

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

ITA No.413/Ind/2023
Assessment Year: 2018-19

Shri Anil Firojiya, 6, Bhakt Nagar, Dashera Maidan, Ujjain (Assessee/Appellant)	बनाम/ Vs.	Dy. Commissioner of Income-tax, Assessment Unit, New Delhi (Revenue/Respondent)
PAN: AAIPF7302A		
Assessee by	Shri Manoj Fadnis, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	04.07.2024	
Date of Pronouncement	12.07.2024	

आदेश / ORDER

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

Feeling aggrieved by appeal-order dated 31.08.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 17.02.2023 passed by learned DCIT, Assessment Unit, Delhi ["AO"] u/s 147 r.w.s. 144B of the Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on following grounds:

- "(1) *On the facts and circumstances of the case, the Hon'ble CIT(A) has erred in holding the order passed by Ld. AO u/s 143(3) of the Income-tax Act, 1961 dated 17.02.2023.*"

2. The Registry has informed a delay of 1 day in filing this appeal. However, on a careful scrutiny, it is found that the time-limit of 60 days prescribed for filing appeal expired on 29.10.2023 which was a closed holiday being 'Sunday', therefore the assessee filed present-appeal on immediate next working day of 30.10.2023. Hence, there is no delay.

3. The background facts leading to present appeal are such that the assessee-individual filed his return of income for AY 2018-19 declaring a total income of Rs. 9,10,980/- u/s 139. Subsequently, the case of assessee was re-opened for assessment u/s 147 by issuing a notice u/s 148 and the AO completed re-opened assessment vide order dated 17.02.2023 after making an addition of Rs. 10,29,672/- on account of unexplained investment in construction of property. Aggrieved by such order, the assessee carried matter in first-appeal before CIT(A) but did not get any relief. Still aggrieved, the assessee has come before us in next appeal.

4. At first, we would like to re-produce the orders passed by lower-authorities reading as under:

AO's order:

"On perusal of information it is seen that you have incurred expenses on construction of house. In the verification report uploaded by investigation wing, Indore, it is alleged that you have incurred expenses in cash towards construction of house and failed to submit any explanation toward source during verification. In this regard, vide submission dated 27.10.2022 in response to notice u/s 142(1) you have stated that the source of cash payment can be easily verified from the balance sheet and capital account and also furnished cash flow statement. On perusal of balance sheet, capital account and cash flow statement it is seen that these documents have not shown the date of payment for construction of Rs. 10,29,672/- and source of cash

payment. Hence, you have failed to furnish documentary evidence to justify the source of cash payment made for construction and also failed to substantiate the date of construction made. In this regard, you are requested to explain as to why the amount of Rs. 10,29,672/- should not be treated as unexplained investment and added to the total income.

1. Synopsis of the reply of the assessee to SCN and additional SCN (if any): Assessee has neither given any reply on above issues.
2. Summary of information evidence collected after SCN (if any).
3. Point-wise rebuttal of reply of the assessed including analysis of any case law relied upon.

(i) **Unexplained investment of Rs. 10,29,672/-** : Assessee has not given any reply on merit. Further, despite having been given an opportunity vide show cause, the assessee vide e-proceedings dated 06.02.2023 has reiterated the previous statement. The assessee has not furnished any documentary evidence to justify the specific date of construction and source of cash payment made for construction. Hence, the assessee has failed to justify the sources of payment made for construction of Rs. 10,29,672/- in cash during the year.

In view of the above, amount of Rs. 10,29,672/- made for construction is treated as unexplained investment u/s 69 of the Income-tax Act, 1961 and added to the total income of the assessee. The total income assessed is taxed u/s 115BBE of the Income-tax Act, 1961 at the rate of 60%."

CIT(A)'s order:

"Discussion, Reason & Decision :

6. I have considered the facts of the case and submissions of the appellant. I have also perused the Assessment order passed by the AO u/s 147 r.w.s. 144B of the Income-tax Act, 1961, dated 17.02.2023.

6.1 As per the facts culled out from the record and reproduced earlier, the appellant assessee is an individual and return of income for the year under consideration was filed by declaring total income of Rs. 9,10,980/- on 29.08.2018. Subsequently, as per credible information received through Insight Portal for F.Y. 2017-18 relevant to assessment year 2018-19 which was uploaded by the DDIT (Investment.)-II, Indore, wherefrom it was precisely mentioned that the appellant assessee alongwith his wife had jointly purchased plot at 68, Mahesh Vihar, Ujjain in the year 2004 on which construction of residential house was carried out after F.Y. 2012-13. From the information uploaded in Insight portal by the DDIT-II, Indore, it had been emerged out that the payment to the tune of Rs. 10,29,672/- was borne by the appellant for the FY 2017-18 relevant to assessment year 2018-19 towards construction of the said property under consideration. During the course of verification and/or investigation by the DDIT-II, Indore, the appellant assessee

has failed to furnish any details regarding the expenses incurred on construction of house/property. Accordingly, the case was reopened after obtaining administrative approval from the Competent Authority. While reassessing the case under consideration, the AO has added Rs. 10,29,672/- on account of unexplained investment and issued order u/s 147 r.w.s. 144B of the Act on 17.02.2023 assessing the total income at Rs. 19,40,652/-/

6.2 Feeling aggrieved and dissatisfied with the aforesaid decision and order of the AO, the appellant has preferred the instant appeal.

7. Apropos the above, the Ground no. 1 is owing to challenging the addition of Rs. 10,29,672/- on account of unexplained investment. A plain reading of assessment order reveals that the case of the assessee is reopened u/s 147 of the Act as the appellant assessee was involved in cash transaction of Rs. 10,29,672/- towards the construction of house at 68, Mahesh Vihar, Ujjain.

7.1 It is observed from the assessment order that the appellant assessee had furnished copy of balance sheet, copy of capital account, copy of cash flow statement etc. However, it was observed by the AO that these documents had not revealed the date of payment for construction amounting to Rs. 10,29,672/- and source of cash payment. In this context, Section 69 of the Act has been reproduced for sake of convenience as under :-

“Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments may be deemed to be the income of the assessee of such financial year.”

From the above it is observed that section 69 of the Act is the weapon in the armory of the revenue department to detect the tax evasion in respect of clandestine investments made by the assessee as many times investments are being made out of unaccounted funds and black moneys are being settled in such investments. Section 69 of the Act also gives power to AO to treat the value of investments as the income of the assessee if the assessee does not offer any explanation or the explanation offered by him is not satisfactory to the AO.

7.2 The provisions of section 69 provides that where an assessee made investments which are not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the AO, satisfactory, the value of the investment may be deemed to be the income of the assessee of such financial year. In the present case, on mere perusal of the assessment order, it would suggest that the assessee had failed to offer any explanation whatsoever before the AO. It was only during the course of appellate proceedings that the assessee took a plea that the cash expenses incurred regarding construction of house-property was made on income from other source, remuneration as

MP, rental income, bank interest, recovery of loan & advance without leading necessary evidence on record in the support of such contention. However, the appellant assessee had not adduced any evidence in support of this submission except making ipse dixit submissions. Thus, the explanation offered during the course of appellate proceedings is not tenable in the eyes of law as it is a mere bald submission without bringing any material on record in support of submission. As regards the other contentions of the assessee that the AO without discharging the onus of proving the source from which the investments and cash deposits were made, had chosen to make addition, this submission is contrary to the well settled position of law that no burden lies on the revenue to show the income is received from any particular source before invoking the provisions of section 68/69. In view of well settled position of law, the contention raised by assessee as devoid merits.

7.3 For what has been outlined above and for the reasons stated above, it is held that on the pertaining facts and circumstances of the case, I have not found any infirmity in the assessment order of the AO with regard to addition made on account of unexplained investment of Rs. 10,29,672/- towards construction of the house-property under consideration for the F.Y. 2017-18 relevant to assessment year 2018-19 Accordingly, the addition of Rs. 10,29,672/- on account of unexplained investment u/s 69 of the Act is hereby confirmed."

5. Ld. AR for assessee drew our attention to the above orders passed by lower-authorities and submitted that in the first instance, the AO has observed that although the assessee has filed Balance-Sheet, Capital A/c, Cash-flow Statement during assessment-proceeding but those documents do not show the dates of payments made by assessee towards construction and the sources of making those payments. Ultimately, the AO has concluded that the assessee has not furnished evidences to justify the sources of payments towards construction of house property and accordingly made addition. During first appeal, the CIT(A) has merely repeated the observations made by AO and cited section 69 to uphold the AO's action. However, the position of assessee's case is such that when the AO show-caused assessee qua this issue, the assessee filed 1st reply dated 19.03.2022 (Page 5-9 of Paper-Book) clearly mentioning in Para 3 thereof

about the sources of income available to the assessee year after year and the fact that the cost incurred by assessee is duly appearing in assessee's Balance-Sheet. The assessee also filed copy of Balance-Sheet for AO's reference. Subsequently, the assessee again filed 2nd reply (Page 19-21 of Paper-Book) repeating the same submission. Therefore, when the impugned investment stands included in assessee's Balance-Sheet, the same cannot be treated as unexplained. However, the assessee's submission has not been properly considered by AO and addition has been made, which ought to be deleted having regard to the documents filed by assessee. While arguing, Ld. AR, however, asserted that the assessee did not file 'Cash-Book' to AO during assessment-proceeding.

6. Ld. DR for revenue submitted that the assessee has not submitted full particulars as required by AO and from the documents filed by assessee, the AO was not in a position to get satisfaction regarding source of investment. Therefore, the AO has rightly invoked section 69 and made addition. However, for the sake of justice, the case may be remanded back to the AO so that the assessee can file better particulars and the AO can decide the issue more aptly.

7. In rejoinder, Ld. AR opposed the proposal of Ld. DR for remanding this matter back to AO. He submitted that the addition made by AO is wrong in as much as the AO has not considered the evidences submitted by AO, therefore the addition made by AO has to be deleted instantly without remanding back.

8. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. Undisputably, the case of assessee was re-opened to examine and assess the investment made by assessee in construction of property and the AO raised specific query to the assessee to explain the sources of investment. In response, the assessee filed Balance-Sheet and Capital A/c but from those documents, the AO could not get the exact details required by him i.e. the details of construction and precise sources from which the impugned investment was made by assessee. The documents filed by assessee might be showing an overall picture of assessee's financials but still do not provide the precise details of construction and sources thereof as required by AO and that is why the AO has invoked section 69 and made addition. In that view of matter, we are in agreement with Ld. DR's proposal that the present matter needs to be remitted back to the file of AO to enable the assessee to furnish full particulars as to the construction of property and the sources available to assessee for AO's consideration and adjudication. Accordingly, we restore this matter back to the AO who shall pass order afresh after giving necessary opportunities to the assessee. Needless to mention that the assessee shall avail the opportunities granted by AO and make cogent submission and the AO shall also pass order afresh without being influenced by his previous order.

9. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 12.07.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated : 12.07.2024
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