

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No.569/JPR/2023
निर्धारणवर्ष/AssessmentYear :2011-12

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|---|-------------|----------------------------|
| M/s. Rajshree Alloys India Ltd. 17, Near Akash Hotel, I.C. Bose Road Howrah 71 1101 (West Bengal) | बनाम Vs. | ITO Ward 1(1) Jaipur |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADCB 4084 H | | |
| अपीलार्थी /Appellant | | प्रत्यर्थी /Respondent |

निर्धारिती की ओरसे /Assesseeby : Shri Dilip Shivpuri,
राजस्व की ओरसे /Revenue by: Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख /Date of Hearing : 26/10/2023
उदघोषणा की तारीख /Date of Pronouncement: 19 /01/2024

आदेश /ORDER

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

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 21-08-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 wherein the assessee has raised the following grounds of appeal.

“1. That order of ld. CIT(A) is bad in law since it ignores relevant facts and law.

2. That the return was filed Howrah, West Bengal and address of business is same . Hence notice u/s 148 by the ITO, Ward 1(1), Jaipur is without jurisdiction.

3. That since the reasons recorded u/s 148 were never served on the assessee violating the procedure of M/s GKN Drwshafts. Hence assessment of A.Y. 2011-12 is bad and illegal.

4. That Id CIT(A) and AO ignored the provisions of Section 32,50,& 71 of the Act. Assessee incurred capital loss of Rs. (-) 67488623.54.

5. That both Id. CIT(A) and AO erred in not giving any working of indexation and not allowing it calculating the capital loss.

2.1 Apropos Ground No. 1 to 5 of the assessee, brief facts of the case are that the AO was in possession of an information that the assessee had sold an industrial plot situated at F-947, 948 and 949 and E-929, Vishwakarma Industrial Area, Jaipur for a sale consideration of Rs.3,25,00,000/- during the Assessment year 2011-12. Further the sub-Registrar had adopted the consideration of Rs.3,36,15,064/-. Therefore, the AO had reason to believe that income chargeable to tax had escaped assessment with the meaning of Section 147 of the Act. Accordingly, he issued a notice u/s 148 of the Act on 26-03-2018 which was duly served

on the assessee. The AO issued statutory notices which were also not responded by the assessee. Under the circumstances, the AO issued a show caused notice proposing to pass an order u/s 144 of the Act taxing the capital gains amount of Rs.3,19,45,406/- after allowing the indexed cost of Rs.16,69,658/-. The assessee did not respond to the said show cause also. Thus the AO assessed the total income under the capital gains at Rs.3,19,45,406/-

2.2 Being aggrieved by the order of the AO, the assessee carried the matter before the Id.CIT(A) who dismissed the appeal of the assessee by observing as under:-

5. DECISION: I have very carefully considered the facts of the case. assessment order of the AO, grounds of appeal and the submissions of the appellant.

5.1 The AO was in possession of an information that the assessee had sold an industrial plot situated at F-947,948 and 949 and E-929, Vishwakarma Industrial Area, Jalpur for a sale consideration of Rs.3,25,00,000/- during the F.Y.2010-11 relevant to A.Y.2011-12. Further, the sub registrar had adopted the consideration of Rs.3.36,15,064/-. Therefore, the AO had reason to believe that income chargeable to tax had escaped assessment with the meaning of section 147 of the Act. Accordingly. he issued a notice u/s148 of the Act on 26.03.2018 which was duly served on the assessee. The assessee did not respond to the said notice u/s148 of the Act.

Thereafter, the AO issued statutory notices which were also not responded to by the assessee. Under the circumstances, the AO issued a show cause notice proposing to pass an order u/s 144 of the Act taxing the capital gains amount of Rs * 0.3, 19, 4! /- after allowing the indexed cost of Rs. 16,69,658/-. The assessee did not respond to the said show cause also. Thus, the AO assessed the total income under the head capital gains at Rs. 3, 19 ,45,406/.

6. From the grounds of appeal filed by the assessee, it is seen that the assessee has not challenged the action of the AO in making an addition under the head Capital Gains of Rs.3,19,45,406/-, However, the assessee has challenged the action of the AO on other grounds which are dealt with as under:

7. Vide the grounds of appeal No. 1 to 3, the assessee has challenged the action of the AO for re-opening the assessment u/s. 148 of the Act and order passed u/s. 144 r.w.s. 147.

7.1 From a perusal of the AO's assessment order, it is seen that the AO in this case has followed due procedure prescribed under the law to reopen the case for the year under consideration. From the assessment order, it is also observed that the assessee has acknowledged the notice issued by the AO. The appellant has not objected to the reopening of the assessment before the AO nor has it requested for reasons for reopening.

7.1.1 It is also seen that the assessment year reopened is within 4 years from the end of relevant assessment year and no assessment u/s 143(3) of the Act had been made earlier. Therefore, the provisions of first proviso to section 147 of the Act do not apply. In this view of the matter, in my view, the A.O. on the basis of material available with him which had direct nexus with the factum of income escaping assessment was Justified in re-opening the assessment. In this regard, I draw support from the Hon'ble Supreme court decision in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. SC, 210 CTR 0030, (2007) (SC), dated: 23-05-2007., wherein the Apex

court has explained the post 01-04-1989 position with regard to section 147 by holding as under:

"17. The scope and effect of s. 147 as substituted with effect from 1st April, 1989, as also as. 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of s. 147, separate cls. (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under s. 147(a) two conditions were required to be satisfied firstly the AO must have reason to believe that income profits or gains chargeable to income-tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under s. 148 r/w s. 147(a) But under the substituted s. 147 existence of only the first condition suffices. In other words if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to s. 147. The case at hand is covered by the main provision and not the proviso."

7.1.2 Further, it is seen that the AO in this case has followed due procedure prescribed under the law to issue notice u/s. 143(2) and 142(1) of the Act which was duly served on the assessee.

7.2 In view of the facts ances explained above, I am of the view that the objections of the appellant regarding garding the reopening of the case u/s 147/148 and order passed u/s. 144 r.w.s. 147 of the Act for the year under consideration are not valid, and hence dismissed. Thus, the action of the AO in issuing the notice under section 148 and order passed u/s. 144

r.w.s. 147 of the Act is upheld. Thus, grounds of appeal No. 1 to 3 are dismissed.

8. Vide the ground of appeal No.4, the assessee has challenged the action of the AO in not allowing Indexation.

From a perusal of the AO's assessment order, it is seen that the AO has allowed indexation on cost of acquisition. Thus, the action of the AO passing an order u/s 144 r.w.s. 147 of the Act is upheld. Thus, ground of appeal No. 4 is dismissed.

9. Vide the ground of appeal No.5, the assessee has challenged the action of 9. the AO in not allowing carry forward and set off of losses. In this regard, it is seen that no details of losses have been submitted by the assessee. Nor has the assessee provided details as to how it is eligible for such carry forward and set off of losses. The AO may examine the claim of the assessee as per law. The Ground of appeal No.5 is Dismissed for statistical purposes.

10. In the result, the appeal of the assessee is Dismissed.”

2.3 During the course of hearing, the Id. AR of the assessee had filed following written submission with the prayer to allow the appeal of the assessee.

“1. Ground No. 1&2:

Ground no. 1 is general and may be read with the other Grounds of Appeal,

In Ground no. 2, the Appellant has assailed the assessment order and the order of the CIT(A) on the grounds that the assessment order passed by ITO Ward 1(1), Jaipur was bad in law as the notice u/s 147/148 issued by the ITO and the subsequent assessment proceedings were without jurisdiction.

Section 124 of the Income-Tax Act lays down the jurisdiction of assessing authorities in these words

"124.(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the assessing officer has been vested with jurisdiction over any area within the limits of such area, he shall have jurisdiction -

(a) In respect of any person carrying on business or profession if the place at which he carries on his business or profession is carried on is situate within the area.....if the principal place of his business or profession is situate within the area, and

(b) In respect of any other person residing within the area.

It is abundantly clear from a reading of this section that the jurisdiction of a business entity is decided by the place of business

In the present case the place of business in the relevant year was 17, Near Hotel Aakash, I.C. Bose Road, Howrah, West Bengal.

Q. Was the ITO Ward 1(1) Jaipur made aware of change of jurisdiction?

The answer to this question raised by the Hon'ble ITAT is an emphatic YES. The evidence in this regard is as follows:

1) Letter of B. Singhal & Co. .CA of Kolkata dated 29.11.2018 addressed to ITO, Ward 1(1), Jaipur.

Here the CA has categorically stated that

a) the assessee had shifted its office to 17, I.C. Bose Road, Howrah, West Bengal;

b) that this was already informed to ITO, Jaipur vide letter of May, 2018;

c) that the assessee had requested that the PAN may be transferred to ITO, Ward 48(1), Howrah but this request has not been complied with by ITO, Jaipur.

d) That the assessee has filed its return with ITO 48(1), Howrah. A copy of the same was enclosed.

ii) Letter of Rajshree Alloys (India) Ltd. Dated 04.05.2018 addressed to ITO, Ward 1(1), Jaipur:

Wherein it was categorically stated that the office of the assessee has been shifted from Jaipur to Howrah West Bengal and that the file of the assessee should be transferred from Jaipur to West Bengal

Copies of the above mentioned letters dated 04.05 2018 and 29 11. 2018 are enclosed herewith as Annexures A-01 & A-02 respectively.

iii) Ist Page of Return of Income for A.Y. 2011-12

It shows the address as that of Howrah, West Bengal (Annexure A-03).

iv) Copy of the assessment order showing address as that of 17, I.C. Bose Road, Howrah, West Bengal;

This shows that the ITO Ward 1(1), Jaipur was well aware of the present address of the assessee and had sent the assessment order at the Howrah address. (Annexure A-04).

It is thus abundantly clear that the ITO Ward 1(1). Jaipur was informed by the assessee of the change of address and place of business during assessment proceedings itself. He was also requested to transfer the PAN and the assessment records to Howrah, West Bengal but he chose not to do so but to knowingly continue the assessment proceedings at Jaipur. Thus the notice under section 147/148 and the subsequent assessment proceedings culminating in the assessment order dated 14.11.2018 were conducted outside the correct jurisdiction of Howrah, West Bengal, in the incorrect jurisdiction of Jaipur ITO.

It is pertinent to point out that this Ground of Appeal was taken before the CIT(A) and is so mentioned in the Form no. 35 but it was ignored/not considered by him.

In view of the above, the notice issued u/s 147/148 and the assessment order passed pursuant thereto is illegal, contrary to law, ab initio void, liable to be quashed.

In support of this contention, the assessee relies on the following judicial pronouncement

- 1) Mrs. Chitra Supekar v. ITO [2023] 453 ITR 530 (Bombay);
- ii) Shrishbhai Hargovandas Sanjanwala v. ACIT, Ahemdabad [2017] 396 ITR 167 (Gujarat);
- iii) Suresh Kumar Sheetlani v. ITO [2018] 257 Taxman 338 (Allahabad);

Copies of the said judgments have already been supplied to the Hon'ble Tribunal and the Respondent during the hearing on 26.10.2023.

2. Ground No. 3:

In this ground, the assessee states that the reopening of the assessment by issue of notice under section 147/148 subsequent assessment proceedings and assessment order dated 14.11.2018 is bad in law and liable to be quashed because the mandatory procedure laid down by the Hon'ble Supreme Court in the case of **G.K.N. Driveshafts**

A perusal of the assessment order dated 14.11.2018 would confirm that the procedure as laid down in the case of G.K.N. Driveshafts case has not been followed. No reasons recorded for reopening of the assessment have been supplied to the assessee.

This issue was raised before the CIT(A) , as is evidenced by the written submissions filed before him, which are before the Hon'ble Tribunal, but it was ignored/not dealt with by the CIT(A) specifically who only stated that the ITO had followed the proper procedure as prescribed by law in general terms.

That this procedure is mandatory, and if not followed renders the proceedings bad in law has been held in a number of judicial pronouncement right up to the Hon'ble Supreme Court. Some of these pronouncements relied upon by the assessee are:-

- (i) Principal CIT V. V. Ramaiah [2019] 262 Taxman 16 (SC) dismissing the SLP against the decision of the Karnataka High Court in the case of Principal CIT v. V. Ramaiah [2019] 103 taxmann.com 201 (Kar.);
- (ii) ii) Principal CIT v. Jagat Talkies Distributors [2017]398 ITR 13 (Delhi);
- iii) CIT v. Trend Electronics [2015] 379 ITR 456 (Bombay).

In view of the position of law as expounded in these judicial decisions, the non-supply of reasons recorded for issue of notice u/s 147/148 of the Act would vitiate the whole assessment proceedings, rendering it null and void, liable to be quashed.

Copies of the above judgments had been supplied to the Hon'ble Tribunal and the Senior D.R. of the Department on the day of hearing

3. Ground no. 4:

On merits of the case, it was pointed out to the Hon'ble Bench that as per the audited accounts of the assessee supplied to the CIT(A), the WDV of the assets of the company as at the beginning of the relevant year was Rs. 9,99,88,623.54. The

company was making continuous losses and was, therefore, shut down. All the assets of the company were sold for Rs. 3,25,00,000/- during the relevant year. These are undisputed figures

Now, if the assets sold during the year are treated to be business assets, then as per section 32 (1) (iii) of the Income-Tax Act deduction of the amount by which the moneys payable in respect of such building, machinery, plant or furniture together with the amount of scrap value, if any fall short of the written down value. Hence, as per this section,

| | |
|-------------------------------------|---------------------------|
| WD V as on 01.04.2010 | Rs 9, 99, 88.62 |
| Moneys payable on sale | <u>Rs. 3,25,00,000.00</u> |
| Deduction as per section 32(1)(iii) | Rs. 6,74,88,623.54 |

If the assets sold during the year are treated to be capital assets, then the provisions of section 50 (2) of the I.T. Act come into play which says that if the whole block of assets is sold during the year, then the cost of acquisition of the said assets shall be the WDV at the beginning of the year. Hence, the situation would be

| | |
|---------------------|---------------------------|
| Cost of acquisition | Rs. 9,99,88,623.54 |
| Sale price | <u>Rs. 3,25,00,000.00</u> |
| Capital loss | (-) 6,74,88,623.54 |

Hence, in both the situations, the assessee has incurred a loss of Rs. 6,74,88,623.54 which should have been allowed in the assessment order. Thus the treatment given to the sale of assets during the year by the ITO is contrary to the provisions of the I.T. Act and is liable to be quashed/set-aside. The loss of Rs. 6,74,88,623.54 deserves to be allowed,

In conclusion, the Hon'ble Tribunal is requested to consider the written submissions of the assessee which submissions have already been made

during the hearing on 26.10.2023, and to decide the appeal as per law and facts enumerated above.

2.4 On the other hand, the ld. DR supported the order of the lower authorities.

2.5 We have heard both the parties and perused the materials from record. In this case, it is noted that that the AO made the addition in the hands of the assessee in spite of providing ample opportunities with following narration.

“5. Brief facts of the case are that as per the information available with this office, the assessee had sold immovable properties of Rs.3,36,15,064/- during the F.Y. 2010-11. The assessee did not file his return of income for the relevant period and no capital gain was disclosed or transfer of such immovable property. However, no details/ information has been filed by the assessee till date. As per information available with this office, such property was allotted by RIICO to assessee company and indexed of such property comes to Rs.16,69,658/- . Since the assessee has failed to explain the transaction of sale of immovable property. Considering all the facts and circumstances of the case, I have no other alternative but to add a sum of Rs.3,19,45,406/- (33615064 – 1669658/-) into the total income of the assessee company being long term capital gain, as no supporting evidence/ proof regarding purchase of such property was submitted by the assessee company despite providing ample opportunities to him.

In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee (supra). It is also noted from the written submission of the assessee wherein the assessee mentioned that “ *it is pertinent to point out that this Ground of appeal was taken*

before the CIT(A) and is mentioned in Form No. 35 but it was ignored/ not considered by him''. The Bench from the entire conspectus of the case observed that the assessee was deprived off to substantiate the case before the AO to settle the issue in question and the Id. CIT(A) has decided the appeal the as per the records/ documents available before him while adjudicating upon the appeal of te assessee with following narration.

‘9. In this regard, it is seen that no details of losses have been submitted by the assessee. Nor has the assessee provided details as to how it is eligible for such carry forward and set of losses.

The Bench taking into consideration all the facts and circumstances of the case feels that the appeal of the assessee should be restored to the file of the AO to decide it afresh by providing one more opportunity of hearing and the assessee will put forward his written submissions / documents to substantiate his grievance, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

2.6 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or

expression on the merits of the dispute, which shall be adjudicated by AO independently in accordance with law.

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

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

Sd/-
(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 19 /01/2024

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s Rajshree Alloys India Ltd. Howrah.
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(1), Jaipur.
3. आयकरआयुक्त / The Id PCIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No.569/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar