

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1067/Bang/2024
Assessment Year : 2017-18

Shri Jaganath Ramachandra Jamadar, House No – 8-9-270, Bhavani Nivas, Gurunanak Colony, Bidar, Karnataka – 585 401. PAN: AFOPJ4531L	Vs.	The Income Tax Officer, Ward -1, Bidar.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Jinita Chatterjee, Advocate
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	05-07-2024
Date of Pronouncement	:	18-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 31.03.2024 passed by the NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal.

“Grounds on assessment being invalid

1. That under the facts and circumstances of the case and in law, the order passed by the office of Commissioner of

Income tax (Appeals), National Faceless Appeal Center ('CIT(A)') by upholding the order passed by the Income tax officer, Ward- 1, Bidar (Id AO) is devoid of any merits and void ab initio.

2. That on the facts and circumstances of the case and in law, the assessment proceedings initiated by the Ld AO under section 144 of the Income tax Act 1961 ('the Act') without taking into consideration the Return of Income filed by the me against notice issued under Section 142(1) of the notice are invalid.

3. That on the facts and circumstances of the case and in law, the Ld. AO had grossly erred in not issuing a statutorily mandated notice under Section 143(2) of the Act. Accordingly, the assessment proceedings initiated are invalid and consequently the assessment order is void ab initio and non-est.

4. That on the facts and circumstances of the case and in law, the Ld AO had grossly erred in making an addition in the assessment order without providing any basis/reasoning for not accepting the Return of Income furnished by me is clearly against the principles of natural justice.

Erroneous computation of Capital gains under section 45(2) of the Act

5. That on the facts and circumstances of the case and in law, the Ld AO in determining the capital gains tax under section 45(2) of the Act, has grossly erred in calculating the fair market value of a capital asset (being 2 acres of land converted in to plots of 46,500 sft) by applying an arbitrary fair market value per square feet of land, instead of the stamp duty value adopted by the State Government as on the date of conversion, which has resulted in an excessive capital gain tax on the Appellant.

6. That on the facts and circumstances of the case and in law, the Ld AO in calculating the capital gains tax, has erroneously considered the aggregate plotting size of 2 acres of land to be at 63,225 square feet ("sft") instead of the actual aggregate plotting size at 46,500 sft, which has resulted in a wrong calculation of full value of consideration to adopted as per section 45(2) of the Act.

7. That on the facts and circumstances of the case and in law, the Ld AO has erroneously considered the entire 2 Acres of land (equivalent to 46,500 sft) as sold during the

AY 201718, as against actual sale of 24,600 sqft which has resulted in excessive capital gains for the AY 2017-18 which is not in terms of section 45(2) of the Act.

8. That on the facts and circumstances of the case and in law, the Ld AO had grossly erred in considering the cost of acquisition at Rs 3,00,000 and not Rs 3,35,000 as incurred by me towards purchase of land.

9. That on the facts and circumstances of the case and in law, the Ld AO had completely ignored the fact that, I had incurred an amount of Rs 15,69,118 towards ground levelling charges in previous financial year and the same was eligible as deduction from sale consideration as cost of improvement.

Erroneous computation of business income

10. That on the facts and circumstances of the case and in law, the Ld AO in calculating the business income of the Appellant, has erroneously considered the aggregate plotting size of 2 acres of land to be at 63,225 square feet ("sft") instead of the actual aggregate plotting size at 46,500 sft, which has resulted in a wrong calculation of sale value for the purpose of calculating the business income of the Appellant.

11. That on the facts and circumstances of the case and in law, the Ld AO has adopted an erroneous and arbitrary value of selling price at Rs 600 per sqft instead of the actual selling price of Rs 310 per sqft, resulting in an excessive business income in the hands of the Appellant, which is not as per the provisions of the Act.

Other grounds

12. That on facts and circumstances of the case and in law, the Ld AO had grossly erred in denying the deduction of Rs 1,50,000 under Section 80C of the Act which was duly claimed by me in the Return of Income.

13. That on facts and circumstances of the case and in law, the Ld AO had grossly erred in not granting credit of self-assessment tax paid by me amounting to INR 3,52.190.

14. That on facts and circumstances of the case and in law, the Ld AO had grossly erred in excess interest under Section 234A, 234B and 234C of the Act.

The Appellant craves leave to add to and / or to alter, amend, rescind, modify, withdraw all or any of the grounds of appeal herein above or add any further grounds as may be considered necessary and to submit such statements, documents, facts and evidence as may be considered necessary either before or at the time of hearing of this appeal.”

2. At the outset, the Ld.AR raised legal ground regarding non-issuance of mandatory notice u/s. 143(2) of the act by the Ld.AO for the purposes of assessment of assessee for the relevant period under consideration. He submitted that the assessment passed is *void-ab-initio* as it is passed without assuming proper jurisdiction.

3. On the contrary, the Ld.DR emphasized that assessee has not filed the return of income for the year under consideration and therefore issuance of notice u/s. 143(2) is not mandatory. It is submitted that, even during the statement that was recorded under 131, the assessee did not take necessary steps to file the return of income. He thus submitted that the legal issue raised by the assessee, therefore cannot be entertained.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. On perusal of the assessment order, we find the arguments advanced by the Ld.DR to be correct.

5. The assessee do not have a case on the legal issue alleged, as no return was furnished by assessee either u/s. 139 of the act, or

even on receipt of the notice u/s. 142(1) during the assessment proceedings. We therefore reject the ground raised by the assessee on this aspect.

Accordingly, ground no. 3 stands dismissed.

6. The assessing officer made addition in the hands of the assessee on the cash deposited in the bank account during the demonetization period. Apart from the statement of assessee recorded, no other evidences were tendered by the assessee. It is also noted that the assessee was not provided with the copy of the statement recorded u/s. 131 by the Ld.AO. We also note that, even the Ld.CIT(A) summarily rejected the appeal of assessee, based on the written submissions furnished i.e. reproduced in the impugned order.

The explanation given by the assessee in respect of the cash deposited during the demonetization period deserves detailed verification.

7. The Ld.CIT(A) though recorded certain observations regarding abnormal sales, did not consider CBDT circulars in order to verify the same. Even the Ld.AO during the assessment proceedings did not consider relevant CBDT circulars, issued for the purposes of verifying demonetized cash deposited during the year under consideration. In the interest of justice, we remit this issue to the Ld.AO to verify the sales made by the assessee that is deposited into the bank accounts during the year under consideration in accordance with the following circulars whichever is applicable to the facts of the case.

- a) The 1st instruction was issued on 21/02/2017 by instruction number 03/2017.
- b) The 2nd instruction was issued on 03/03/2017 instruction number 4/2017.
- c) The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II.

8. The assessee is directed to furnish all relevant evidences in respect of the same which shall be verified by the Ld.AO in accordance with the CBDT instructions i.e. applicable to the present facts of the case.

Accordingly, ground nos. 2 and 4 raised by the assessee stands allowed for statistical purposes.

Ground no. 1 is general in nature.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 18th July, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 18th July, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore