

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.521/JPR/2023
निर्धारणवर्ष/Assessment Year : 2015-16

Abdul Rashid 364, Chat Gate bazaar, Opp. Romo Public School, Under Luharon Ka Khurra, Jaipur.	बनाम Vs.	Income Tax Officer, Ward-5(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BPLPR 5927 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओरसे/ Revenue by: Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 19/10/2023
उदघोषणा की तारीख/Date of Pronouncement: 19/01/2024

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Id. CIT(A) dated 15.06.2023, National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] for the assessment year 2015-16.

2. The grounds of appeal raised by the assessee in its appeal are as under:-

“1. That on law and facts the Ld. CIT (A) NFAC has grossly erred in holding that addition of Rs. 1268725/- made u/s. 56(2)(vii)(b)(ii) is a valid addition. The total addition in said section of Rs. 8382352/- was made by Ld. AO out of which addition of Rs. 7113627/- was deleted by the Hon'ble CIT (A) due to apparent mistake in DLC valuation. The addition u/s. 56(2)(vii)(b)(ii) was made on wrong facts and against the record on file hence addition of Rs. 1268725/- deserves to be quashed.

2. That on law and facts the Ld. CIT (A) has grossly erred in directing the Ld. AO that while allow the addition of Rs. 7113627/- to be deleted, the Ld. AO is to verify the DLC rates of the property and calculate the correct value of the property. In appeal proceedings necessary evidences like valuation report of DLC authorities and prescribed DLC rate of property was filed. As such the Ld. CIT (A) has grossly erred in directing the Ld. AO to verify the DLC rate and calculation of valuation of property.

3. That on law and facts the Ld. CIT (A) has grossly erred in ignoring the facts that title of property is having various encumbrances and not absolute marketable title, as such the Ld. AO was not justified in adopting the stamp duty valuation as the sale consideration u/s. 50C of the Act. As such the value as given in the sale deed should be the value of sale of property.

4. The Ld. AO has grossly erred in not making the compliance as provided in section 50C(2), since sub-registrar has valued the property on too higher side and necessary objection u/s 50C(2) before the Ld. CO was filed during the course of assessment proceedings. As such the assessment order deserves to be quashed.

5. That the order of the Ld. AO is bad in law and against the facts on record, hence deserves to be quashed.

6. That the appellant reserves the right to add, amend, withdraw or alter any ground of appeal before the finalization of said appeal.”

3. The brief facts of the case are that the return of income for the assessment year 2015-16 was e-filed on 31.03.2017 declaring total income of Rs. 1,93,350/-. The case was selected for limited scrutiny through CASS. Accordingly, notice u/s 143(2) of the Act, 1961 was issued on 20.09.2017 fixing the date of hearing for 27.09.2017, which was duly served upon the assessee. In response to the said notice, the ld. AR of the assessee filed power of attorney and requested for adjournment. Later on, notice u/s 142(1) was issued on 03.10.2017. The ld. AR of the assessee, appeared from time to time and filed requisite details/information which were placed on record, produced sale/purchase deed and bank statements etc. which are test checked and the facts of the case were discussed with him. The assessee has declared business income u/s 44AD. Apart from it, assessee has sold two properties during the year and after indexation of cost of acquisition and benefit of section 54F of the Act computed long term capital gain at nil. The AO observed that the assessee has purchased property situated at Nagar Prishad No. 1606, Chowkdi Ghat Gate, Ghat Gage Bazar, jaipur for the amounting of Rs. 35,00,000/- , which has also

been claimed u/s 54F of the Act against long term capital gain arise on two properties sold during the year. Further, it is noticed that the sub-registrar has taken value for the purpose of stamp duty of such property of Rs. 1,18,82,352/-. Hence, the assessee vide show cause notice dated 22.12.2017 required to show case as to why an addition of Rs. 83,82,352/- should not be made in light of provisions of Section 56(2)(vii)(b)(ii) under the had income from other sources. The AO observed that the assessee stated that the provisions of Section 56(2)(vii)(b)(ii) of the Act is not applicable because the agreement for purchase of such property was made before 01.04.2013. The assessee was tenant in said property since long and to avoid litigation, the seller have decided in the year 2012 to sell the property to the assessee. The ld. AO noted that the effectiveness of a section is w.e.f. 01.04.2014 means the section is duly applicable for A.Y. 2014-15. In the instant case, the sale deed was registered during the year under consideration, hence, there was no impact that the purpose was made in the earlier year through ikrarnama. Hence addition of Rs. 83,82,352/- u/s 56(2)(vii)(b)(ii) of the Act made and added to the income of the assessee by the ld. AO.

4. In first appeal the assessee carried the matter before the CIT(A) who confirmed the disallowance made by AO by observing as under:-

“The appellant further submits that Section 56(2)(vii)(b)(ii) provides that in case where date of agreement and date of registration of sale deed are not same, the date of agreement shall be taken. The appellant therefore submits that value of property should be taken as on 06/04/2012 i.e. the date of agreement and not 30/10/2014 i.e. the date of sale deed registration. Further, the appellant submits that in view of the facts of the case, the AO was duty bound to refer the valuation of the property to the Department Valuer which has not been done in this case and therefore the addition made is liable to be quashed. The appellant further submits that he has purchased Shop No.362, 363, 364 and attached residential house portion at Ghat Gate Bazar, Jaipur for a sum of Rs.35 lakhs from Anil Kumar Garg, Vipin Radhey Shyam Garg and Dr. Radhey Raman Garg and the sale deed was registered on 30/10/2014. The shop No.362 & 363 were rented to others on a rent of Rs.350/- per month and Shop No.364 and attached house portion were on rent with the appellant at a rent of Rs.200/- per month. All these tenants were residing since more than 40 years and dispute to vacate the property was going on for long. To avoid and to end the dispute, the seller decided to sale the property to the appellant for a sum of Rs.35 lakhs only and for this purpose an agreement was executed with the appellant on 06/04/2012. The appellant submits that the copy of this agreement was filed before the AO during the assessment proceedings.

Facts on record, AO's remand report and appellant's submissions have been examined. Fact in issue here is that the appellant has purchased one property bearing Shop No.362, 363, 364 and residential house portion at Ghat Gate Bazar, Jaipur for a sum of Rs.35 lakhs from Anil Kumar Garg, Vipin RadheyShyam Garg and Dr. Radhey Raman Garg. Sale agreement to this effect was executed between the appellant and the seller on 06/04/2012 and was produced before the AO in the course of the assessment proceedings and this sale agreement was neither doubted by the AO during the assessment proceedings nor by the AO during the remand proceedings. Section 56(2)(vii)(b)(ii) provides that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purpose of this sub clause. In the remand report, the AO has clarified that the agreement was executed at Rs.35 lakhs and the appellant has not paid any consideration/ part consideration before the agreement. It is to be noted that second proviso to Section 56(2)(vii)(b)(ii) provides that the first proviso shall apply only in a case where the amount of consideration refer to therein, or a part thereof has been paid by any mode other than cash on or before the date of

agreement for the transfer of such immovable property. Since this is not the case of the appellant, the AO was correct in holding the date of sale deed execution i.e.

30/10/2014 as the valid date for transaction in this case.

The second issue in this case is that total commercial area was 21.55 sq. meter and total residential area was 61.96 sq. meter and that the sub registrar, Jaipur has made a mistake apparent from record in valuation of the property in the sense that DLC rate for commercial area has been applied to the entire area and as such the valuation of the property was made excess by Rs.71,13,627/-. The appellant has submitted that the area and nature of the property both are mentioned in registered sale deed which was submitted before the AO. This assertion of the appellant is found to be correct from the perusal of the registered sale deed. The appellant has also submitted valuation made by the DLC authorities and the correct valuation as per the DLC rate. The purpose of Income Tax Act is to collect rightful taxes from a taxpayer. Just because the stamp duty authority has made computational mistake in valuation of the property, the Department cannot take advantage of that and ask for higher taxes from the taxpayer. The AO is, therefore, directed to verify the DLC rate of the property on the date of registration of sale deed and calculate the correct value and tax the appellant accordingly. To sum up, the appeal is partly allowed.

Grounds of Appeal No.5 & 6 are general in nature. Hence, no separate adjudication is required and hence dismissed.

4. In the result, the appeal of the appellant is partly allowed.”

5. On the other hand, the ld. DR supported the order of ld. CIT(A).

6. We have heard both the parties and perused the materials available on record. The Bench noted that out of addition of Rs. 83,82,352/- made by the ld. AO, ld. CIT(A) deleted addition of Rs. 71,13,627/-. For the sustained addition the ld. AR for the assessee submitted that necessary evidences like valuation report of DLC and prescribed DLC rate of property were not persuaded with the contention so raised. Further, the ld. AR for the assessee submitted that they have raised

necessary objection u/s 50C(2) of the Act before the ld. AO during the course of assessment proceedings where the valuation of property is on too higher side and the assessee has not filed any appeal against the valuation made by Sub-registrar, Jaipur on this ground the ld. AO verify the date of agreement and date of registration of sale deed where the agreement is evidence to determine the date of transfer of property. Before the first appellate authority, the assessee furnished necessary evidences like valuation report of DLC authorities and DLF rate details were filed which has been considered by the ld. CIT(A) but no specific relief granted to the assessee in appreciation of the details filed. Thus, the Bench feels that the assessee because of the above reasons could present his arguments/submissions to contest the case before the lower authorities in full and have prayed to give one more opportunity to peruse these evidences concerning the issue in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing. Looking to the facts that the ld. CIT(A) has already appreciated the fact partly, we consider the prayer of the assessee and set aside the issue before the ld. AO. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

7. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

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

Order pronounced in the open court on 19/01/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/01/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Abdul Rashid, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(3), Jaipur.
3. आयकरआयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 521/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar