

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 864/JP/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Shakuntala Devi W/o Shri Daya Ram Village: Karmapur, Tapukara Tehsil: Tijara, Distt. Alwar	बनाम Vs.	The ITO RIICO Industrial Area Bhiwadi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CGVPD 9825 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 25/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 27 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 10-04-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 raising following grounds of appeal.

“1.That the Id. assessing officer has erred in law as well as on the facts and circumstances of the case in giving a finding in the assessment order by making addition of income on account of capital gain and not considering the facts that the said land which is sold was situated at rural area as define in section 2(14) of the income tax act and the same is in the nature of rural agricultural land. Therefore the sold land was not an capital

assets and hence there was no question arises on treating the sales consideration as income under the head of capital gain.

2 That the Id. assessing officer has erred in law as well as on the facts and circumstances of the case in giving a finding in the assessment order by making addition of income on account unexplained investment u/s 69B of the act on account of purchased of an immovable property. That the Id. Assessing officer did not consider the facts that the assessee sold her agricultural rural land on dated 16.09.2013 as mentioned in ground no. 1 of the appeal. The sales proceeds credit into the bank and withdrawn by the assessee for purchasing the land therefore there was sufficient explained sources of investment made by assessee and hence the same not be treated as unexplained investment u/s 69B of the 1.Tax Act

2.1 During the course of hearing the Bench noted that there is delay of 02 days in filing the appeal for which the ld.AR of the assessee has filed an application for condonation of delay mentioning therein that delay of two days was due to mistake of counsel's office which was bona fide and not intentional. The ld.AR of the assessee has filed the following case laws to support his case as to condonation of delay.

- (i) Vijay Vishan Meghani vs DCIT[2017] 398 ITR 250 (Bombay High Court)- High Court condoned delay of 2984 days in filing appeal- Assessee's appeals allowed.
- (ii) Just Steels vs DCIT [2012] 74 DTR (MA) 86 – Appeal could not filed in time before the ITAT because the order of CIT(A) was misplaced. The firm stood dissolved and was recurring into losses. Delay to be condoned.
- (iii) Oracle India Pvt Ltd. vs DCIT [2008] 13 DTR 371 that “condonation of delay – reasonable cause- delay of 1297 days in filing appeal being on account of lapse on the part of consultant and not being malafide, there was valid reason warranting condonation of delay and admission of appeal.”
- (iv) Improvement Trust vs Ujagar Singh (Supreme Court) Civil Appeal Nos. 2395 of 2008 dated 26-06-2010 – Unless mala

fides are writ large, delay should be condoned. Matters should be disposed of on merits and not technicalities

Thus the ld.AR submitted that it was because of the bona fide mistakes on the part of the counsel's office, the appeal could not be filed in time and it happened due to inadvertence and beyond the control. Thus the Bench may kindly condone the delay and admit the appeal. Further the assessee has filed an affidavit deposing the facts that delay for 02 days in filing the appeal was due to counsel's office mistake.

2.2 On the other hand, the ld. DR objected to such delay but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 The Bench heard both the parties and perused the submissions of both the parties and also the case laws cited by the ld. AR of the assessee. The Bench noted that delay of two days in filing the appeal as per the submissions of the assessee is condoned which indicates the sufficient cause for such bona fide delay.

3.1 Further, it is noted that an application by the ld. Counsel for the assessee under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963 has been moved to raise the additional ground and the same is reproduced as under:-

“On the facts and in the circumstances of the case and in law, the AO has erred in issuing notice u/s 148 on 23-03-2018 after obtaining approval of the PCIT, Alwar whereas sanction u/s 151(2) as

these stood when was required from JCIT. The notice issued u/s 138 is ab initio void.”

The ld. AR of the assessee relied upon following case laws:-

- (i) NTPC Ltd. vs CIT (1998) 229 ITR 383 (SC)
- (ii) Ravindra Arora vs ACIT (2018) 404 ITR (Raj.)
- (iii) Shrawan Beniwal vs ITO, Bikaner (ITA No.292/JU/2008 dated 14-01-2000)
- (iv) Jora Singh vs ITO (2010) 42 DTR 409 (Lucknow)
- (v) CIT vs Kerala State Cooperative Marketing Federation Ltd. (1992) 193 ITR 624 (Ker.)
- (vi) Mahindra & Mahindra Ltd. vs DCIT (2009) 122 TTJ 577 (Mub)(SB)
- (vii) Sunil Kumar Pugalia (HUF) vs ITO (2009) 120 TTJ 1001 (Jodh)

3.2 This application for raising additional ground needs to be allowed on the ground that it is pure legal in question and no further documents are required for adjudicating the same and moreover goes to the roots of the case therefore this application need to be allowed. Since the appellant has raised the additional ground which is legal in question therefore, I have decided to adjudicate the same firstly.

3.3 Through this ground, the appellant has challenged the notice issued under section 148 of the Income Tax Act after obtaining approval of the PCIT Alwar, as per the appellant the sanction under Section 151 (2) as these provisions stood than

was required from JCIT therefore, the notice issued under section 148 is void ab initio.

3.4 On the contrary ld. DR relied upon the orders passed by the revenue authorities and further submitted that PCIT is superior in rank officer than that of JCIT and since the PCIT has all the powers which the JCIT has therefore there is no illegality if the sanction has been obtained from PCIT Alwar , instead of JCIT

3.5 After having heard the counsel for both the parties and after perusal of the orders passed by the revenue authority and the documents placed on record and judgement cited by the respective parties. It is an undisputed fact that notice under section 148 of the Income Tax Act has been issued with the approval of PCIT Alwar and these facts have been mentioned by AO in para number 3 on page number 2 of the assessment order and the relevant portion is reproduced here in below.

“3. Since no communication of above notices have been received till date which only substantiates that the assessee has nothing to say in this regard. The assessment is time barring and sufficient opportunities have been provided. Hence, there is no option but to complete the assessment ex-parte u/s 144 of the I.T. Act on the basis of material / information available on record.”

It is noted in this case that no assessment was completed earlier prior to issuance of notice under section 148 on 28.03.18. Since the relevant assessment year being 2014-15, therefore in such case approval was required under section 151(2) of the

Act as these provisions stood than was required from the JCIT whereas the AO wrongly and unlawfully sought approval from PCIT Alwar. Hence, in this way AO was wrong in issuing notice under section 148 on 23.03.2018 with the prior approval of the PCIT Alwar where as such approval was required from JCIT. To appreciate this legal proposition, it is imperative to mention the relevant provisions of section 151 which are reproduced here in below.

‘Sanction for issue of notice (Sec. 151 as substituted by the Finance Act. 2015 w.e.f. 1/4/2015 applicable up to 31/3/2021)

151. (1) No notice shall be issued under section-148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section-148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section-148, need not issue such notice himself.]

The perusal of the aforesaid provisions which came into effect from 01/06/2015 and were in force up to 31/03/2021 very clearly lay down that in a case which falls within four year from the end of the relevant year, notice u/s 148 shall be issued only with the satisfaction of the Joint Commissioner on the reasons recorded by the

Assessing Officer that it was a fit case for issue of notice. In other words, the provisions, as these stood then, clearly lay down that for issuing notice u/s 148 on 23/3/2018 in the case of the assessee for A.Y. 2014-15, sanction was required u/s 151(2). The same having not been obtained, the issuance of notice is unlawful. In the case of CIT VS.SPL Siddhartha Ltd (2011) 79 CCH 0893 (Del/HC dated 14/9/2011, the Hon'ble Delhi High Court held that it is trite law that when a statute requires a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner. Satisfaction of one authority cannot be substituted by the satisfaction of another authority. Similarly, following this decision, the Hon'ble Mumbai High Court in the case of Ghanshaym K Khabrani (346 ITR 443) has held that approval which has been granted is not by the Joint Commissioner of Income Tax but by the Commissioner of Income Tax, there is no statutory provision under which a power to be exercised by an officer and be exercised by a superior officer. The Court further laid down that when the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. In view of these decisions, it is submitted by the assessee that in the case of the assessee, the notice u/s 148 was issued without having lawful sanction. Therefore, the assessment so completed in pursuance of this notice happens to be without jurisdiction. The same deserves to be quashed. Since in the present case the notice

under section 148 was issued without having lawful sanction, therefore, in my view the assessment so completed in pursuance of this notice is without jurisdiction and therefore deserve to be quashed. Therefore I quash the assessment proceedings and order accordingly. This ground raised by the appellant stands allowed.

4.0 Since I have quashed the assessment proceedings therefore there is no need to decide the other grounds raised by the appellant on merits.

5.0 In the result the appeal filed by the appellant stands allowed with no orders as to costs.

Order pronounced in the open court on 27/08/2024.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/08/2024

***Mishra**

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

1. The Appellant- Smt. Shakuntala Devi, Tijara, Alwawr
2. प्रत्यर्थी / The Respondent- The ITO, Ward - Bhiwadi
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 864/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar