

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

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.908/Del/2022
Assessment Year: 2016-17

DCIT,
Central Circle-29,
New Delhi.

Vs Rita Chandiok
L-41, Connaught Circus,
Connaught Place,
New Delhi – 110 001.

PAN: AAAPC2224L

(Appellant)

(Respondent)

Assessee by : Shri Vinod Bindal, CA &
Ms Rinky Sharma, ITP
Revenue by : Shri Vivek Vardhan, Sr. DR
Date of Hearing : 19.01.2024
Date of Pronouncement : 29.01.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Revenue against the order dated 04.02.2022 of the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred to as the Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.10332/2018-19 arising out of the appeal before it against the order dated 23.12.2018 passed u/ss. 143(3) of the Income Tax Act, 1961

(hereinafter referred as ‘the Act’) by the ACIT, Circle 53(1), New Delhi (hereinafter referred to as the Ld. AO).

2. The facts, in brief, are that the ld. AO while examining the case of the assessee under limited scrutiny had questioned the return of the assessee for the following two reasons:

- (i) new foreign asset in the nature of financial interest in any entity; and
- (ii) large investment in property (Form 26QB) as compared to total income.

2.1 The ld. AO had notes:-

“3.1 It is noticed that in Schedule FA under point B of ITR which reflects “Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year”, assessee has shown total investments of Rs.1,83,18,425/- for AY 2016-17 and the same column reflects a figure of Rs.48,23,999/- in the Return for A Y 2015-16. However assessee is claiming that no increase has been there in the investments in the Current year. Also the date of holding in respect of the same investment is shown different in Income Tax Returns for AY (2015-16) and AY (2016-17) as 12.02.2015 and 13.08.2013 respectively. Assessee was issued a show cause notice dated 03.12.2018 asking for reconciliation of this difference.”

2.2 The assessee had submitted:-

“3.2 In the reply dated 05.12.2018, the assessee has submitted that the investment in foreign entity of Rs.48.23,999/- was made on 17/09/2013 and the same was duly disclosed in her Return of Income for the AY 2014-15. However, the investment made during AY 2015-16 was Rs.45,83,999/- on 09/04/2014 so the total investment up till AY 15-16 should have been Rs.94,07,998/- but it was mistakenly not added in the ITR for AY 15-16 as per the claims of the assessee. The assessee also claimed that the source of these investments is gift from her son Mr. Vishesh C Chandiook. For the investment of Rs.1,83,18.425/- mentioned in AY 2016-17 in the ITR, the assessee had submitted that during the year under consideration, amount of investment made by her husband Mr. Vinod C Chandiook was mistakenly

shown in her Return of Income although no fresh investment was done by the assessee in that year. However, no reply was provided by the assessee to the query about why the date of holding in respect of the same investment is shown different in Income Tax Returns in AY 2015-16 and AY 2016-17 as 12.2.2015 and 13.08.2013 respectively. Further, the date of holding has again been mentioned as different in ITR for AY (2014-15) i.e 17.09.2013. It can be clearly seen that assessee is providing three different date of holdings for same investment in three ITRs for three different years. Also assessee is claiming mistake in filing of amount of investment in ITR for two consecutive years i.e. AY 2015-16 and 2016-17.”

3. The Id. AO observes in the assessment order that in spite of opportunities, the assessee has failed to convince with the evidences and, therefore, made the addition on the basis of the following findings:-

“3.4 It is observed that despite providing multiple opportunities to the assessee by issuing 142(1) notices and show cause notices, assessee is not furnishing any documents to explain the nature of the investments. It can be clearly seen that assessee is intentionally withholding the information and providing evasive replies. As it can be inferred from the ITR of the assessee, the investments are made in a company TREASURE CHECK LTD which is a British virgin island company with address PO BOX 957, ROAD TOWN, TORTOLA BRITISH VIRGIN ISLAND as mentioned in the ITR of the assessee. Further on enquiring on public domain, no information could be gathered about the company ‘TREASURE CHECK LTD’. Assessee had already been issued notices dated 03.12.2018 and 12.12.2018 to show cause as to why the difference in investments of last year AY (2015-16) and current year (AY 2016-17) shouldn't be treated, as unexplained, investment and added back to the income of the assessee. However no proper explanation could be furnished by the assessee as already discussed.

3.5 In view of the above, as the assessee couldn't offer proper explanation about the nature and source of these investments shown credited in his ITR for the AY 2016-17 and the explanation offered by the assessee is not satisfactory, the difference in investments as per the ITR of last year AY (2015-16) and current year AY (2016-17) amounting to Rs.1,34,94,426/- (Rs.1,83,18,425/- minus Rs.48,23,999/-) is added back to the income of the assessee as unexplained investments under section 69 r.w.s 115BBE of the Income Tax Act, 1961. Also being satisfied that assessee has furnished inaccurate particulars of income, penalty proceedings u/s 271(l)(c) are separately initiated on this account.”

4. The Id.CIT(A) has deleted the addition primarily accepting the plea of the assessee that as a matter of fact, no investment was made in the present assessment year and the investment pertain to AY 2015-16 and 2014-15.

5. The Revenue is in appeal before us raising the following grounds:-

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law & on facts, ignoring all the facts as enumerated by the AO in details in assessment order dated 23.12.2018.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law & on facts, ignored the fact that the assessee did not provide any documentary evidences regarding the nature of investments despite asking for the details multiple times during the course of assessment proceedings.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law & on facts, ignored the fact that assessee claimed to have committed mistake/in filing her ITR i.e. AY 2015-16 & 2016-17 twice consecutively which seems a deliberate attempt at misrepresentation of facts and an evident cover up in order to evade paying taxes.

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law & on facts, ignored the fact that assessee did not avail any of the options available as per the Income-tax Act, 1961 such as to file revise return 139(5) of the Income-tax Act, 1961 etc in order to rectify the mistakes for both the AY's.

5. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law & on facts, held that the AO did not bring on record any evidence to refute the claim of the assessee ignored that the burden lies on the assessee to proof genuineness of the transactions. In this regard, reliance placed on the decision of Hon'ble High Court of Calcutta in the case of CIT Ys Mihir Kanti Hazra.

6. Whether the appellant craves leave to add, amend, alter or forego any ground(s) of appeal either before or during the course of hearing of the appeal.”

6. Heard and perused the record. Ld. DR although defended that order of Ld. AO and the grounds of appeal but what comes up is that as a matter of fact, the assessee along with her husband had remitted Rs.94,07,998/- in their joint account with HSBC Bank, UK, in AY 2014-15 and 2015-16 out of which Rs.93,88,118/- was transferred to the account of Mr. Vishesh C. Chandiok, the son, for investment in Treasure Check Ltd. As such, during the relevant AY 2016-17, the assessee had not made any investment abroad, but, out of some clerical errors, certain facts of investments were shown in the schedule of foreign assets and for which the assessee had tried to give explanation to the AO. It appears that the Ld. AO was seeking more information with regard to certain facts which had erroneously crept in the return of present AY 2016-17 and has attributed motive to assessee's failure to satisfy the queries of AO for which drawing adverse inference concluded that the investments are made in Treasure Check Ltd. in the present year. There appears to be no justification add the difference in the investments of AY 2015-16 and 2016-17 as unexplained investments in the present year. The Ld.CIT(A) has duly taken the facts of the case into consideration to conclude that when, as a matter of fact, no investments are made in the present assessment year, then, there was no reason to examine the source of investments of the earlier assessment years 2014-15 and 2015-16. The Ld.CIT(A) was correct in giving benefit to the assessee on the settled proposition of law that the assessee cannot be penalized for *bona fide*

mistakes in the returns which are established during the assessment proceedings to be factually incorrect. The grounds raised by the Revenue have no substance.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 29.01.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 29th January, 2024.

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Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi