

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश एम. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JUDICIAL MEMBER

आयकर अपील सं. / ITA NO. 462/Chd/2023
निर्धारण वर्ष / Assessment Year : 2012-13

Manisha Prashar 1654 A, Gulmohar Complex, Desu Majra, Kharar-140301- India	बनाम	The ITO, Ward-6(4), Mohali Punjab
स्थायी लेखा सं. / PAN NO: AXRPS1380D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Amitoz Singh Kamboj, CA
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR
सुनवाई की तारीख / Date of Hearing : 22/04/2024
उद्घोषणा की तारीख / Date of Pronouncement : 23/04/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC Delhi dt. 12/05/2023 pertaining to A.Y. 2012-13.

2. In the present appeal, the assessee has raised the following grounds of appeal:

1. *That the Ld. CIT (A) has erred in law by confirming an addition of Rs 36,45,000/- u/s 69 of the Income Tax Act despite the fact that the assessee has not made any such payment to M/s Bajwa Developers Ltd. and further more despite requesting for cross-examination, said request of assessee was not considered.*

1.1 *That the Ld. CIT(A) has erred in law and facts of the case by shifting the burden of proof from Ld. AO to assessee and going against the general rule, i.e. burden of proof is always on the authority, who asserts a proposition or fact, which is not self-evident.*

2. *That the appellant seeks to leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.*

3. Briefly the facts of the case are that in this case, notice under section 148 was issued to the assessee on 30/03/2019. As per the information available with

the Income Tax Department, the assessee had purchased an immovable property in Sector 123, Mohali from M/s Bajwa Developers Limited and during the F.Y. 2011-12 relevant to A.Y. 2012-13, she had made cash payment of Rs. 36,45,000/- as advance towards the purchase of the property. Since, as per the data available with the Department, the transaction was made without PAN and no return of income was filed by the assessee, the AO recorded the reasons for escapement of income and notice u/s 148 was issued after seeking prior approval from the Pr. CIT-2, Chandigarh.

4. In response to notice under section 148, the assessee submitted that she had already filed her return of income on 28/07/2012 and a copy thereof was filed before the AO and it was submitted that the same may be treated to have been filed in response to notice under section 148 of the Act. Thereafter notice under section 143(2) and 142(1) were issued and assessment was completed under section 143(3) r.w.s 144 r.w.s 147 of the Act, wherein the AO made an addition of Rs. 36,45,000/- under Section 69 of the Act holding the cash payment made by the assessee towards booking of the plot as unexplained investment.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since dismissed the appeal and the addition so made by the AO has been sustained.

6. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

7. During the course of hearing, the Ld. AR taken us through the submission made before the AO and submitted that the plot was registered in the name of the assessee by M/s Bajwa Developers Limited through sale deed dt. 01/08/2016 and as per the sale deed, the assessee had made total payment of Rs. 27,60,000/-. It was further submitted that the assessee has submitted before the AO that she had not paid any amount over and above the cheque payment

and details in respect of cheque payment were duly submitted before the AO. It was further submitted that the AO has taken cognizance of the registered sale deed filed by the assessee wherein there is no mention of cash payment by the assessee to the seller, at the same time, he has stated that as per documents seized from the developer company, the assessee has paid advance money against booking of the plot in cash. It was submitted that thereafter, a show cause was issued to the assessee on 28/11/2019, however the assessee could not respond to the show cause and thereafter the AO proceeded and made the addition of Rs. 36,45,000/-.

8. It was further submitted that before the Ld. CIT(A), the assessee reiterated the submission made before the AO wherein it was also submitted that no documents has ever been provided by the AO which was found at the premises of the builder basis which it has been alleged that the assessee has made cash payment to M/s Bajwa Developers Ltd. It was further submitted that the assessment order so passed is therefore purely basis suspicion, surmises and conjectures and without confronting the material which has been made the basis of the addition. It was further submitted that the assessee was not even provided an opportunity of cross examining the person from whom such information was found and which has been made basis of the addition in the hands of the assessee. It was accordingly submitted that the AO has erred in law by passing the order without making documents relying on which the addition has been made in the hands of the assessee. It was further submitted that no cash payment has been made by the assessee to the builder for purchase of the property and the relevant sale deed and the affidavit in this regard has already been placed on record. It was further submitted that the assessee has been able to procure a copy of the ledger account of the assessee in the books of M/s Bajwa Developers Ltd. and a perusal thereof would also show that the assessee has made a payment of Rs. 27,60,000/- only. It was submitted that the

assessee may be allowed to place the said evidence on record for support of her submission that she has not made any cash payment to M/s Bajwa Developers Ltd.

9. Per contra, the Ld. DR has relied on the findings of the lower authorities and our reference was drawn to the findings of the Ld. CIT(A) which are contained at para 5.1 and 5.2 of the impugned order and the contents thereof read as under:

" 5.1 It is a fact on record that the search was conducted in the case of M/s. Bajwa Developer Ltd., and from this developer the appellant has purchased a plot No. 1026 situated in village Jandpur Tehsil Kharar, District. S.A.S. Nagar Mohali during the F.Y. 2011-12. During the search proceedings in the case of Bajwa Developer Ltd., it was noticed that this developer is collecting cash for sale of immovable properties to various buyers of plots including the appellant during this F.Y. 2011-12. The appellant has apparently paid cash of Rs. 36,45,000/- as advanced towards purchase of property booked at Plot No. 1026 developed by the builder. This plot was finally registered much later i.e. almost after lapse of more than 5 years from the date of initial cheque/DD payment of Rs. 3 lakhs vide No. 132641 dated 6.5.2011. As per the registered deed final payment is made only on 07.06.2016 for an amount of Rs. 7,50,000/- and balance substantial amount close to Rs. 20.01 lakhs was paid back to back in a span of 1 year in F.Y. 2011-12 itself. Finally the property was registered in the name of the appellant only on 01.08.2016 and the reasons of such delayed registration is neither forthcoming with substantiations of evidences nor considered to be acceptable as prudent financial wisdom for any person not to register the property having paid substantial amount of about 73% of total registered consideration of Rs.27.60 lakhs. Normally, it is not the practice in the real estate market keeping in view the sensitivity of price escalations and associated litigation involved on such half ended and half concluded real estate property transactions as did by the appellant. All these facts are apparently emanating from facts referred by the A.O in the assessment order dated 18.12.2019. Further as referred by A.O in the assessment order, the builder has been duly involved in admitting such transactions of advance cash receipts from their buyers which is apparently attributable to additional payments over and above the cheque / DD payments adduced/referred in the registered deed finally. In the light of these facts as appellant failed to give any legible reply, during the assessment proceedings as reconcilable/explainable with the documents seized at the developer company etc., the A.O issued a specific show cause notice dated 28.11.2019 seeking the details as under for conclusion of assessment proceedings :-

"Vide this office letter dated 13.09.2019 at Sr. No. 6, you are requested to explain whether any payments made to M/s Bajwa Developers besides issuance of cheques mentioned at Sr. No. 5 of above letter have been made. In response to it vide your letter dated 23.09.2019 you have stated at Sr. No. 6 that no other payment has been made to M/s Bajwa Developers. On the other hand, this office is in possession of information that you have made cash payment of Rs.36,45,000/- for purchase of immovable property to M/s Bajwa Developers. In this regard, please give the details of properties in respect of which the above cash payment was made and source of investment alongwith documentary evidence.

The reply may be made latest by 03.12.2019. Please note that in case of failure, your case will be decided ex parte on merit on the basis of facts of the case and material available on record, as per the provisions of Section 144."

In response to the above show cause notice also apparently, the appellant could not avail this opportunity to prove appellant's contentions/claims that the appellant is not involved in advancing any cash payment in purchase of immovable property from M/s. Bajwa Developers. In this show cause notice, the AO has clearly brought out seeking related information as pertaining to the appellant and M/s. Bajwa Developers as reconcilable with appellant's purchase of properties involving such cash payments received/claimed by the developer as noticed during the search. The appellant ought to have availed this opportunity in clear terms as she is aware of such possible information consequent to the search in the case of M/s. Bajwa Developers as attributable to various buyers including the appellant during that period so as to come clean from appellant's side to prove appellant's transactions as an isolated transaction of no such cash payments involved over and above the registered deed payments. The appellant's clear failure to prove appellant's contentions/claims as made in the initial reply/letter dated 25.09.2019 on this analogy of no such cash payments to developer, clearly establishes that the appellant is not confident of establishing the submissions of the letter dated 25.09.2019 as correct, before the ** A.O. during the assessment proceedings itself. In the light of these factual inconsistencies in appellant's claims which clearly proves that the appellant is indeed involved in advancing such unexplained cash payments to the developer during the FY. 2011-12, in relation to purchase of Plot No. 1026 from the developer, the A.O has categorically discussed all these inconsistencies involving appellant's failure to respond to show-cause notice dated 28.11.2019 and finally concluded by the A.O as under as unexplainable cash payments:

"5.1 As mentioned above, the assessee was given an opportunity to explain her case with documentary evidence with regard to cash payments made by her by 03.12.2019. However, till the passing of this order no reply has been received from the assessee. Therefore, it is held that the assessee has nothing to state in respect of the cash payments made by her as advance money for booking of the plot and it is held that these were from his undisclosed sources. Thus it is an unexplained investment in the terms of Section 69 of the I.T Act, 1961 and held accordingly.

9. In view of the above facts, a sum of Rs. 36.45 lakhs is added u/s 69 of the Act to the taxable income as declared in the return of income filed on 28.07.2012 and stated to be treated as return in response to the notice u/s 148."

5.2 During the appellate proceedings also, the appellant could not give any further submissions with supporting evidences so as to prove contrary to the above findings of the A.O resulting in assessment of cash payments as unexplained investments of the appellant. Apparently, appellant is only standing on the contention with the relevant information in the possession of the A.O having not made available to the appellant during the assessment proceedings and this claim of appellant is far from truth as analyzed and discussed supra which clearly proves that the appellant has apparently genuinely opted out to avail the opportunity offered vide show cause notice dated 28.11.2019 as discussed in detail, supra. The appellant ought to have responded to this show cause notice by clearly giving appellant's version with supporting proofs as reconcilable with the A.O show cause notice so as to establish the embedded truth involved in purchase of property from stated builder as contended by the appellant. In the light of these observations, appellant's contentions involving not owning up the accountability and responsibility to prove the claims /contentions of appellant, when the same is provided by A.O vide show cause notice dated 28.11.2019 clearly makes it a case of apparent willful failure on the part of appellant to support the grounds of appeal. Considering all these discrepancies involving appellant's omissions during the assessment proceedings, it clearly establishes that the appellant has no substantiating proofs to adduce, contrary to the observations/findings of Assessing Officer in the assessment order. Accordingly, appellant's Grounds of appeal are not maintainable as order of the A.O is sustainable thereby resulting in disposal of appellant's appeal."

10. We have heard the rival contentions and perused the material available on record. We find that it is a case where basis certain information collected during search at the premises of a builder, M/s. Bajwa Developer Ltd, the case of the assessee has been reopened and addition has been made in the hands of the assessee towards unexplained cash payment towards booking of a plot of land. In her submissions, the assessee has requested that the information which has been collected and made the basis for action by the AO be made available to her and she be allowed to cross-examine the person/builder where the latter has accepted any receipt of cash from the assessee in his statement recorded during the course of search.

11. We are of the considered view that the assessee has a valid and justifiable request as the material and information forming the basis of action by the AO has to be confronted to the assessee and the latter has to be allowed an opportunity to put forth her defence and an opportunity to cross-examine the person who has accepted the cash and has admitted the same in his statement recorded during the course of search. It is equally important for the Revenue to bring such material and information on record as the same will

provide a clear picture in terms of basis of charge against the assessee and the explanation of the assessee can then be appreciated instead of simply discarding the same. Therefore, keeping the entirety of facts and circumstances of the case, the matter is remanded to the file of the AO to decide the matter a fresh as per law after providing the assessee the material and information basis which it has been alleged that the assessee has made cash payment to the builder towards the purchase of the plot in her name and the necessary opportunity be allowed to her to put forth her defence and make necessary submissions in that regard as so advised.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23/04/2024

Sd/-

परेश एम. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER
AG

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar