

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 814/JP/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Radhey Shyam Yadav Ramchandra Pura, Post: Mahapura Bhankrota, Jaipur- 302 026	बनाम Vs.	The ITO Ward -7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABVPY 7362 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Nargis Parveen, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 01/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 06/02/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 10-12-2023, 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 the learned AO has erred at law as well as on facts initiating proceedings under section 148 by stating that no return under section 139(1) was filed and the learned CIT (Appeal) further erred in justifying the proceedings under section 148 & thus had erred in confirming the action of the AO based on wrong facts.

2 The learned CIT(Appeal) has erred by stating in the order the following wrong facts:-

(a) The appeal was filed late whereas the order was dispatched by speed post RR168513156IN from RL 3020390103 (302039) on 30.10.2018 at 11:38

(b) Declaring income of 5,710/- and agricultural income of 1,88,500/- as per ITR-3 filed under section 139(1) against the income of 44,350/- and agricultural income of ₹ 1,88,500/-

(c) The action of AO initiating the proceedings under section 148 is justified on the basis of return filed under section 139(1) where the ITO had initiated proceedings as per order for reason of no return filed under section 139(1) and not having of PAN. Thus the order of CIT (Appeal) is not maintainable.

3 That both the authorities being the AO and CIT (Appeal) had erred at law as well as on facts in **not providing the proper opportunity of being heard without indicating** the servicing of the notices and thus the orders of both the authorities deserve to be set aside being against the principle of natural justice.

4 That the learned AO has erred at law as well as on facts in treating the investment of ₹ 21 lacs made in the land purchased despite declaring in the balance sheet attached with the return on presumption being taxable as per section 69 of the Act and further the CIT (Appeal) had also erred in confirming the action of the AO.

5 That the learned assessing officer has erred at law as well as on facts in stating in the assessment order "income from long term capital gain" but taking the income assessed at 21 lacs as taxable under section 69 of the Act and further the learned CIT (Appeal) had also erred in confirming the action of the AO.

6 That the assessment order and the appellate order of both the authorities being the AO and of the CIT (Appeal) are containing contradictory statement of facts and therefore being unjust,

unfair and un lawful based on presumption and thus to be set aside and to be sent back to the AO for providing justice to the assessee.

2.1 Brief facts in this case are that there was an information that the assessee had purchased Plot No. 141, Situated Nirman Nagar E Block, Ajmer Road,, Jaipur at Rs.20,00,000/- and also paid stamp duty charges of Rs. 1,00,000/- totaling to Rs. 21,00,000/-, which was registered before the Sub- Registrar VII. Jaipur on 22-10-2010. As per the office records of the Department, it was noticed that the assessee had not filed his return of income for the A.Y. 2011-12 u/s 139(1) of the Income-tax Act, 1961 for which Notice u/s 148 was issued to assessee on 23.03.2018 after recording reasons for escapement of income in writing after approval/sanction of the competent Authority, which was duly served upon the assessee. It is also noted from the assessment order that since the assessee has not complied with the notices, despite ample opportunities provided to him as above, therefore , the AO has no other alternative except to finalize the case ex-parte u/s 144 of Income-tax Act, 1961 i.e. best judgment assessment on the basis of material available on record and merits of the case. In this case, the assessee had purchased Plot No.141, Situated at Nirman Nagar, E Block, Ajmer Road, Jaipur at Rs.20,00,000/- and also paid stamp duty charges of Rs. 1,00,000/- totaling to Rs21,00,000/- which was registered before the Sub-Registrar-VII, Jaipur on 22-10-2010. Since, the assessee

offered no explanation about the investment made in property therefore, the same was treated as unexplained investment in property by the AO. Thus, the amount of Rs 21,00,000/- was treated as income of the assessee and added back to the total taxable income of assessee u/s 69 of the I.T. Act, 1961 by the AO.

2.2 Being aggrieved by the order of the Id. CIT(A), the assessee carried the matter before the Id. CIT(A) who dismissed the appeal of the assessee that there was no details forthcoming from the taxpayer during scrutiny or appeal proceedings. The relevant observation of the Id.CIT(A) is as under:-

“VIII.....There is no details forthcoming from the taxpayer during scrutiny or appeal proceedings, no bank statement evidencing payment towards investment, no drawls from bank, no part wise accounts on investment. Taxpayers case is a classic case where a R/I was filed declaring income of Rs 5710. The return was accompanied with Balance Sheet in which the investment made in the land purchased at Nirman Nagar, Ajmer Road, Jaipur, for Rs.21,00,000/- was disclosed. The taxpayer has raised the issue of reopening, it is clarified that the B/s filed by the assessee along with the R/I had reason for reopening i.e. Investment in immovable property. But the taxpayer failed to disclose the nature and source of investments. Nor did the taxpayer had income commensurate with such investment. The case was posted during appeal proceedings on 16/8/2023. The taxpayer could not explain satisfactorily the nature and source of investments with documentary evidences Considering the facts of the case and the ratio decidendi of the decisions cited above, Rs 21,00,000 is treated as undisclosed income u/s 69. Addition of Rs 21,00,000 is upheld.

IX. In the result the appeal is dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee filed the written submission alongwith paper book with the prayer that the matter be set aside and send back to the AO for providing justice to the assessee

2.4 On the other hand, the ld. DR relied upon the order of the ld CIT(A).

2.5 We have heard both the parties and perused the materials available on record. It is noticed that that the AO made an addition of Rs.21.00 lacs u/s 69 of the Act in the hands of the assessee for not offering the explanation about the investment made in the property and the ld. CIT(A) has also confirmed the action of the AO for not providing details by the assessee during scrutiny and appeal proceedings. In the appellate proceedings before us, the ld. AR of the assessee has filed the written submission alongwith paper book praying that one more chance may be given to contest the case before the AO and thus restore the matter to the file of the AO as the assessee was deprived off to contest the case before the AO. In view of the prayer that the assessee should be given one more chance to contest the case before the AO for which the Bench awards cost of Rs.2,000/- and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the AO for proof and thus the appeal of the assessee is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, 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.

3.5 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.

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

Order pronounced in the open court on 06 /02/2024.

Sd/-
(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/02/2024

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Radhey Shyam Yadav, Jaipur
2. प्रत्यर्था / The Respondent- The ITO , Ward -7(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 814/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar