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

डा॰ 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. 56/JPR/2024
निर्धारण वर्ष/Assessment Years : 2016-17

Hari Narayan Meena 37, Meeno Ki Dhani, Ward-12, PO Asarpura, Mansarowar, Tehsil Sanganer, Jaipur.	बनाम Vs.	Income-tax Officer, Ward-2(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APDPM7428L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashish Sharma (Adv.)
राजस्व की ओर से/ Revenue by : Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 29/02/2024
उदघोषणा की तारीख/Date of Pronouncement : 05/03/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 21.09.2023 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2016-17, which in turn arise from the order dated 24.12.2018 passed under section 143(3) of the Income Tax Act, [Here in after referred as "Act"] by the AO.

2.1 At the outset of hearing, the Bench observed that there is delay of 60 days in filing of the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers and the assessee to this effect also filed an affidavit :-

> "1. That the impugned order passed by the Commissioner of Income-tax (Appeals) was passed and uploaded on 21/9/2023. The appeal is thus delayed by 120 days.
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> 2. That the assessee had filed an appeal before Commissioner of Income-tax (Appeals) which was being handled by the earlier authorized representative and the information and details of the case had been provided to the assessee recently only.
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> 3. That the assessee is only villager and has no access to email or other online mode through which he could have known about the proceedings in the appeal and the order passed by the learned Commissioner of Income-tax(Appeals), NFAC in the appeal of the assessee.
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> 4. That the fact of order being passed by the Commissioner of Income-tax (Appeals), NFAC came to the knowledge of assessee only when demand was persued by the officials of the department.
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> 5. That furthermore the assessee had filed an application before the Commissioner of income- tax Appeals) for rectification of impugned order on 23/9/2023 stating therein that a fresh assessment order had been passed in the case of the assessee in respect of same assessment year and on the same set of facts and therefore the first assessment order impugned therein before the Commissioner of Income-tax(Appeals), NFAC had become infructuous. The original assessment order therefore deserves to be quashed an set-aside.
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> 6. That however, to utter dismay of the assessee no order had been passed by the Commissioner of Income-tax(Appeals), NFAC. The assessee had therefore preferred this appeal before this Hon'ble Tribunal after waiting for rectification of impugned order dated 21/9/2023.

7. That the balance of convenience lies in favour of the assesssee and assesseee has all hope that the demand raised by the impugned assessment order will be nullified by deletion of the additions made by the Assessing Officer. It is further submitted that refusing to condone delay will result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

8. That it is settled law when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

9. That the delay caused was bonafide and not intentional

It is therefore prayed that the delay of 120 days caused in filing the appeal may kindly be condoned."

To this effect, the assessee has filed an affidavit as to the condonation of delay in filing the appeal.

2.2 The ld. AR of the assessee appearing on behalf of the assessee submitted that the assessee is serious on the duties casted upon him but the is on account of the of fact that the assessee is only villager and has no access to email or other online mode through which he could have know about the proceedings and the reasons are beyond his control and therefore, it has attributable to the delay. Considering the various judicial precedent where in the courts has considered ignored technicality of the reasons and has considered the delay. Even the apex court in the

case of Collector, Land & Acquisition Vs. Mst. Katiji& Others 167 ITR 471(SC) directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

2.3. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay and prayed that the bench may decide the issue as deem fit and proper in the interest of justice.

2.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee is coming from the village and prayed the reasons for the delay is on account of the fact he resides in the village and has not frequent access to the email. The case of handled earlier by the local counsel and the present appeal is filed in consultation of the other counsel all these process and coordination has caused the delay. In support of the delay assessee filed an affidavit praying for condonation of delay of 60 days and has also explained that the reasons were beyond his control. Considering the overall aspect of the matter we consider the reasons advanced by the assessee and condone the

delay in bringing this appeal by the assessee and same is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. The assessee has marched the present appeal on the following grounds:-

"1. The A.O. erred in ignoring the evidence on record, even while observing it, and disallowing the claimed expenses despite the evidence on record and thereby, computing the capital gain at Rs. 1,49,25,590/-. In the fact and circumstances, the disallowances are unsustainable and needs to be deleted.

2. The AO erred reopening the assessment dated 24.12.2018, even while appeal again it was pending, on the same issues as considered for reopening and in failing to drop the proceedings for reassessment even though fully aware of the related facts. On the facts and in the circumstances of the appellant, the learned AO has legally and factually erred in making in repeating the disallowances for computing the capital gains.

3. The AO erred in not following principal of the natural justice, by failing to allow personal hearing as requested and failing to apply mind to the facts and in relying on "Borrowed opinion" without recording its own findings on the merits/ legality of the case thereby, the reassessment order is bad-in-law.

4. The ld. CIT(A) erred in confirming the disallowance on a distorted understanding of the validity of agreement and in ignoring the additional evidence filed for which apparently, no remand report was also sought from the AO.

5. The ld. CIT(A) erred in failing to pass rectification order u/s 154 in respect of appellant application dated 23.09.2023 pointing out that the appeal order dated 21.09.2023 passed by him was infructuous since, the assessment order dated 24.12.2018, adjudicated by him was no

longer in existence in view of the reopened proceedings u/s 148 dated 31.03.2021.

6. The appellant craves your indulgence to amend, delete, modify, withdraw, add anyone of the grounds of appeal before or during the hearing before your honour."

4. The fact as culled out from the record is that the assessee filed his return of income on 30.03.2017 declaring total income of Rs. 30,590/-, which was processed u/s 143(1). The case of the assessee was selected for limited scrutiny under CASS. Notice u/s 143(2) was issued on 26.09.2017 and served upon the assessee. Thereafter, a notice u/s 142(1) has been issued along with questionnaire through ITBA/E mail on 24.07.2018 fixing the date of hearing on 08.08.2018. In compliance to this, assessee filed a letter and requesting adjournment. Subsequently, again a fresh notice u/s 142(1) has been issued along with questionnaire through ITBA/E mail on 05.12.2018 fixing the date of hearing on 10.12.2018. In response to this, the assessee filed a reply along with copy of return of income, computation of income, sale and purchase deed of the property sold during the financial year concerned etc. The document submitted has been checked and placed on record. In the computation of capital gain submitted by

the assessee, the assessee claimed certain expenses toward cost of acquisition for purchase of property. Accordingly, a notice u/s 142(1) of the Act has been issued on 19.12.2018 fixing the date of hearing on 21.12.2018. Conclusively, the AO made addition in the hands of the assessee by holding as under:-

> *"6.1 Disallowance of claim toward JDA expenses: In the computation of capital gain, assessee has claimed a sum of Rs 60 lakh for JDA expenses. In reply to the notice u/s 142(1) of the act, assessee has submitted that he has has incurred incurr a total sum of Rs 60 lakh towards the JDA expenses in order to seythe above said agriculturat land to be converted in to 90A which is clearly state in the e sale deva of above mentioned property. The reply of the assessee is considered but not it found conclusive. The sesee has not submitted any challan/receipt of payment made towards JDA expenses. In view of the above, any payment made towards JDA expenses is not ascertainable. Hence, the same is disallowed and capital gain/ cost of acquisition is recomputed accordingly.*
> *6.2. Disallowance of claim toward additional expenses: In the computation of capital gain, assessee has claimed a sum of Rs 88.95 lakh for additional expenses. In reply to the notice u/s 142(1) of the act, assessee has submitted that a dispute was arose between assessee and Shri Kajod Meena in respect to the ownership of the above said land covered by the Khasra no. 217,218,219,220,223. After having understood the matter between the said parties to the dispute, it was mutually decided by the said parties to settle the dispute in a peaceful manner. The dispute was settle down between the parties to the tune of Rs 1,25,00,000.*
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> *The reply of the assessee is considered but not found acceptable. As per the Rajinama given by the assessee in his reply, the assessee was not a party in the dispute. It was the dispute between Kajodmal Meena and the previous owner (Moolchand & party) of the property from whom assessee has purchased the property. In Rajinama submitted by the assessee, it is clearly mentioned that Moolchand & party will pay a sum of*

Rs 1.25 crore to Shri Kajodmal Meena, not the assesse. Further as per the purchase deed of the property between Moolchand & Party and the assessee, it is categorically mentioned that any expense toward dispute in title of land will be borne by the seller of the property i.e Moolchand & Party. The purchase deed between Moolchand and party & the assessee is a legal contract between then. The contract is also registered with sub registrar. Both the seller and purchaser should bind to act as per the purchase agreement. Any deviation from the term of the contract should not allowable under the law. As per the purchase deed, assessee should not pay any amount to Kajodmal Meena. If any dispute arise after purchase of the property between Moolchand & Party and Kajodmal Meena, then it is the liability of Moolchand & party to pay the settlement amount out of the sale proceed (Rs. 1,68,00,000) received from the asseseee,

In view of the above, the claim of Rs 88.95 lakh towards additional expenses is not allowable. Hence, the same is disallowed and capital gain/ cost of acquisition is recomputed accordingly.

7. In view of the above discussion, capital gain is recomputed as under:

1. Net Sale consideration after transfer expenses: Rs 3,28,18,190
2. Cost of acquisition Rs 168,00,000 (Value of land)
3. Registry expenses: Rs10,92,600
4. Total cost of acquisition -Rs 168000004+ Rs.1092600= Rs 17892600
5. Taxable Capital gain- (Rs 3,28,18,190- Rs 17892600) = Rs. 1,49,25,590
As the assessee has already declared a sum of Rs 30590 under the short term capital gain in his ITR, therefore a sum of Rs 14895000 (Rs 14925590- Rs 30590) is added to the total income of the assessee under the head income from short term capital gain."

5. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

> "The allowable expenses for computation of STCG are Cost of acquisition, cost of improvement, registration expenses, stamp duty. The provisions of the Act which deals with these are given below -
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> [Mode of computation. 48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely: -
>
> 1. expenditure incurred wholly and exclusively in connection with such transfer
>
> 2. the cost of acquisition of the asset and the cost of any improvement thereto:
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> 7.2 The taxpayer has wrongly calculated STCG by including additional expenses of Rs 88.95 lakhs and JDA expenses of Rs 60 lakhs only. Expenses that are directly related to transfer of an asset can only be considered for claim under STCG. Any expenditure that is incurred solely and necessarily in relation to transfer of a capital asset can be deducted from the full value of consideration. This means that expenses that only expenses that are directly connected to the transfer of the asset can be claimed as a deduction.
>
> 7.3 It is important to note that the expenditure must be wholly and exclusively in connection with the transfer. This means that even if a small element of the expenditure is unrelated to the transfer, the entire amount cannot be claimed as a deduction. The end use of the expenditure must be exclusively for the purpose of the transfer of the capital asset. Vague claims regarding the purpose of expenditure will not be accepted as a basis for deduction. Wholly refers to the entire amount of expenditure while exclusively refer to the motive, objective and purpose of the expenditure. These two words give the taxing

authority jurisdiction to determine whether the expenditure was incurred in connection with the transfer. Genuine or deemed to be sham will not be allowed as a deduction. The courts or the Tribunal cannot question the commercial expediency or reasonableness of the expenditure. Reasonableness includes - expenditure which should not have been incurred as well as unreasonably large. The preconditions are -

` 1. expenditure should be genuine.

2. Factually expended.

3. Paid to a third party.

The expenditure should be -

1. Wholly in connection with transfer.

2. Exclusive element of expenditure that is used for the transfer of an asset.

3. Must be genuine and connected to the transfer.

Cost of acquisition means any capital expense at the time of acquiring capital asset under transfer i.e to include the purchase price, expenses incurred upto acquiring date in the form of registration, storage etc.

7.4 Here in the case of the taxpayer, cost of expenditure includes - Cost of acquisition of the land which is given as 168000000. Apart from that taxpayer has claimed JDA expenses and additional expenses @ Rs 88.95 lakhs. JDA expenses is nothing but joint development expenses incurred by the taxpayer. this is paid to the developer of the property. JDA also includes the taxpayer as the owner of the land. Taxpayer is one of the party to the Joint Development Agreement, since he has contributed land. In some instances the assessee would also be eligible for a flat or two depending on the facts of the case. Since COA includes cost of land acquired while arriving at the STCG, no separate claim of JDA expenses can be made. There is no explanation given on the additional expenses incurred. The amount claimed as JDA expenses and additional expenses put together is hence disallowed, since COA is restricted by expenses which are connected with transfer and does not include any other expense. JDA expenses in this case are incurred for converting the land into non agricultural land. Since cost for acquiring the land as per the sale deed is already allowed, the same cannot be claimed again, Assessee did not provide challan for payment of JDA expenses and hence it is

unascertainable. The additional expenses is nothing but expenditure which was incurred by Moolchand & Party in the dispute between Kajodmal Meena and Moolchand & Party. Assessee is not a party to the dispute. In the purchase deed of the property between Mool Chand and Party and assessee, it is categorically mentioned that any expense towards dispute of title of the land will be borne by the seller of the property ie MoolChand and Party. Considering these facts the additional expenses cannot be claimed while working the Short Term Capital gains. Hence the claim of the assessee for the JDA expenses and additional expenses stands disallowed. The addition of Rs 14895000 is upheld.

8.0 In the result the appeal is dismissed."

6. Aggrieved from the order of the ld. CIT(A) the assessee has preferred this appeal before this tribunal on the grounds as reiterated in para 3 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

"1. The Return filed at Income of Rs. 30,590/- was selected for limited scrutiny under CASS to examine and verify the sale of agricultural land for Rs.3,51,00,000/- and assessed u/s 143(3) on 24.12.2018 at the Income of Rs. 1,49,25,590/-, by ITO, Ward 2(5), Jaipur.

2. The AO disallowed the claim of JDA (Jaipur Development Authority) expenses of Rs. 60 Lakhs and the payment of Rs. 88.95 Lakhs made to one Kajod Meena for settling dispute regarding the ownership of this land sold by the assessee. These disallowances were appealed against, on 21.01.2019, which was decided by NFAC on 21.09.2023, in which the disallowances were confirmed.

3. Sir, notice u/s 148 and reasons for reopening the assessment for A.Y. 2016-17 dated 31.03.2021 was issued/recorded by ITO Ward-1(2), Jaipur. Later, ITO Ward-7(2), Jaipur, issued FIVE notices u/s 142(1) dated 17.02.2022 for reply by 23.02.2022 and 04.03.2022, but, but the

time given for filing reply was different in these notices. The FAO, NFAC, also issued two notices u/s 142(1) dated 07.03.2022 and 09.03.2022. for reply by 14.03.2022. A gist of these notices is enclosed as Annexure-A.

4. Nevertheless, the FAO (Faceless Assessing Officer), was informed vide replies dated 22.02.2022 and 12.03.2022 that the assessment for A.Y. 2016-17 has already been framed under section 143(3) on 24.12.2018, on the identical issues and appeal against it is pending. before CIT(A), NFAC. Therefore, the reopening should be dropped.

5. The A.O. NFAC accepted this fact of pending appeal on the same issue in the penultimate para of an order vide order u/s 147 r.w.s. 144 r.w.s. 1448 of the Act, dated 24.3.2022 and observed as under:-

'On the basis of submission it is found that the AO had already accumulated the sale consideration amount of Rs.3,51,00,000/- in his Assessment order u/s 143(3) dated 24.12.2018 for the Asstt. Year 2016 and Rs. 1,49,25,590/- had been added income under the had Long Term Capital Gain. Hence the reply of the assessee has found satisfactory'.

6. Yet, the FAO again passed assessment order u/s 147 r.w.s. 144 r.w.s. 1448 of the Act on 24.03.2022, making the identical disallowances. A copy of this order is enclosed as Annexure-B. The assessee filed appeal on 08.04.2022, against this order dated 24.03.2022, which is pending for disposal. A copy of this appeal is enclosed as Annexure-C.

7. Sir, the assessment order dated 24.12.2018 was reopened. Therefore, this assessment order and consequent appeal against it, filed on 21.01.2019 have also been rendered nugatory and infructuous. As such the appellate order dated 21.09.2023 is non-est.

8. This fact of the appeal having become infructuous was brought to the notice of the concerned CIT(A), Unit-III, Coimbatore, who had passed the appeal orders dated 21.09.2023, vide application u/s 154 of the Act, dated 23.09.2023, which is still pending for disposal. Copy of rectification application dated 23.09.2023 is enclosed as Annexure-D.

9. Sir, it is settled law that the same income cannot be taxed twice in the same A.Y. and demand raised twice on the same income. In the case of Urvashi Narayan vs. ITO, International Taxation, reported In 156 taxmann.com 189 (Delhi) (31.05.2023) the Hon'ble ITAT Delhi held as under:-

"Whether once an assessment order has been passed under section 143(3) in respect of any assessment year, Assessing Officer cannot tinker with that assessment, of course, he can either reopen assessment or rectify assessment order after strictly complying with

conditions of section 147 and respectively and statute does not confer any powers on Assessing Officer to elther withdraw or modify or substitute assessment order passed under section 1.3(3) with another assessment order"

10. In these facts the order passed by the CIT unit-III, Coimbatore / NFAC dated 21.09.2023 in respect of assessment u/s 143(3) dated 24.12.2018 is non-est and may please be quashed."

7. During the course of hearing the ld. AR of the assessee that in first round the case was selected under CASS and the ld. AO made the addition and the assessment order u/s. 143(3) of the Act was also passed on 24.12.2018. The assessee preferred the appeal against the said order before NFAC. In the meanwhile notice u/s. 148 of the Act was issued on 31.03.2021, the assessee informed the NeAC that the assessment has already been completed, yet the national faceless officer passed an assessment order u/s. 147 r.w.s. 144 r.w.s. 144B of the Act on 24.03.2022 making the identical disallowance. A copy of that order placed on record. The assessee informed the ld. CIT(A) that appeal filed against the original order passed u/s. 143(3) becomes infructuous. Even though the ld. CIT(A) passed the order and confirmed the demand finding of the ld. AO recorded in the order passed u/s. 143(3). The ld. AR of the assessee submitted that there cannot be two assessment order assessing the similar income.

8. Per contra, ld. DR did not object about the facts placed on record and prayed that this fact of passing the two order for the same assessee, having same assessment year needs to be examined and therefore, he submitted that the matter be remanded back to the ld. AO to examine this issue.

9. We have heard both the parties and perused the materials available on record. We find force in the contention raised by the assessee that the same income cannot be taxed twice in the same assessment year of the same assessee and demand raised twice on the same income needs to be examined on fact by the ld. AO as the same has been brought on record by a two separate order one passed u/s. 143(3) of the Act dated 24.12.2018 and one passed u/s. 147 r.w.s. 144 r.ws. 144 B of the Act dated 24.03.2022. The ld. AR of the assessee that he has placed on record certain additional evidence in the first round of appeal which has not been considered by the ld. AO. Since we are set aside the assessment order passed by the assessing officer for the same assessment year to the file of the ld. AO, the ld. AO will decide the issue based on the all the contentions raised by the assessee. Considering these peculiar facts of the case, the ld. Jurisdictional

Assessing Officer is directed to examine the contention of the assessee and pass suitable order a fresh after giving sufficient opportunity of being heard to the assessee. Based on these set of facts we hold to remand back the matter to the file of the ld. AO who will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. JAO.

10. 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 filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05/03/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठौड़ कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judcial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/03/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Hari Narayan Meena, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(5), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 56/JPR/2024}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar