/s 148A of the Income Tax Act, 1961. Detailed questionnaire was issued by the Assessing Officer. The appellant vide its reply dated 06.09.2022 submitted the reply along with the Income Tax Return. The appellant submitted that the appellant is an agriculturist and engaged in agricultural activity. Details of payment of cash from agricultural land was filed before the Assessing Officer. The appellant was asked to produce the bank statement along with the details/documentary evidences of the agricultural income but same was not file before the Assessing Officer despite various notices. On 24.02.2023, the appellant submitted the written reply as filed earlier but no evidences were filed. Hence, the Assessing Officer made the addition.

4.1 Now before me in the appellate proceedings, no evidences have been filed of the agricultural income. Some sample bills have been filed. Cash sales of the parties have not been correlated with the cash book. Some confirmation has been filed. They don't help the case of the appellant as documentary evidence

has not been filed to support the contention of the appellant that cash generated is out of agricultural income. Hence, the order of the Assessing Office is confirmed and appeal of the appellant is dismissed.”

16. Aggrieved by the order of Ld. CIT(A) the assessee is in appeal before us.

17. Learned Counsel for the assessee argued that assessee paid Rs.53.83 lacs in cash towards purchase of property and Rs.51 lacs through cheque. The assessee furnished cash book for block 01.04.10 to 31.03.15. The assessee also furnished notarized confirmation of seller, indicating dates of cash paid. The Id Counsel submitted that entire case of the AO founded on non-execution of agreement to sell, assuming without admitting payment is not made as per agreed terms or belatedly, but then it makes contract voidable at option of promise. The AO is holding information as to financial transaction much before expiry of limitation. The Id Counsel also stated that reassessment proceedings initiated by the AO is also bad in law. Besides, the approval to issue notice u/s 148 is not proper. The Ld. Counsel relied on several judgments, which we have gone through. Therefore, Id Counsel contended that addition made by the assessing officer should be deleted.

18. On the other hand, Ld. Sr. DR for the Revenue, argued that there is no infirmity in the reasons recorded by the Assessing Officer. The assessee has not filed return of income u/s 139 of the Act, therefore question to issue the notice u/s 143(2) does not arise. All the documents filed by the assessee are self-servicing documents/ made documents and therefore should not be relied on. The Ld. Sr. DR pointed out that in the reasons recorded by the Assessing Officer that there is no any apparent mistake therefore the assessment should not be quashed purely on the ground that the reasons recorded by the Assessing Officer are defective. The Id DR

also relied on the order passed by NFAC/Ld. CIT(A) and prayed before the Bench to confirm the order of Id CIT(A).

19. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We do not find any mistake in the reasons recorded by the assessing officer and process of reopening the assessment. The Id Counsel for the assessee submitted that assessee does not maintain books of accounts, however we note that assessee furnished cash book for block 01.04.10 to 31.03.15, which is part of books of accounts. We note that assessee did not file return of income for assessment year 2015-16. Even before Id CIT(A), the assessee has not filed sufficient evidences, as noted from the findings of Id CIT(A), which is again reproduced below for ready reference:

“4.1 Now before me in the appellate proceedings, no evidences have been filed of the agricultural income. Some sample bills have been filed. Cash sales of the parties have not been correlated with the cash book. Some confirmation has been filed. They don't help the case of the appellant as documentary evidence has not been filed to support the contention of the appellant that cash generated is out of agricultural income. Hence, the order of the Assessing Office is confirmed and appeal of the appellant is dismissed.”

20. Considering these facts, we are of the view that assessee's lis may be remitted back to the file of the assessing officer for fresh adjudication. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Assessing officer for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper

to set aside the order of the Id. CIT(A) and remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 28/12/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Surat/दिनांक/ Date: 28/12/2023
Dkp Outsourcing Sr.P.S.
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat