

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 144/JPR/2024
निर्धारण वर्ष/Assessment Years : 2013-14

Smt. Gyan Devi House No. 92, Bilaheri, Bilaheri Kotkasim, Alwar.	बनाम Vs.	ITO, Ward-1(1), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BZZPD4713N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P. C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Anoop Singh (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 14/08/2024
उदघोषणा की तारीख/Date of Pronouncement : 21/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 01.02.2024 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2013-14, which in turn arise from the order dated 29.09.2021 passed under section 147/144 of the Income Tax Act, [Here in after referred as "Act"] by the ITO, Ward-1(1), Alwar.

2. The assessee has marched this appeal on the following

grounds:-

“1. The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal filed by the assessee on the ground that assessee has failed to furnish any reply in response to the notices issued ignoring that in response to notice dt. 18.01.2024 assessee has furnished the reply on 22.01.2024 with documentary evidences.

2. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO that assessee has sold the land for Rs. 28 lacs which has been assessed by stamp duty authority at Rs. 54,93,600/- and thereby confirming the addition of Rs. 54,93,600/- under the head long term capital gain by not considering the submissions of assessee that she has not sold the land but has in fact purchased it with other 2 buyers and that neither section 50C nor section 56(2)(vii)(b) is applicable on purchase of property at lower than the stamp duty value.

3. Necessary cost be awarded to the assessee.

4. The appellant craves to alter, amend and modify any ground of appeal.”

3. Brief fact as culled out from the record is that the assessee had sold land for a sum of Rs. 28,00,000/- (Value considered by Stamp Duty Authority for Registration for Rs. 54,93,600/-) as per information available with Id. AO for F.Y. 2012-13 relevant to A.Y. 2013-14. Thus, after recording the valid reasons in writing to the satisfaction and belief of the Assessing Officer he hold a view that assessee's income to the extent of Rs. 54,93,600/- chargeable to tax has escaped assessment. Therefore, after obtaining approval u/s 151(1) from the Pr. Commissioner of Income-tax, Alwar, the

case of the assessee was re-opened by issuing of notice u/s 148 of the I.T. Act, 1961. Notice u/s 148 was issued dated 19.03.2020. The notice u/s 142(1) along with query letter was issued vide notice on 22.09.2021 requiring the assessee to furnish return of income in compliance to notice issued on 19.03.2020 u/s 148 of the I.T. Act.

Ld. AO noted that the assessee has sold immovable property for Rs. 54,93,600/- but failed to furnish the documentary evidence in respect of cost of acquisition, cost of improvement or any kind of investment/expenses for deduction u/s 54/54B/54EC/54F/54GB. Therefore, it is fair and reasonable to assessee Long Term Capital Gain of the assessee at Rs. 54,93,600/- in the hands of the assessee as per provisions of section 144 of the Act.

4. Being aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A). The Ld. CIT(A) observed that various notices were issued on 08.12.2023, 02.01.2024 & 18.01.2024 and requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued the Id. CIT(A) dismissed the

appeal of the assessee ex-parte order. The finding of the Id. CIT(A) is reiterated herein below :-

“6.1 Based on a thorough examination of the order under section 147 r.w.s 144 of the Income Tax Act, 1961, and a meticulous review of the available documentary evidence, it is unequivocally evident that the appellant, in the appellate proceedings, has repeatedly been given ample opportunities vide notices dated 08/12/2023, 02/01/2024, and 18/01/2024 to substantiate his contentions. However, the appellant has consistently displayed a negligent and evasive attitude, blatantly ignoring the notices issued to them and failed to provide even a single piece of evidence to support their claims. Furthermore, their silence on the matter, even after numerous reminders from this office, demonstrates a complete disregard for the proceedings and a complete lack of seriousness.

6.2 In light of the factual circumstances and the extensive legal precedents cited above, there is absolutely no doubt that the appellant is deliberately avoiding the pursuit of this appeal. By deliberately choosing not to attend the hearing and not pursuing any seriousness, the appeal deserves to be dismissed on this ground only.

6.3 Nevertheless, in adherence to the principles of natural justice, I have carefully considered the grounds raised by the appellant, despite non-responsive and negligent behaviour. The assessment order passed by the Assessing Officer (AO) under section 147 r.w.s 144 stands as a well-reasoned and comprehensive document, thoroughly discussing the issues involved and the reasons behind rejecting the appellant's contentions.

6.4 Furthermore, it is abundantly clear from the assessment order that the AO has rightfully made addition of Rs.54,93,600/-in capital account under provision of Income Tax Act, 1961. The additions were meticulously made based on single issue. The same issue has been contended in the appeal. The adjudication of the same on merit are as under:

After carefully examining the assessment order issued under section 144 r.w.s 147 of the Income Tax Act, 1961, assessee was asked to submit all relevant details and explanation. Assessee has not complied with all the notices issued and could not provide the requisite details.

Assessee has been given more than enough opportunities to comply during the course of proceedings by the AO. As the onus of explaining the same is on assessee and assessee has not responded over the notices, AO had left with no other alternative but to make best judgement on the basis of available records. Accordingly, AO has made addition of Rs.54,93,600/- in its assessment order for AY 2013-14. u/s 69A of IT Act, 1961.

On perusal of assessment order, ground of appeal submitted by appellant and available documents, it is stated that appellant has not submitted any supporting documentary evidence and reason for such deposits even in appellate proceedings. The claim of the appellant without any documentary evidence cannot be entertained. Further, appellant remained non-responsive in appellate proceedings as well. In this scenario, I do not find any infirmity in the decision of AO in respect of Rs.54,93,600/-, and I upheld the addition made by AO in its assessment order u/s 144 r.w.s 147 of IT Act, 1961.

6.5 Hence, On merits also, the t appellant has no case. The appellant, has the The challenged the additions made, without submitting any documentary evidences or counter arguments in support of its claims. Mere claiming that the AO erred in making the additions does not give an edge to the appellant. Keeping in view all the stated facts and discussions, I find no reason in altering the additions made by the AO. In view of the above facts, merit of the case, non-responsive nature of the assessee and failure to carry out its responsibility as an appellant, Thus, I firmly uphold the AO's additions to the appellant's income and dismiss their appeal with unwavering resolve.

07. For statistical purposes, the appeal is summarily and unceremoniously dismissed, reflecting the appellant's complete lack of accountability and sincerity in the face of due process.”

5. Feeling dissatisfied from the above orders of the Id. CIT(A), the assessee has preferred the present appeals on the ground as stated hereinabove. In support of the grounds so raised the Id. AR

appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

“Facts:

1. During the year under consideration assessee purchased a land measuring 311.11 sq. yds at village Janaksinghpura, Tehsil Behror, Alwar for Rs.28,00,000/- on 26.04.2012 in which assessee has 1/3d share (PB 5-15).

2. The AO, on the basis of information that assessee has sold a land for Rs.28,00,000/- (Stamp Duty Value Rs.54,93,600/-), issued notice u/s 148 dt.19.03.2020 and notice u/s 142(1) dt.22.09.2021. In response to the same assessee vide reply dt.28.09.2021 filed on e- mail (PB 3) explained that she has purchased the plot for Rs.28,00,000/- in which she has 1/3d share and thus her investment is Rs.9,33,333/-, The source of investment was explained to be out of the sale proceeds of the land for Rs.2,66,000/- on 28.02.2012 (PB 16-23), out of income from agriculture, milk and cattle sale and amount taken from her husband who is a gazetted officer in the State Government. The AO however held that assessee sold the immovable property for Rs.54,93,600/- but failed to furnish documentary evidences in respect of cost of acquisition, cost of improvement or for deduction u/s 54 of the Act and thus assessed the long term capital gain at Rs 54,93,600/- vide order dt.29.09.2021.

3. Before the CIT(A), assessee vide reply dt.22.01.2024 (PB 1-2) filed all the above evidences along with the reply filed to the AO on 28.09.2021. The Ld. CIT(A) reproduced the statement of facts, grounds of appeal and the submission of the assessee in support of grounds of appeal at Page 2-15 of the order. However, at Page 15 Para 6.1 it is held that assessee has ignored the notices issued on 08.12.2023, 02.01.2024 & 18.01.2024 and failed to provide even a single piece of evidence to support its claim. Again at Para 6.4 & 6.5 it is held that assessee has not submitted any documentary evidence even in appellate proceedings and therefore the order of AO making addition of Rs.54,93,600/- is upheld.

Submission:

1. At the outset it is submitted that it is incorrect on the part of CIT(A) to held that assessee has failed to respond to the notices issued on 08.12.2023, 02.01.2024 & 18.01.2024 and has failed to provide a single piece of evidence to support its claim. From PB 1-2 it can be noted that assessee has filed its response against notice dt. 18.01.2024 on 22.01.2024 along with the documentary evidences. The response of the assessee has been reproduced by the Ld. CIT(A) at Page 3-15 of the

order where assessee at Page 11 has specifically stated that she has not sold the land rather she purchased the land in which her share is only 1/3rd. In support of the same the registry of land purchased was filed before CIT(A). Thus, there is complete non-application of mind by the Ld. CIT(A) in making various observations alleging negligent, evasive, seriousness and disregard as to the conduct and notices issued. Hence, it is requested that for such mental agony caused to the assessee and the cost incurred in pursuing unnecessary litigations, cost be awarded to the assessee and strictures be passed against the Ld. CIT(A) for adopting such casual & negligent approach.

2. It is submitted that as per the assessment order, notice u/s 148 is issued for the reason that assessee has sold the land for Rs.28,00,000/- whereas the document available with the AO clearly shows that assessee has not sold the land rather she purchased the land in which her share is only 1/3. Thus, the notice issued u/s 148 is illegal and the same be quashed.

3. It is further submitted that section 56(2)(vii)(b) provides that where there is difference in the actual consideration and the stamp duty value in relation to the purchase of an immovable property, the difference can be added to the income of the buyer. However this clause was introduced w.e.f. 01.04.2014 ie. A.Y. 2014-15. Prior to it this deeming provision was applicable only when the immovable property is received by the assessee without consideration, the stamp value of which exceeds Rs.50,000/-, In the present case the land was purchased for a consideration and therefore the case of the assessee is not covered u/s 56(2)(vii)(b) as applicable for the year under consideration.

In view of above the addition confirmed by the CIT(A) is not tenable both on law and on facts, therefore the addition made by the AO be deleted.”

6. To support the various grounds so raised by the Id. AR of the assessee he also relied upon the following evidences in support of the contentions so raised:-

S. No.	Particulars	Pg No.	Filed before AO/CIT(A)
1.	Copy of acknowledgment of reply dt. 22.01.2024 filed before Ld. CIT(A), NFAC	1-2	CIT(A)

2.	Copy of reply dt. 28.09.2021 filed before AO through e-mail	3	Both
3.	Copy of sale deed dt. 26.04.2012 of plot purchased by the assessee with other two buyers	4-15	Both
4.	Copy of sale deed dt. 28.02.2012 of plot sold by the assessee.	16-23	Both

7. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) has passed ex-parte order. The assessee was not given adequate opportunity of being heard. Ld. AR of the assessee stated that the assessee has purchased the land not sold the land. Ld. AO has not inspite of having all the details based upon which the re-opening of the case was done the basis of re-opening as well as making the addition is based on wrong appreciation of the facts. Thus, the assessee's has been deprived of justice. The assessee in the assessment proceeding vide letter dated 28.0.2021 submitted to the assessing officer that the assessee has purchased the land. This primary fact has not been considered while passing the assessment order. Before the Id. CIT(A) the assessee submitted all the relevant details so as to provide sufficient evidence before the Id. CIT(A) to decide the merits of the case but here also the evidence placed were not discussed or dealt with. Based on that aspect the Id. AR of the

assessee prayed to set aside the order to frame after considering the facts of the case.

8. Per contra, Id. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the Id. CIT(A) and now they are praying for equity and justice. Therefore, in that case if the Bench feels the matter may be restored to the file of the Assessing Officer so as to have the appreciation of the proper facts.

9. We have heard both the parties and perused the materials available on record. The bench noted from the order of Id. CIT(A) that the appeal of the assessee was dismissed by the Id. CIT (A) by holding that the assessee did not comply with the hearing notices and has not filed any submission. The Bench further noted from the grounds of appeal of the assessee wherein the assessee contended by raising a specific ground that *“The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal filed by the assessee on the ground that assessee has failed to furnished any reply in response to the notices issued ignoring that in response to notice dt. 18.01.2024 assessee has furnished the reply on 22.01.2024 with documentary evidences.”* Thus, in view of the

overall facts of the case the Bench feels that the assessee placed on record the fact that she has purchased the land and not sold the land, but Id. AO did not appreciate the facts. Before, Id. CIT(A), assessee filed the submission vide submission dated 22.01.2024 but the same has not been verified and considered. The order has been passed without considering the contention of the assessee. Considering the specific ground of the assessee that she should be given one more chance to submit the evidence concerning the issue in question, which has apparently has merits to be decided after having verified the contention by Id. AO. Thus, with grounds so raised by the assessee, in our considered view the matter is required to be set aside to the file of the Id. AO, who will decide the issue afresh by providing sufficient 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.

10. 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 appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/08/2024.

Sd/-

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/08/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Smt. Gyan Devi, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 144/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar