

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

HEARING THROUGH: HYBRID MODE

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

आयकर अपील सं. / ITA NO. 12/Chd/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Renu Gupta House No. 386 D/4, Near Dev Samaj College, Ambala City, Haryana	बनाम	The ITO Ward-3, Ambala
स्थायी लेखा सं. / PAN NO: AFJPG6914K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Varun Gupta, Advocate
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 23/04/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 03/05/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/ NFAC, Delhi dt. 10/11/2022 pertaining to Assessment Year 2011-12.

2. In the present appeal Assessee has raised the following revised grounds:

1. That the Ld. CIT (A) has gravely erred in passing a non-speaking order while confirming the order of Ld. AO below, without going into merits of the case, as well as ignoring/ mis-appreciating the legal position and submissions made by the Assessee, while deciding the appeal and confirming the addition.

2. That the AO as well as Ld. CIT (A) have erred in making addition without an iota of evidence/ proof of any payment in cash, in existence or verified. Mere entry found in some copy (not any book of account) seized by the Department from the office of MJs Barnala Construction & Property Consultant in a search operation conducted on 13/07/2016, cannot be blindly relied upon by the AO without any corroborative evidence. No verification of correctness of such entry was ever done by the AO, before making such addition.

3. That the order passed by the Ld. Authorities below is unsustainable in as much as such alleged written note of cash paid by the Assessee was never got verified from the Assessee. No such document was ever confronted by the AO before passing the Assessment Order. No statement of Appellant-Assessee was

ever recorded or even called for by the department during assessment of such search made.

4. That the AO has arrived to the decision merely on the basis of an entry, without any suitable Reason to Believe. The reason as given by AO does not satisfy the basis requirements of Section 147 of the Act. The reasons & the information referred to is extremely vague & scanty. There is no reference to any document or statement except the entry which has been quoted. Such entry found from the register seized from MJs Barnala Construction & Property Consultant cannot be regarded as material evidence that prima-facie show or establishes nexus or link which disclosed escapement of income.

5. That since the Appellant-Assessee is of old age and her health has been deteriorated. As such she has been living with her son in Zirakpur, near Chandigarh. Thus, the notice of hearing sent by post to Assessee's address in Ambala was not known to the Assessee. Thus, such inadvertence may kindly be condoned and Assessee may kindly be given an opportunity of being heard.

6. That the counsel for the Assessee was also hospitalized in the month of October & November 2022 as having severe pain in Gall Bladder due to Stones and was operated.

7. That the Appellant-Assessee prays your good-self to accept the appeal and quash the additions.

8. That the Appellant-Assessee craves for the right to add, amend or alter any of the grounds of appeal before or at the time of hearing of appeal as per the facts and circumstances of the present case.

3. Briefly the facts of the case are that the assessee has purchased flat from M/s Barnala Builders for Rs. 44,00,000/- and paid cash component of Rs. 18,62,500/- On the basis of AIR information, proceedings u/s 147 of the I.T.Act, 1961 were initiated by recording reasons. Notice u/s 148 of the I.T.Act, 1961 was issued to the assessee for the A.Y.2011-12 on 29.03.2018 after obtaining approval from the Pr. Commissioner of Income-tax, Panchkula which was served upon the assessee through post Sh. Pawan Kumar Aggarwal CA attended the proceedings and furnished the copy of efiled return filed on 28.04.2018 declaring income at Rs. 1,66,228/-. Thereafter notice under section 142(1) and 143(2) alongwith questionnaire was issued on 10/09/2018 and information were called for.

3.1 In response to notice u/s 142(1) of the IT. Act it has been submitted by the counsel of the assessee that the figure of Rs. 44,00,000/- is not correct. The payments were made for purchase of property by banks amounting to Rs. 25,85,496/- and no cash payment of Rs. 18,62,500/- was made.

3.2 Assessee vide reply dated 12.12.2018 again stated that the flat was purchased for Rs. 25,85,496/- and Copy of allotment letter alongwith payment structure of Rs. 25,85,496/- furnished. The submissions filed by the assessee were considered but not found acceptable to the AO. Thereafter AO assessed the income at Rs. 20,78,730/- and issued penalty notice under section 271(1)(c) of the Act.

4. Against the order of the AO, the assessee went in appeal before the Ld. CIT(A). The Ld. CIT(A) stated that the notices were issued to the assessee from 13/01/2021 till 29/09/2022, but the assessee neither filed any written submission nor attended the proceedings, thereafter the Ld. CIT(A) passed the impugned order dismissing the appeal.

5. Against the order of the Ld. CIT(A), the assessee came up in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the Ld. CIT(A) passed the order *ex-parte* without deciding the appeal on merits of the case. It was submitted that the assessee be allowed one more opportunity to represent his case and he hereby gives an undertaking that the assessee shall not abuse this opportunity and will attend to the proceedings and the matter may accordingly be set-aside to the file of the Ld CIT(A).

7. Per contra, the Ld. DR relied on the orders of the lower authorities. It was submitted that the assessee has been allowed ample opportunity by the Ld CIT(A) but he has not availed the same. At the same time, the Ld DR fairly

submitted that since the matter has not been decided on merits, he has no objection where the matter is set-aside to the file of the Id CIT(A).

8. We have heard the rival contention and perused the material available on the record. In the facts and circumstances of the case, we are of the considered opinion that the matter has been decided *ex-parte qua* the assessee and that too, without going into merits of the case. Therefore, in the interest of justice, the assessee is allowed one more opportunity and the matter is restored to the file of Id. CIT(A) to decide the matter afresh in accordance with law after giving a reasonable opportunity of being heard to the assessee. The assessee, no doubt, shall cooperate in the proceedings before the CIT(A) and submission necessary/information as so advised.

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

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

Sd/-

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

Sd/-

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

AG

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar