

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER
(Virtual hearing)

ITA No. 414/Ind/2023
Assessment Year: 2017-18

Shri Suresh Kumar, S/o Shri Laxman Singh Sahu, H.No.06,New Jail Road, Ratan Colony, Karond, Bhopal	<u>बनाम/</u> Vs.	Income-tax Officer, 5(3), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AYVPK 6096 P		
Assessee by	Shri Nitin Kaushik, AR	
Revenue by	Shri Harshit Bari, Sr. DR	
Date of Hearing	19.03.2024	
Date of Pronouncement	02.04.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 13.09.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 26.09.2019 passed by learned ITO, 5(3), Bhopal ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that based on an information received by department regarding cash deposits of Rs. 11,50,000/- having been made by assessee in Bank A/cs during demonetization period, the AO issued notice dated 13.03.2018 u/s 142(1) requiring the assessee to file return of income of AY 2017-18 by 31.03.2018. In response, the assessee filed return on 07.09.2019 declaring total income of Rs. 1,03,228/- and agricultural income of Rs. 2,00,000/-. The AO treated the return filed by assessee as invalid since it was filed beyond the time permitted by AO. Therefore, the AO made assessment u/s 144. While making such assessment, the AO noted that the assessee deposited a sum of Rs. 4,60,000/- (+) Rs. 6,90,000/- in two different bank a/cs, aggregating to Rs. 11,50,000/-. The AO was not convinced with the explanation made by assessee qua the source of deposits and accordingly made an addition of Rs. 11,50,000/- u/s 69A read with section 115BBE. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) deleted addition of Rs. 4,60,000/- but upheld the addition of Rs. 6,90,000/-. Still aggrieved, the assessee has come in next appeal before us.

3. The grounds raised by assessee are as under:

Original grounds in Form No. 36:

“(1) That, on the facts and in the circumstances of the case as well as law on the subject, the NFAC /Ld. CIT(A) has erred in confirming the action of AO in making addition of Rs. 6,90,000/- u/s 69A of the Act on account of unexplained money and is therefore unjust, illogical and arbitrary and deserves to be quashed.”

- (2) *It is prayed that the assessment order may please be quashed and/or addition made by the AO and confirmed by NFAC/Ld. CIT(A) may please be deleted.*

Additional grounds through a Written-Application:

“The assessment completed under section 144 of the Act by Ld. AO is without jurisdiction as no notice under section 143(2) was issued by him after 142(1) without accepting the filed return. Hence the assessment completed should be held as void ab initio.”

4. Learned Representatives of both sides are *ad idem* that the additional ground is legal in nature; goes to the root of the matter; does not call for any new evidence; and can be decided on the basis of material already held on record. Therefore, in view of the decision in *National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)*, the additional ground is admitted and taken for adjudication.

5. Since the additional ground challenges the legality of proceeding done by AO, we first take up additional ground for adjudication. Precisely, the claim of assessee is such that the AO has not issued notice u/s 143(2) to assessee before making assessment and hence the assessment is void ab initio. During hearing, on perusal of assessment-order, it is observed that the AO issued notice dated 13.03.2018 u/s 142(1) to assessee calling the assessee to file return by 31.03.2018 but the assessee did not file return by the said date, though the same was filed later on 07.09.2019. Therefore, the AO made assessment u/s 144 treating the assessee's return as invalid. When we read section 143(2), it prescribes thus:

“Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall serve on the assessee a notice”

In the present case, the return filed by assessee is held as invalid by AO since it was not filed by assessee within the time permitted in notice u/s 142(1). That means, the return filed by assessee subsequently on 07.09.2019 is neither u/s 139 nor u/s 142(1). Therefore, the requirement to issue notice u/s 143(2) does not trigger. Further, the AO has made assessment u/s 144 and not u/s 143(3), which is very much correct in term of clause (b) of sub-section 1 of section 144. Hence, the claim made by assessee in additional ground does not have any merit and rejectable. Accordingly, the additional ground is dismissed.

6. Now, we take up original grounds which are on merit. Precisely, the assessee claims that the lower-authorities are wrong in making/upholding addition of Rs. 6,90,000/- u/s 69A.

7. Ld. AR for assessee initially drew our attention to following order passed by CIT(A) upholding the addition:

“6.3.1 The 2nd deposit which was added as income was in the form of SBNs brought in bank account number 1754104000005159 with IDBI Bank to the tune of Rs. 6,90,000/-. Appellant has stated that this sum represented cash component arising from sale of an immovable property, being residential plot, in March, 2016. Thereafter, it was used as business funds in agriculture and deposited in Bank account as SBNs during demonetization. AO while adding back the amount as income u/s 69A of the Act held that considering the scale of operations, it is unlikely that these receipts were earnings from Kirana business.

*6.3.2 **Decision:** As far as property transaction made in March, 2016 is concerned, it is seen that the transaction was not disclosed by the*

appellant in the relevant year for income-tax purposes. Hence, it continued to remain undisclosed till the point this transaction was captured by the Income-tax Department in form of cash deposit in SBNs during demonetization. In this transaction, appellant received Rs. 5 lakhs in cheques and Rs. 7 lakh in cash. The ambit of section 69A covers 'income' which is not reflected in the regular books of accounts and assessee has not furnished a satisfactory explanation that the due taxes have been paid on it, then, the year in which that income is caught by the Department, the same is liable to tax u/s 69A of the Act. In this context, reliance is placed on judgment of Hon'ble P & H High Court in case of Bimal Prakash Gupta, reported in 179 ITR 613 (1989) wherein it was held that the term 'income' for purposes of section 69A of the act has a wide meaning and covers anything when resulted or brought in any gain. The intent and purpose of demonetization was exactly the same. Hence, receipts from the unreported property transaction 'in amount and form', are liable to tax as 'unexplained money' in the year they were introduced in the bank account in the form of cash deposit. Under these circumstances, addition of Rs. 6,90,000/- made by the AO u/s 69A of the Act is confirmed."

8. Then, Ld. AR carried us to Page No. 44-51 of Paper-Book where a copy of registered sale-deed dated 04.03.2016 of a plot sold by assessee is filed. Referring to Page 2 of impugned sale-deed, Ld. AR showed that the assessee sold plot for Rs. 12,00,000/- and received consideration of Rs. 5,00,000/- through banker cheque and remaining sum of Rs. 7,00,000/- in cash on 04.03.2016. Thus, Ld. AR submitted that the assessee was having the sum of Rs. 7,00,000/- received in cash on 04.03.2016 which was ultimately utilized for making deposit of Rs. 6,90,000/- in bank a/c during demonetization period (09.11.2016 to 30.12.2016). Therefore, the deposit was made from explainable source. However, the CIT(A) rejected assessee's submission precisely on the footing that the transaction of sale of plot was not disclosed by assessee in the relevant year (which would be AY 2016-17) for income-tax purposes. Ld. AR submitted that the reasoning taken by

CIT(A) is not valid and appreciable. He submitted that at present we are concerned with the source of cash-deposit of Rs. 6,90,000/- in bank a/c made during AY 2017-18 and that is very much explained from receipt of cash of Rs. 7,00,000/- from sale transaction of plot. Hence, the deposit in bank a/c cannot be said to be unexplained, therefore no addition can be made in AY 2017-18 u/s 69A. Ld. AR submitted that even if the assessee has not disclosed the sale transaction of plot in earlier AY 2016-17, that could be an issue for AY 2016-17 but certainly that cannot be a basis for upholding addition in AY 2017-18. Ld. AR submitted that once source of deposit of Rs. 6,90,000/- is explained and that is not in dispute, no addition can be made u/s 69A.

9. Per contra, Ld. DR for revenue defended the orders of lower-authorities. He submitted that the time-gap between sale of plot and deposit in bank a/c is about 8-9 months. Therefore, the assessee's liking of deposit in bank a/c with sale of plot is not credible and it is an after-thought. He submitted that the assessee has not furnished anything before AO.

10. In rejoinder, Ld. AR re-emphasized his submission that the source of deposit is clearly explained from receipt of sale-consideration of plot and that there is no way to uphold addition in AY 2017-18.

11. We have considered rival submissions of both sides and perused the material held on record. On a careful consideration, we find that the assessee has filed a registered sale-deed of plot showing receipt of cash of

Rs. 7,00,000/- as part of sale-consideration. The sale-deed is a registered document and its content cannot be denied. In fact, the CIT(A) has also accepted the sale-deed and transaction of sale without raising any objection. But the CIT(A) has gone to uphold the addition made by AO on a basis that the transaction of sale had not been disclosed in earlier AY 2016-17. In our considered view, Ld. AR is right in contending that the reasoning given by CIT(A) is not correct in as much as we are at present concerned with the source of cash-deposit in bank a/c. Once the assessee has explained the source of deposit from receipt of sale consideration of plot and the assessee's explanation cannot be negated, there is no way to make addition in AY 2017-18 u/s 69A. There may (or may not) be some other remedy for assessing the income, if any, earned by assessee from sale-transaction of plot in AY 2016-17 but certainly the addition made in AY 2017-18 by AO cannot be upheld. The plea taken by Ld. DR for revenue that there is a time-gap of almost 8-9 months in receiving cash and depositing in bank, is also not having weightage for the reasons (i) that the time gap is of certain months but there are cases wherein the judicial forums have accepted the time-gap of even 2-3 years, and (ii) it is not the case of revenue that the amount received by assessee was utilized elsewhere. Being so, we find strength in claim of assessee that no addition can be made in AY 2017-18. Needless to mention that the cash component of Rs. 7,00,000/- noted in registered sale-deed is enough to cover the cash deposit of Rs. 6,90,000/- in bank a/c and the time-gap of 8-9 months is also reasonable. In that view of

matter, we delete the addition made by lower authorities. The assessee succeeds in original grounds.

12. Resultantly, this appeal is partly allowed.

Order pronounced in open court on 02.04.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 02.04.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore