

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 319/JP/2024
निर्धारण वर्ष / Assessment Years : 2014-15

Rajesh Kumar Meena G-2, Plot No. 123, A-ACME Residency Vishveshriya Nagar, Gopalpura Bye Pass, Jaipur	बनाम Vs.	ITO, Ward 2(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ALBPM 6775 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Anil Kumar Sharma, CA
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 18/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 01/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 17/01/2024 [here in after 'NFAC'] for assessment year 2014-15 which in turn arise from the order dated 29th November, 2019 passed under section 144 r.w.s. 147 of the Income Tax Act, by ITO, Ward 2(3), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. Under the facts and circumstances of the case the Id. CIT(A) is not justified in sustaining the Addition of Rs. 6000000/- made to returned as Income from other sources towards alleged unexplained investment in immovable property.

3. Succinctly, the fact as culled out from the records is that the assessee has filed its return of income for the year under consideration u/s 139(1) of the I.T. Act, 1961 on 25.06.2015 declaring his total income of Rs. 3,25,250/- Further, the information was received from the office of the DIT(I&CI), Jaipur that the assessee has purchased immovable property from Sh. Ram Karan Meena & others for Rs. 60,00,000/- during the year under consideration.

3.1 During the course of enquiry before the I&CI wing of the Department assessee failed to furnish any reply regarding the source of investment in the above property. On perusal of ITR of the assessee, it is seen that investment in immovable property of Rs. 60,00,000/- during the F.Y. 2013-14 does not commensurate with the income particulars of the assessee. Hence, the income of the assessee to the extent of Rs. 60,00,000/- has escaped assessment for the A.Y. 2014-15. Consequently, notice u/s 148 of

the I.T. Act was issued on 28.03.2018 after obtaining necessary approval from the competent authority and served upon the assessee by post and by e-mail. In response to the above notice, the assessee has not filed his return of income for the A.Y. 2014-15. Thereafter notices u/s 142(1) was issued on 12.09.2019. Further, again notice U/s 142(1) was issued on 07.11.2019 requesting the assessee to file all the details regarding source of above investment of Rs. 60,00,000/- and it was also informed that in case of non submission of reply the assessment will be completed on the basis of material available on record. In compliance to these notices the assessee has not furnished any submission. Further it was clearly mentioned in the notice u/s 142(1) of the Act dated 07.11.2019 by the AO that in case of non submission of details assessment order will be passed u/s 144 of the IT. Act, 1961 and the case was fixed for hearing on 14.11.2019. However no response was received from the assessee. In the absence of any submission, the amount of investment of Rs. 60,00,000/- remained unexplained. Since the assessee has not filed any submission / computation in respect of source of investment made addition of Rs. 60,00,000/- under the head income from other sources to the total income of the assessee.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the NFAC/CIT(A). Apropos to the grounds so raised the relevant finding of the NFAC/CIT(A) is reiterated here in below:

“6. Findings & Decision

6.1 I have gone through the Assessment Order and submissions of the appellant. The AO has carried out additions of Rs. 60,00,000/- under the head of Income from other sources for the year under consideration.

Grounds No. 2,3 and 7

6.2 These grounds are general in nature. Therefore, the adjudication is not required on these grounds. Accordingly, Grounds No. 2, 3 and 7 are dismissed.

Ground No. 1 and 4

6.3 These grounds are regards to addition of Rs. 60,00,000/- under the head of Income from Other Sources for the year under consideration.

6.4 During the course of the assessment proceedings, it was noted by the AO that the appellant has invested in an immovable property to tune of Rs. 60,00,000/-. The appellant was asked to furnish the explanation for the same. However, the appellant was failed to do so. Accordingly, the assessment proceedings were concluded after making an addition of Rs. 60,00,000/- under the head of Income from Other Sources for the year under consideration.

6.5 It is noted from the submissions furnished by the appellant during the course of the appellate proceedings that there is nowhere mentioned in sale deed dated 18.09.2013 that the appellant has purchased an immovable property in the status of director on behalf of "Khushi Sansar Real Estate Pvt. Ltd." Further it is noted from the sale deed dated 18.09.2013 that it is nowhere mentioned about Khushi Sansar Real Estate Pvt. Ltd. in the said sale deed. The appellant has not furnished any documentary evidences to substantiate his claim. Therefore, the contention of the appellant is not found to be acceptable.

6.6 In view of the above, I am of considerate view that the observations and findings of the AO is correct. Therefore, addition made by the AO of Rs. 60,00,000/- under the head of Income from Other Sources for the year under consideration is upheld.

6.7 Accordingly, Ground No. 1 and 4 are dismissed.

Ground No. 5

6.8 This ground is regards to charging of interest under section 234A, 234B and 234C of the Income Tax Act, 1961.

6.9 In this regard, it is pertinent to mention that levy of interest on any demand is consequential in nature and therefore, Ground No. 5 is dismissed.

Ground No. 6

6.10 This ground is regards to initiating of penalty u/s 271(1)(c) of the Income Tax Act, 1961.

6.11 In this regard, it is pertinent to mention that initiating of penalty u/s 271(1)(c) of the Income Tax Act, 1961 on any conceal income is consequential in nature and therefore, Ground No. 6 is dismissed.

7. Accordingly, the appeal of the appellant is dismissed.

5. As the assessee did not find any favor from the finding of the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he has filed the written submissions and the same is reproduced herein below:

“The humble appellant in respect of solitary Ground of Appeal most respectfully bag to submit:

1. The AO initiated the assessment proceedings u/s 147/148 of IT Act 1961.
2. The assessee unfortunately due to an oversight could not participated in assessment proceedings.
3. The AO observed that the assessee during the relevant previous year has purchased an immovable property for Rs.6000000-.
4. The AO held the relevant Investment of Rs.6000000- as unexplained and made addition of the same to returned Income.

5. The assessee filed written submission before Id. CIT(A) and explained that :

5.1 The Appellant is Director in the company "Khushi Sansar Real Estate Pvt. Ltd.' engaged in the business of development of real estate projects for the last several years.(PB No.6)

5.2 The Appellant had purchased the relevant land vide Registered Sale Deed dated 18.09.2013 in the status of director on behalf of "Khushi Sansar Real Estate Pvt. Ltd.". (PB No.11-16)

5.3. The entire purchase cost of Rs. 60,00,000/- on such purchase of land was paid by the company to the seller from its accounts/ sources (PB No.17-21)

(reproduced at Page No.2-4 of the Order of CIT(A).)

6.It is apparent from the registered Sale Deed dated 18.09.2013 that the Payment to the Sellers has been made through Banking Account by way of different Cheques mentioned therein.

7. It is also apparent from the Ledger Accounts of the Sellers in the Books of Accounts of M/s "Khushi Sansar Real Estate Pvt. Ltd.'" that the relevant payment has been made out of Banking Account of that company duly accounted for in Books of Accounts.

8.The Books of Accounts of M/s "Khushi Sansar Real Estate Pvt. Ltd are duly audited and relevant return of Income and Financial Statements are available on record.(PB 22-32).

9.The relevant land has been utilized by M/s "Khushi Sansar Real Estate Pvt. Ltd for it's Real Estate Project " Khushi Sandar-V".(PB No.34)

10.The assessment of M/s "Khushi Sansar Real Estate Pvt. Ltd for the relevant A.Y.2014-15 has been completed u/s 143(3) of IT Act 1961and returned Income has been accepted.(PB No.33)

11.Thus the Source of Investment for purchase of relevant Land vide Registered Sale Deed 18.09.2013 by the assessee/ M/s "Khushi Sansar Real Estate Pvt. Ltd is duly explained.

12.It is also drawn to kind notice of Hon. Bench that the Original Assessment of the assessee for the relevant A.Y. has also been completed u/s 143(3) of the Act and return Income has bee accepted.(Copy of Assessment Order dated 18..11.2016 attached herewith.)

13. Therefore Id. CIT(A) is not justified in sustaining the relevant addition of Rs.6000000/-made by the AO holding the same as unexplained.

14.Your Honour is requested to delete the relevant addition of Rs.6000000/-made to returned Income or issue any other directions to the AO/assessee as deemed fit in the interest of justice..”

6. The Id. AR of the assessee in addition to the above written submission vehemently argued that the assessee has submitted all the details that has been repeated at page No. 3 of the Id. CIT(A). Even though all these details placed on record before the Id. CIT(A), he did not deem it fit to call for the remand report of Id. Assessing Officer in the interest of justice. Even the Id. CIT(A) without doing any enquiry on facts taken a stand that in the sale deed dated 18.09.2013 assessee has purchased an immovable property in the status of director on behalf of "Khushi Sansar Real Estate Pvt. Ltd." Further he noted from the sale deed dated 18.09.2013 that it is nowhere mentioned about Khushi Sansar Real Estate Pvt. Ltd., in the said sale deed. This observation is without conducting any factual verification and without appreciating the evidence placed on record and therefore, the Id. AR of the assessee prayed to set a side the matter before the Id. AO.

7. Per contra, Id. DR relied upon the detailed finding recorded in the order of the Id. CIT(A). The Id. DR vehemently argued that the assessee has not submitted any details before Id. Assessing Officer and the order of Id. Assessing Officer is ex-parte. Before Id. CIT(A), the assessee has not preferred the petition to bring the additional evidence on record and based on that even the Id. AR of the assessee has not filed the full details relating to the transactions before ITAT also. He also submitted that the Id. CIT(A) appreciated the evidence and noted that there is nowhere mentioned in sale deed dated 18.09.2013 that the appellant has purchased an immovable property in the status of director on behalf of "Khushi Sansar Real Estate Pvt. Ltd." The Id. CIT(A) also noted that the sale deed dated 18.09.2013 did not mention about Khushi Sansar Real Estate Pvt. Ltd. Thus, there is no fault in the finding of the Id. CIT(A) and the appeal of the assessee is required to be dismissed. As regards the prayer of the assessee to set aside the matter to the file of the Id. AO the Id. DR objected that the assessee has already remained non-compliant before the Id. AO. The transaction is done by the assessee but blamed to have of the company and therefore, there is no meaning to set aside the matter to the file of the Id. AO.

8. In the rejoinder the Id. AR of the assessee submitted since the payment details relating to the transaction are already placed on record and therefore, since the details are already on record there is sufficient material which has not been appreciated by Id. CIT(A) is required to be verified by the Id. AO. Though, the assessee has not placed on record any separate petition before ITAT and since all the records were already placed on record before the Id. CIT(A) and same has been appreciated and commented upon no separate application is required. Therefore, the prayer of the assessee be considered for giving one more chance to be heard on merits. The Id. AR of the assessee has also filed and undertaking that he will submit all the details though related to the case of the company and the content of undertaking supplied reads as under :

राजस्थान RAJASTHAN BS 835650

**Before Income Tax Appellate Tribunal
Bench-"A" Jaipur**

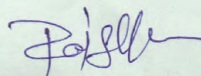
Undertaking

I Rajesh Kumar Meena S/o Bheru Lal Meena do hereby undertake R/o G-2, Plot No.123, A-ACME Residency, Vishveshriya Nagar, Gopalpura By Pass, Jaipur do hereby undertake:

1. That a registered Sale Deed dated 18.09.2013 was executed in favour of the assessee towards purchase of an immovable Property against consideration of Rs.6000000/- paid by way of cheques out of Bank Account of the Company *Khushi Sansar Real Estate Pvt. Ltd. wherein I am a director during the relevant period.*
2. That in my case for the A.Y.2014-15 the AO has passed Ex party Order dated 29.11.2019 and made addition of Rs.600000/-towards purchase of an immovable property holding the same as unexplained.
3. That the Id. CIT(A) vide order dated 17.01.2024 has dismissed my Appeal without properly appreciating the facts of the case and documentary Evidences filed during the Appellate proceedings.
4. That I have filed an Appeal before the Hon. Bench against the Order of CIT(A) and prayed for restore the matter before the File of the AO for fresh denovo Assessment Order subject to Opportunity of hearing.

ATTESTED
REST ON PAGE....2

5. That I shall Co-Operate the AO in fresh denovo assessment proceedings and shall submit all the information/details and Evidences relating to the purchase of the relevant immovable Property and Payment of the Same by the Company M/s *Khushi Sansar Real Estate Pvt. Ltd.* before the AO in fresh denovo Assessment proceedings.



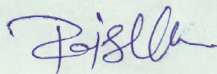
(Rajesh Kumar Meena)

Place: Jaipur

Dated: 20.06.2024

Verification

I Rajesh Kumar Meena S/o Bheru Lal Meena do hereby undertake R/o G-2, Plot No.123, A-ACME Residency, Vishveshriya Nagar, Gopalpura By Pass, Jaipur do hereby verify that the contents 1 to 5 of undertaking are correct to the best of my knowledge and belief.



(Rajesh Kumar Meena)

Place: Jaipur

Dated: 20.06.2024

ATTESTED
Mg 20.06.2024
NOTARY PUBLIC
JAIPIUR (INDIA)



9. To support the contention so raised in the written submission or in the arguments advanced, reliance was placed on the following evidence / records / decisions:

S.No.	Paper/document	Page No.
1.	Written Submission dated 22.11.2021 before Id. CIT(A)	1-5

2.	Master Data of the Company, Khushi Sansar Real Estate Pvt. Ltd. (Proof of Directorship of the assessee of that Company)	6-6
3.	Return of Income of the assessee for the relevant A.Y.2014-15	7-10
4.	Registered Sale Deed dated 18.09.2013 in the name of the assessee held by the AO as un explained Investment	11-16
5.	Ledger Accounts of sellers of the relevant Land in the Books of the Company Khushi Sansar Real Estate Pvt. Ltd. (Proof of Source of Payment for purchase of the relevant land)	17-21
6.	Income Tax return and Audited Balance Sheet/P&L Account of the Company Khushi Sansar Real Estate Pvt. Ltd	22-32
7.	Assessment Order dated 18.11.2016 of the Company Khushi Sansar Real Estate Pvt. Ltd. for the relevant A.Y.2014-15.	33-33
8.	Project/Development Plan on the relevant Land in the name of of the Company Khushi Sansar Real Estate Pvt. Ltd.	34-34

10. We have heard the rival contentions and perused the material placed on record. In this case the solitary ground raised by the assessee is in relation to the addition made by the Id. AO and sustained by the Id. CIT(A) for the alleged purchase of property for an amount of Rs. 60 lacs. The assessee's contention is that the property has been purchased by the company in the name of the assessee where he is director. The company has accounted that asset and all the payment is also recorded in the books of the company where he is director. Though, unintentionally the assessee's case assessment order is passed u/s. 144 r.w.s. 147 of the Act. But before the Id. CIT(A) remained attended and has filed the details related

to the property. The assessee also filed the return of income u/s. 139(1) of the Act voluntarily. The Id. CIT(A) while dealing with the transaction has not appreciated the fact that the company where the assessee is director has made the payment and that property is already reflected in the balance sheet of the company named Khushi Sansar Real Estate Private Limited. Considering the facts placed on record in the paper book at Sr. no. 1 to 8 which were placed before the Id. CIT(A) are required to be tested and that will affect the taxable income of the assessee substantially. The assessee also filed the undertaking that if he is given a chance will submit all the details to prove the otherwise of what is held so far. Based on that aspect of the matter we deem it fit in the interest of the justice to set aside the matter to the file of the Id. AO who will decide the issue afresh by providing one more opportunity of hearing to the assessee. Thus, the matter is restored back to the file of the Id. AO who will decide the issue based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the Id. AO.

11. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having

any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

In the result, the four appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 01/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Rajesh Kumar Meena, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(3), Jaipur, 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. 319/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar