

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

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

आयकर अपील सं./ITA No. 17/JPR/2024
निर्धारण वर्ष/Assessment Years :2012-13

Babulal Sharma Hathoj, Kalwar Road, Jaipur-302012.	बनाम Vs.	ITO, Ward-3(3), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AXBPS 9458 A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assesseeby : Shri Vijay Gupta (CA) &
Shri Apeksha Kalra (Adv.)
राजस्व की ओर से/ Revenue by: Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 14/02/2024
उदघोषणा की तारीख/Date of Pronouncement: 29/02/2024

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assesseeis arising out of the order of the Id. CIT(A), National Faceless Appeal Centre, Delhi dated 20.11.2023 [here in after "CIT(A)/NFAC"] for assessment year 2012-13, which in turn arise from the order dated 22.11.2019 passed under section 144/147 of the Income Tax Act, 1961 (here in after "Act") by the Income Tax Officer, Ward-3(3), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

"1. Without prejudice to the case, in the facts and circumstances of the case the reason to belief has been framed and notice u/s 148 issued by the Ld. A.O. Ward-3(1) which is not jurisdictional A.O. in our case. In accordance to settled law, the reasons to be framed only by jurisdictional assessing officer and not any other assessing officer and issuance of notice is mandatory. Thus, the notice issued by the Ld. AO and the assessment proceedings concluded thereafter by the jurisdictional AO is illegal and non-curable u/s-292BB of the Income Tax Act, 1961.

2. Without prejudice to the case, on the facts and circumstances of the case the Ld. A.O. grossly erred in making addition of Rs.11,02,870/- without disposing the objection in accordance to decision made by Apex court in the case of GKN Driveshaft (1) Limited and without providing reasonable opportunity of being heard. The action of the Ld. A.O. is illegal and deserves to be quashed or set aside.

3. Without prejudice to the case, in the facts and circumstances of the case the learned A.O. has erred in holding the mistake of non-issuance of notice u/s 143(2) before completion of assessment u/s 144 as non-curable u/s 292BB of the Income Tax Act, 1961.

4. The appellant craves the right to add, delete, amend or abandon any of the ground of appeal either before or at the time of hearing of appeal."

2.1 The Id. AR of the assessee has also raised additional ground of appeal and the same is reproduced here in below :-

"1. On the facts and circumstances of the case the reason to belief has been framed and notice u/s 148 issued by the Ld. A.O. Ward-3(1) which was not jurisdictional A.O. In accordance to the law, framing of the reasons to belief and issuance of notice u/s 148 must be done by the jurisdictional assessing officer. Therefore, the notice issued u/s 148 by Ld. A.O. ward-3(1), Jaipur is illegal and deserves to be quashed and The Ld. A.O. ward-3(3) without issuing the fresh notice u/s 148 completed the assessment proceedings is also illegal and non-curable defect u/s-292BB of the Income Tax Act, 1961, therefore the action of

both the Ld. A.O.'s was not in accordance to income tax law and therefore deserves to be quashed or set aside.

2. Without prejudice to above, On the facts and circumstances of the case the aforesaid matter be restored before the Ld. A.O. so that the assessee gets the opportunity of being heard to represent his case. As during the assessment proceedings, the assessee did not get fair chance to represent his case before the Ld. AO even after filing of ITR u/s 148 and repeatedly requesting the reasons for reopening the assessment though there was challenge of jurisdiction too.”

3. Succinctly, the fact as culled out from the records is that as per information available with the Department, the assessee has sold two immovable properties and the Sub-Registrar-III, Jaipur adopted value for purpose of stamp duty purpose at Rs. 11,02,870/- (5,51,435+5,51,435) during the F.Y. 2011-12 relevant to AY 2012-13. The assessee has not filed his return of income for A.Y. 2012-13 nor any reply furnished in response to letter issued u/s 133(6) of the I.T. Act. Therefore, the tax liability on the capital gain could not be verified / assessed. Accordingly, a notice u/s 148 was issued on 29.03.2019 by the ITO, Ward-3(1), Jaipur, after taking prior approval from the competent authority. In response to notice issued, the assessee has not filed his return of income. Due to change of incumbent, a notice u/s 142(1) alongwith questionnaire was issued on 17.06.2019, which was served to the assessee on 25.06.2019 by

hand. On the given date no body attended nor filed any submission. As assessee has neither filed return of income for the A.Y. 2012-13, in response to notice issued u/s 148, nor any written reply furnished in response to notice issued u/s 142(1). Therefore, in these circumstances a show cause was issued to the assessee on 01.08.2019 and served to the assessee on 01.08.2019 by hand, further final show cause was issued on 12.10 2019. The Id. AO further observed that on the given date nobody attended nor filed written submission. No return of income was filed in response to notice issued u/s 148. This shows that the assessee is not interested to furnish the return and explanation the transaction. As the assessment was getting time barred & sufficient opportunities were already provided to the assessee, the Id. AO has no option left but to complete the assessment on the basis of material available on record.

4. During the year under consideration the assessee has sold two immoveable properties for total sales consideration of Rs. 11,02,870/- (5,51,435 each)/- 1st situated at 126, North Part, Balaji Vihar IInd Kalwar Road, Govindpura, Jaipur, 2nd situated at 126 A, North Part, Balaji Vihar IInd Kalwar Road, Govindpura, Jaipur. No evidence of cost of acquisition made available therefore, in absence of cost of acquisition no deduction is

can be granted or allowable on account of indexed cost of acquisition. Considering the above, the total sale consideration amounting to Rs.11,02,870/- adopted by the Sub-registrar is treated as long term capital gain of the assessee and added to the total income of the assessee.

5. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that notices were issued on 12.01.2021, 22.12.2021, 06.01.2022, 08.02.2022, 06.09.2022 & 01.11.2023 except asking for adjournment on 20.07.2022, 24.01.2022, 03.08.2022, 24.08.2022 & 16.10.2023 requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued by the Id. CIT(A) but he has dismissed the appeal of the assessee ex-parte order wherein the Id. CIT(A) has held that:-

“6. DECISION: I have gone through and duly considered the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant didn't furnish satisfactory documentary evidence to explain his state of affairs during the assessment proceedings of A.Y.2012-13 .

During the appellate proceedings, the appellant has not complied properly to the notices issued nor filed any written submission. In absence of the written

submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. If the appellant claims that the assessment order was objectionable it should have provided supporting arguments of evidences. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. I am of the view that the government cannot waste its own resources in time and money by providing endless opportunities to pursue taxpayers their own appeals, especially when numbers of pending appeals are high. The more opportunities to a particular taxpayer are always at the cost of denying opportunity to other taxpayer of getting his/her appeal heard early. Therefore, it is assumed that the appellant is not interested in pursuing its own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

In the case of Anil Goel Vs CIT, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:-

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 ITR 5771, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the

Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisonal authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisonal authority."

Accordingly, I agree with the reasons given by the AO and confirm his action of assessing total income of the appellant at Rs. 11,02,870/- on account of long-term capital gain. The grounds of appeal are hereby dismissed."

6. Feeling dissatisfied from the order of the Id. CIT (A) the assessee has preferred this appeal before this tribunal on the grounds as reiterated in para 2 and 2.1 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is kept on record.

7. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard and if given a chance the assessee has a hope to reduce his liability substantially and in the interest of justice since the sale consideration as whole is added and the assessee being small tax payer residing in a village is not familiar with the faceless regime being residing in a Village. Thus, the assessee may be provided

one more opportunity to advance his arguments/submissions on merits in the interest of equity and justice. The Id. AR of the assessee also submitted that the finding of the Id AO that the assessee has not filed the return is not correct the assessee has filed the return in response to the notice issued u/s. 148 of the Act on 25.11.2019 and also filed the online reasons recorded for the re-opening in view response no notice ID 100018089292. Thus, the finding recorded by the Id. AO is incorrect and he has passed the order without taking into the cognizance of the submission and the ITR already on record.

8. Per contra, the Id. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but as per the records the assessee has not responded to the notices.

9. We have heard both the parties and perused the materials available on record. The Bench noted that the fact related to this case is that the notice u/s 148 of the Act was issued by ITO, Ward-3(3), Jaipur on 12.10.2019 before that a notice u/s 148 dated 29.03.2019 was issued by ITO, Ward- 3(1), Jaipur. The assessee in response to notice u/s 148 of the Act on 25.11.2019 wherein the assessee has filed a details of cost and

deduction claimed u/s 54 of the Act, the assessee in the online module in response to notice ID 100018089292 the request after filing the return of income that the reasons recorded for reopening in accordance with the decision of Hon'ble Apex Court in case of GKN Driveshafts reason be provided. But simultaneously the Bench noted that the assessment order in question and under attack is passed u/s 144 of the Act and there is no mentioned about the filing of ITR and asking the reasons recorded for reopening. The assessee in support of this contention has filed an affidavit declaring the stated fact that he has filed return of income and asking for reasons recorded for reopening the assessment twice which were not provided and his return of income was not considered. The Bench also noted that the order of the Id. CIT(A) has simply confirmed the view of the Id. AO without discussing the merit of the assessee, though the assessee has raised that they have not provided the reasons recorded for reopening assessment. Looking to this facet of the facts on record duly supported by an affidavit and the same has not been controverted by the Id. DR. Thus, the Bench is of the view that there are merits in the fact of the case and the assessee needs to be heard on merits as he has filed his return of income in response to notice u/s 148 of the Act. Since the order of the Assessing Officer is without discussing the merit of the case, we feel it

deem to restore the matter back to the file of the Id. AO who will decide the case in the interest of justice and in accordance with law. With these observation the appeal of the assessee is allowed for statistical purpose.

10. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. 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 Id. 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 29/02/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/02/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Babulal Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(3), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 17/JPR/2024)

आदेशानुसार / By order,
सहायक पंजीकार / Asst. Registrar