

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 258/JPR/2024
निर्धारणवर्ष / Assessment Year : 2015-16

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| Sh. Moti Singh Jodha P. No. B-11, Singh Bhoomi, Khatipur Road, Jaipur. | बनाम Vs. | ITO, Ward-1(1), Jaipur. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AGWPJ4429N | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओरसे / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओरसे / Revenue by: Shri Anoop Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 23/04/2024
उदघोषणा की तारीख / Date of Pronouncement : 23/04/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

The assessee presented this appeal on 06.03.2024. He is feeling aggrieved by the order dated 15.01.2024 passed by the Learned CIT(A), National Faceless Appeal Centre, Delhi whereby assessment order dated 27.09.2023 passed by the Assessing Officer for the assessment year 2015-16, has been upheld, and the appeal filed by the assessee has been

dismissed, while observing that there is no material on record to warrant interference in the said assessment order.

In brief, it may be mentioned that vide assessment order, net taxable income of the assessee was assessed at Rs. 70,93,950/- under section 147 read with section 144 B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and penalty proceedings under section 271(1)(c) were sought to be initiated separately, for concealment of particulars of income.

Matter pertains to purchase of land by the assessee. Land is situate in Goa.

Assessee had not filed his return of income. Department received information about purchase of the immovable property by the assessee for Rs.1,72,50,000/-. Thereupon, case was opened, after necessary approvals.

Upon notice under section 148 of the Act, the assessee filed return of income declaring total income of Rs.68,950/-. As observed in the assessment order, the ITR did not commensurate the source of funds used for purchase of the property. So, notices under section 142(1) of the Act were issued to the assessee for furnishing of documents to explain the source of funds.

The assessee furnished reply with documents such as valuation report, purchase deed, bank statement and other related financials, which

revealed that valuation report of the property, as per assessee was Rs.37,67,500/-. Since the land rate adopted by the valuer was not supported by documentary proof, said valuation report was found to be baseless. Fresh valuation report was called for from authorised government Valuation Officer, and as per said report, price of the property was Rs.70,25,000/-.

2. The assessee challenged the assessment order by way of appeal. Same stands dismissed vide impugned order.

It may be mentioned here that Learned CIT(A) has observed in the impugned order that despite repeated notices, the assessee had failed to present any document or put forth any information or submission during the pendency of appeal, and further that the only material on record was Form 35, copy of assessment order with Form 35.

Hence, this appeal

3. Arguments heard. File perused.

4. The first contention raised by Learned AR for the assessee is that the impugned order is an ex-parte order passed without affording adequate opportunity of hearing, and as such the same deserves to be set aside.

5. Learned DR has rightly not disputed that the impugned order is an ex-parte order.

6. As is available from the impugned order, initially, the Learned CIT(A) issued notice to the assessee/appellant for 27.11.2023, but no written submission or information or document having been received from the assessee, another notice was issued for 05.12.2023. Even then, no written submission or document or information was received from the assessee. Accordingly, another notice was issued for 19.12.2023.

On behalf of the assessee. it is submitted that as regards notice dated 12.12.2023 he had sought adjournment, but his request for adjournment was not considered,

However, in the impugned order, it does not find mention that after notice issued for 19.12.2023, the appeal was sought to be adjourned or for the same, any request of the assessee was considered and rejected.

7. Even otherwise, when the assessee or his representative did not appear in the appeal, Learned CIT(A) should have proceeded to decide the appeal on merits taking into consideration whatever was mentioned and observed in the assessment order so as to find out if the assessment order was perfectly valid and legal in all respect.

But, as already noticed above, Learned CIT(A) simply observed that there was no material on record to warrant interference in the assessment order. With this observation, he dismissed the appeal.

8. As is available in column no. 6 of the table given at the very commencement of the assessment order, the residential status of the assessee stands recorded as "Resident".

Learned AR for the assessee has submitted that actually the assessee is a "non- resident", and further that the jurisdiction to frame assessment was with International Taxation Ward but the assessment order has been passed by the Assessing Officer, National Faceless Appeal Centre, and as such, same is illegal, and deserves to be set aside.

9. As is available from the copy of form 35 submitted by the assessee, while challenging the impugned assessment, one of the grounds of appeal was that the Assessing Officer erred in not treating the assessee as "non- resident", even though all necessary documents like Passport, Visa etc. were submitted by the assessee, with the request for transfer of the case to International Taxation Ward.

No doubt, upon notices issued by the department, assessee should have appeared and participated in the appeal proceedings, but, in view of the above specific ground of appeal, even if the appellant did not appear before and produce before Learned CIT(A) any material or document or submission, he was required to consider, the points involved, relevant material so as to decide all the points involved, like, claim of the assessee

that he has status of “Non-resident” , and then proceeded to consider the remaining aspects involved in the matter.

In this regard, no contention has been raised by the Learned DR.

As a result, we find that the abovesaid material aspect raised by raising one of the grounds of appeal having not been considered by the Learned CIT(A), impugned order deserves to be set aside.

10. Another ground raised by the Id. AR for the assessee is that the Learned CIT(A) has erred in confirming the addition made vide impugned assessment order, on the basis of report of DVO as regards the valuation of the land purchased by the assessee at Goa, the reason being that AO failed to appreciate that the actual cost of the land was Rs. 32,00,000/- only and further that the Assessing Officer did not record any reason to disbelieve the said valuation submitted by the assessee.

At the same time, it has been contended that this being only a case of difference in the valuation of the land, cannot be said to be a case of “unexplained income”, so as to attract the provisions of Section 69 of the Act.

Another contention raised by Id. AR for the assessee is that Learned CIT(A) erred in not accepting the source of investment of Rs. 32,00,000/-

made by the assessee for purchase of the said land and by giving credit to this extent.

11. On the other hand, Id. DR has submitted that the Assessing Officer had noticed deficiency as regards valuation of the land, and accordingly, referred the matter to DVO for valuation report, and while passing the assessment order, he based his findings on the said valuation report, and therefore, the addition made by the Assessing Officer stands fully justified. Learned DR has also further defended the impugned assessment due to difference and the amount of Rs. 38,25,000/- remaining unexplained and unaccounted for.

12. As noticed above, Learned CIT(A) did not record any findings as regards the status of the assessee as observed by the Assessing Officer in the assessment order.

The assessee having specifically claimed that he has been working in Italy since 1994-1995 and that he had purchased land at Goa from the funds having source outside in India i.e. Italy, and further that the said payment was made using bank channels as regards Rs. 28,00,000/-, in addition to Rs. 4,00,000/- paid in cash, all these were significant issues to be discussed in detail before arriving at any conclusion or framing of assessment.

It may be mentioned here that before this Appellate Tribunal, assessee has submitted copies of certain documents by way of additional evidence. Learned AR has rightly submitted that these are relevant for the adjudication of points involved.

But, the assessee should have taken steps to produce the same firstly before the Assessing Officer and then while availing opportunity by filing appeal before Learned CIT(A). The fact remains that all these additional documents need verification, before the same are admitted into evidence.

However, in view of abovesaid specific version, when Learned CIT(A) has not recorded any finding on merits on all these relevant aspects, we deem it fit a case to restore the matter to the file of the Assessing Officer to decide the matter afresh.

Result

13. In view of the discussion and reasons recorded above, in the interest of justice, we hereby allow the appeal for statistical purposes, set aside the impugned order passed by Learned CIT(A) as well as assessment order, and restore the matter to the files of the Assessing Officer, who shall decide the matter afresh on all the aspects including status of the assessee i.e. if he is a "Resident" or "non-resident" and the source of the funds

utilized for purchase of the land at Goa, while taking into consideration all the relevant material including bank channels and bank statement etc., and then to pass assessment order afresh.

We may also observe that the Assessing Officer shall also decide the aspect of jurisdiction to frame the assessment, and in case he finds that this is a matter to be decided by the Assessing Officer, International Taxation Ward, he shall transfer the proceedings to the concerned Assessing Officer (International Taxation Ward) for proceeding in accordance with law. Of course, assessee to be afforded reasonable opportunity of being heard.

Order pronounced in the open court on 23/04/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23/04/2024

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Shri Moti Singh Jodha, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Jaipur.
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 258/JPR/2024)

Sd/-

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar