

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: G : DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.2822 & 2823/Del/2023
Assessment Year: 2009-10

Seema Gupta,
156, Kishan Pura,
Baghpat Road,
Transport Nagar,
Meerut (UP) – 250 002.

Vs ITO,
Ward 2(5),
Meerut.

PAN: BKAPG2049G

(Appellant)

(Respondent)

Assessee by : Shri Rohit Aggarwal, CA
Revenue by : Shri Shyam Singh, Sr. DR

Date of Hearing : 07.02.2024
Date of Pronouncement : 16.02.2024

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the assessee against the orders dated 27.07.2023 of the Commissioner of Income-tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeals No.CIT(A), Meerut/10178/2019-20 and No.CIT(A), Meerut/10179/2019-20 arising out of the appeals before it against the orders dated 26.12.2016 and 23.06.2017 passed u/s 144/148 and 271(1)(c) respectively

of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward 2(3), Meerut (hereinafter referred to as the Ld. AO).

2. Heard and perused the record.

2.1 It is pointed out that there is a delay in filing the appeal of ten days for which an application for condonation of the delay is filed. The assessee is a housewife aged 52 years and, thus, the delay not being for a substantial period is condoned.

3. The case of the assessee was reopened u/s 147/148 of the Act on the basis of AIR information of the assessee purchasing an immovable property on 26.02.2009 for an amount of Rs.63,85,100/-. To verify the source of investment made in property, notice was issued u/s 148 followed by notice u/s 142(1) of the Act. However, no response was received by the ld. AO. So, an addition of Rs.63,85,100/- was made u/s 68 of the Act. The ld.CIT(A) has confirmed the same to the extent of Rs.11,48,016/- while taking into consideration the fact that the assessee had 1/6 share only in this property. The assessee is in appeal raising the following grounds:-

"1. That the Ld. CIT(A) has erred in law and the facts of the case by upholding the assessment order under appeal, wrongly deciding ground no.2 of appeal memo in which legality of the assessment order has been challenged, for having been based on borrowed satisfaction taken from AIR information without any independent application of mind by the Ld. A.O.

2. That he Ld CIT(A) has erred in law and the facts of the case by changing the section of the addition under appeal from Section 68 of the Act, as invoked by the Ld. A.O. in the assessment order to Section 69 of the Act.

3. *That the Ld. CIT (Appeals), NFAC, has erred in law, as well as on the facts of the case by confirming the addition of Rs.11,48,016/- u/s 68 of the I.T. Act, 1961, as no books of accounts have been maintained by the appellant and, therefore, no unexplained cash credit could be said to have been found recorded therein for making addition u/s 68 of the Act.*

4. *That the confirmation of addition of Rs.11,48,016/- u/s 69 of Act, as unexplained investment, is unjust, illegal and in any case, is highly excessive in the absence of any unexplained source of income brought on record and as such the impugned investment ought to have been treated, as explained out of past savings and accumulations.*

5. *That the appellant respectfully craves leave to add alter omit or substitute any or all of the above grounds of appeal at any time before or at the time of hearing of appeal to enable your good self to decide the appeal in accordance with law.”*

4. The Id. AR has primarily argued that reopening is bad in law as there is no application of mind independently by the Id. AO because, admittedly, the sale deed is not in favour of the assessee alone, but, the assessee is a co-sharer with five other persons and there was no investment of Rs.68,88,100/- by the assessee alone. The Id. AR has relied the order dated 16.01.2020 in ITA No.6754/Del/2018 for AY 2009-10 in case of Priyanka Garg who was also co-sharer to submit that in her case, the coordinate Bench has taken note of the mechanical reopening and has set aside the same for non-application of mind.

4.1 The Id. DR has, however, defended the reopening submitting that there was tangible material in the form of information and at that stage the total sale consideration of the sale deed was rightly found to be of the assessee.

5. In regard to **ground No.1**, it comes up that in the copy of sale deed available at pages No.8 to 28 of the paper book, the sale deed is shown to be in

favour of six women. There is specific reference to the fact that as all the vendees were women so there is a relaxation in regard to the stamp duty paid. The Id. AO seems to have not at all taken the sale deed into consideration at the time of reopening to understand as to what was the extent of interest of the assessee in the alleged purchase. Although a consolidated amount is shown to have been paid, but, once there are six different co-sharers, the presumption would be that each co-sharer has contributed her part of the sale consideration. In that case, the reasons as recorded in the reopening are factually incorrect. Further, it is also reflecting on the decision making process of the Id. AO that he relied the information without any independent examination of the same. The coordinate Bench in the case of co-sharer had examined these aspects holding the reopening to be bad and we concur to the same. Thus, ground No.1 is allowed. The other grounds are rendered academic. The appeal of the assessee is allowed.

6. Since the appeal on merits of addition, which was the basis on which penalty has been imposed, has been allowed, the penalty imposed does not survive. Hence, ITA No.2823/Del/2023 is also allowed. Penalty order is quashed.

Order pronounced in the open court on 16.02.2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated: 16th February, 2024.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi