

आयकर अपीलिय 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. 16/JP/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Rajeshwari Devi Sharma 11/133, Malviya Nagar, Ward No. 25 Jaipur	बनाम Vs.	The ITO Ward 1(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DGLPS 1167 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None

राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 07/02/2024

उदघोषणा की तारीख / Date of Pronouncement: 13 /02/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 20-10-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2013-14 wherein the assessee has raised the following grounds of appeal.

“(a). On the facts and in the circumstances of the case the Ld. CIT(A) was not justified in confirming addition of ₹13,83,200/-, made by AO, on account of investment in property out of reserved funds as alleged unexplained Investment.

(b) On the facts and in the circumstances of the case the Ld. CIT(A) erred, similar to the AO, in not allowing the benefit of fund received by her husband from his retirement benefits.

© On the facts and in the circumstances of the case and in law the Ld. CIT(A) was not justified as it was contended that the A.O. passed the Assessment Order based on no evidence or on irrelevant evidence and on surmises and conjectures and the facts of the case stated in the assessment order are contrary to records and is against the doctrine of "audi alteram partem", a principle of natural justice. Therefore, order of Ld. CIT(A), in reference to the Assessment Order of AO u/s 144 read with section 147, is void-ab-initio as well as bad in law and deserves to be annulled.

(d) On the Facts and in the circumstances of the case the Ld. CIT(A) was not justified in confirming as contended that the A.O. held the unexplained investment as purely non-genuine based on no evidence or on irrelevant evidence, and on surmises and conjectures.

2.1 None appeared on behalf of the assessee when the case of the assessee was called out for hearing. The Bench felt it appropriate to decide the appeal of the assessee ex-parte based on the materials available on record.

2.2 Brief facts of the case in short are that the assessee has not filed her original return of income for the A.Y. 2013-14. Later on as per information available with the Department, the assessee had made investment of Rs. 13,83,200/- in purchase of agriculture land situated at Village- Banshkhaw, Teshil-Bassi, Distt. Japur during the assessment year 2013-14 in cash which includes stamp duty of

Rs.53,200/-. The Department noted that in spite of huge investment, the assessee did not file her original return of income for the relevant period. Accordingly, notice u/s 148 of the Act was issued on 31-12-2015 after recording proper reasons and satisfaction of competent authority which was served upon the assessee. The assessee in response to notice u/s 148 of the Act made no compliance of it. Subsequently, notice u/s 142(1) alongwith questionnaire was issued on 21-10-2016 requiring certain details/information, fixed the case on 03-11-2016 and in spite of this, the assessee did not make compliance. It is also noted from the assessment order that since the assessee was not complying with the notices/ letters issued by the AO from time to time, therefore vide notice u/s 142(1) dated 11-11-2016 offered another opportunity to the assessee and further show caused her as to why her case may not be decided on the basis of the materials available on record u/s 144 of the Act, 1961 if no compliance is made till 23-11-2016. It is noted from the assessment order that the assessee is intentionally avoiding compliance to various notices/ letters issued to her from time to time. Hence, the AO had no other option except to complete the assessment u/s 144 of the Act on the basis of the materials available on record and thus made the addition of Rs.13,83,200/- in the hands of the assessee by observing as under:-

‘6. Addition on account of unexplained investment

As per information available with the department, the assessee has made investment of Rs. 13,83,200/- in purchase of agriculture land situated at Village- Banshkhaw, Tehsil- Bassi, Distt.-Jaipur during the F.Y. 2012-13 in cash which includes stamp duty of Rs. 53,200/-, During the course of assessment proceedings, the assessee filed a letter on 22.11.2016 in which it has been submitted that,

"I would like to state that my husband got retired in year 2004 and received the following:-

<i>S.No.</i>	<i>Particulars</i>	<i>Amount (In Rs.)</i>	<i>Date of receipts</i>
1.	<i>State Gratuity</i>	<i>93,715 /-</i>	<i>04.03.2004</i>
2.	<i>General Provided Fund</i>	<i>4,09,733/-</i>	<i>23.07.2004</i>
3.	<i>Leave Salary</i>	<i>1,40,316/-</i>	<i>01.05.2004</i>
4.	<i>Gratuity payment</i>	<i>2,31,528/-</i>	<i>27.05.2004</i>
5.	<i>Pension</i>	<i>1,84,640</i>	<i>27.05.2004</i>
		<i>10,59,982</i>	

The aforesaid amount was not invested anywhere before A.Y. 2013-14 and the same was invested in purchase of the agriculture land mentioned above alongwith other accumulated saving in Assessment year 2013-14."

I have considered the reply/submission of the assessee and found not satisfactory for the reason that the assessee could not file any satisfactory explanation regarding source of Rs. 13,83,200/- paid in cash against purchase of agriculture land which includes stamp duty of Rs. 53,200/-. The contention of the assessee that the investment made in agriculture land out of her husband's retirement benefits is not acceptable as the husband of the assessee got retired in the year 2004 whereas the investment made in the financial year 2012-13 i.e. after vary long time of retirement. Further, the assessee has not adduced any corroborative evidence in support of his contention. Hence, without any supporting evidence, it cannot be said that the said

investment was made out of retirement benefits of the assessee's husband. Considering the above facts and circumstances of the case, the source of Rs. 13,83,200/- are found unexplained and added to the total income of the assessee being unexplained payment. This would result an addition of Rs. 13,83,200/-.”

2.3 In first appeal the ld. CIT(A) noted that that the assessee was provided various opportunities to pursue the matter but the assessee had chosen not to attend the hearing and does not want to pursue any seriousness of the case and thus he passed ex-parte order based on the material available on record and ultimately dismissed the appeal of the assessee by observing as under:-

“6. I have carefully considered the grounds of appeal, assessment order and material available on record. Since the appellant has not furnished any submissions, this office is proceeding to decide the case based on material available on record.

6.1 In this case, the proceeding u/s 147 of the Act was initiated as per the information available with the department that the appellant has made investment of Rs. 13,83,200/- in purchase of agricultural land situated at Village-Banshkhaw, Tehsil-Bassi, Distt. Jaipur in cash during the year under consideration. The appellant did not file any return of income during the year under consideration. The proceeding u/s 147 of the Act was initiated after issuing notice u/s 148 of the Act requesting to file return of income within the prescribed time limit. Even after issuing the notice u/s 148 of the Act no return of income was filed by the appellant. As the appellant did not file any return of income the assessment proceedings in the case was finalized u/s 144 of the IT Act. The Action of the AO in finalizing the assessment proceeding u/s 144 of the Act is justified.

In response to the notices issued by the AO during the assessment proceedings, the appellant had submitted that investment

made in agricultural land out of her husband's retirement benefit. The submission of the appellant was not considered by AO as the husband of the appellant retired in the year 2004, whereas the investment in agricultural land was claimed to have been made in F.Y. 2012-13 i.e. after very long time of retirement. No corroborative evidences were filed by the appellant to substantiate her claim. Hence, investment made to the tune of Rs.13,83,200/- in cash for purchase of agricultural land remained unexplained and was added to the income of the appellant.

The appellant has taken the same stand before the appellate authority filing of appeal. It is seen that the appellant has sought for extension by two weeks in response to the notice issued by appellate authority on 30.05.2018. Later notices were issued to the appellant which has been discussed in Para 5 above. The appellant did not file any documentary evidences, written submission before the appellate authority to explain the sources of funds used for investment in the land. Hence, in the absence of any documentary evidences, written submission no relief can be granted to the appellant. Accordingly, all grounds of appeal are dismissed

7. In the result, appeal is treated as dismissed.”

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

2.5 The Bench heard the ld. DR and perused the orders of the lower authorities.

It is noticed that the ld. CIT(A) has passed the ex-parte order and thus dismissed the appeal of the assessee by *holding that the appellant did not file any documentary evidences, written submission before the appellate authority to explain the sources of funds used for investment in the land. Hence, in the absence of any documentary evidences, written submission no relief can be granted to the appellant. Accordingly, all grounds of appeal are dismissed.* The Bench further

noted that the assessee neither submitted any documentary evidence or written submission in connection with her appeal before the AO or before the Id CIT(A) to counter the same which indicates that the assessee is lethargic and not serious to pursue her case before the lower authorities in spite of various opportunities by the lower authorities. It is undisputed fact that the assessee was granted several opportunities by the AO to argue the case but the assessee remained non-cooperative and negligent in pursuing her case on the dates of hearing of the appeal 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.

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 13 /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:- 13/02/2024

*Mishra

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

1. The Appellant- Rajeshwari Devi Sharma, Jaipur
2. प्रत्यर्था / The Respondent- The ITO , Ward 1(1), 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. 16/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar