

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिकसदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकरअपील सं./ITA No.969/JP/2024
निर्धारणवर्ष/Assessment Year : 2011-12

Soni Devi, 01, Thirathraj Apartment, Jacob Road Civil Lines, Jaipur	ब्लाम Vs.	Income Tax Officer, Ward 2(2), Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BADPS 9184 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Ajay Agarwal, CA
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 11/09/2024
उदघोषणा की तारीख / Date of Pronouncement: 18/09/2024

आदेश / ORDER

PER: Narinder Kumar, JUDICIAL MEMBER,

First the Facts-in brief

Assessment Order is passed against the assessee

On 26.12.2018, an assessment order relating to Assessment Year 2011-12 was passed by Assessing Officer (Income Tax Officer, Ward-2(2), Jaipur) qua the assessee-appellant herein. Thereby, an addition of Rs.

30,00,000/- was made to the income of the assessee-Smt. Soni Devi, on the ground that she failed to explain source of -

(a) cash payment of Rs.8 lacs and ;

(b) payment of Rs.22,00,000/-kept aside while executing the sale deed,

which is stated to be the sale consideration of the immovable property purchased by her in July, 2010.

At the same time, the Assessing Officer initiated penalty proceedings u/s 271F of the Income Tax Act [hereinafter referred to as "Act"], the assessee having not filed any return of income as required u/s 139(1) of the Act.

Penalty proceedings u/s 271(1)(c) of the Act, were also initiated against she also having been found to have concealed particulars of income.

Assessee challenges the assessment order

2. Feeling aggrieved by the above assessment order, the assessee challenged the assessment order by way appeal filed before Id. CIT(A).

CIT(A), NFAC, dismisses the appeal

3. Vide order dated 26.12.2018, Id. CIT(A), NFAC dismissed the appeal rejecting the grounds put forth by the appellant, and thereby confirmed the assessment order.

Hence, this appeal before us.

4. Arguments heard. File perused.

Contentions

5. In the course of arguments, Learned AR for the assessee has referred to the observations made by the authorities below and submitted that the matter needs to be relooked as certain relevant material was not there before the Assessing Officer at the time assessment was framed, and even in the appellate proceedings before Learned CIT(A). Therefore, he has urged that matter be remanded to the Assessing Officer for decision afresh after considering all the relevant material and providing opportunity of being heard to the appellant-assessee.

Discussion

6. In order to appreciate the sole contention raised on behalf of the appellant, we have to dive into the facts of the case and search if there is any material which was not before the Assessing Officer or the CIT(A).

Survey leads to the assessee

On 16.09.2016, a survey was conducted in the case of Sh. Rajender Kumar Gupta (PAN: ACNPG4800F). He was a Notary Public, having his office premises at 120/142, Agarwal Farm, Mansarovar, Jaipur.

The survey at the said premises led to discovery of information relating to certain Kucha Agreements. The information was gathered from various registers impounded from there.

One of entries in one of the registers revealed the name of Smt. Soni Devi-assessee.

Department reopens the matter

Information was also received from the Director of Income Tax (Inv.), Jaipur. It was to the effect that the assessee had purchased immovable property worth Rs. 45,00,000/- during the Financial Year 2010-11. That is how, the case was reopened on the basis of reasons, said to have been recorded separately, which led the department to believe that it was a case of escapement of income.

7. As per record, assessment order dated 26.12.2018 came to be passed after assessment proceedings conducted on issuance of notices u/s 148, 142(1) and 144 of the Act.

The first notice i.e. u/s 148 of the Act was issued on 26.03.2018 after a survey action by the department u/s 133(A) of the Act.

Explanation is sought for, as regards sale consideration

8. Assessing Officer called for the assessee to explain source of investments of Rs. 45,00,000/- for the purchase of the said immovable property. Said amount was found recorded in the record of the Notary Public.

Assessee replies

In her reply dated 10.12.2018, the assessee submitted that only $\frac{1}{4}$ th portion of the above said property was purchased by her vide registered document executed on 15th July, 2010 by Shri Ghasi Lal and Smt. Gulli Devi, the vendors, and that only a sum of Rs. 23,00,000/- was paid by way of sale consideration. In this way, she tried to explain that even if initially the agreement was for the portion $\frac{1}{2}$ of the whole land, ultimately, the transaction was entered into only for $\frac{1}{4}$ th share for a sum of Rs. 23,00,000/-.

As per the assessment order, on 11.12.2018, AR of the assessee submitted to Assessing Officer her following version:

"(i)"Assessee has made the agreement for purchase of agriculture land measuring & share out of Khasra No.3 0.21 hqter, Khasra No. 12 0.75 hater and Khasra No.15 0.84 hater on consideration of Rs.45,00,000/-. From Ghasi Lal, Gulli Devi and their family members.

(ii)Due to family dispute, only Ghasi Ram and Gulli Devi agreed to sale their $\frac{1}{4}$ portion out of above mentioned portion measuring 1.80 hqter. Since the agreement was made for purchase of % portion out of 1.80 hater agriculture

(iii) land on consideration of RS.45,00,000/- but deal could not be matured and assessee have to buy only $\frac{1}{4}$ portion out of 1.8 hqter agriculture land on consideration of Rs.23,00,000/-. We have already submitted the copy of registry for your kind perusal and needful.

(iv) Since the agreement sale to purchased was made notarized for purchase of $\frac{1}{2}$ share in 1.80 hqter agriculture land but could not be matured because of family dispute of sellers and registry made of % portion of 1.8 hater and agreement to sale become obsolete registry made of purchase of property."

Record produced by the assessee before the Assessing Officer

9. On 30.11.2018, on behalf of the assessee, copy of ITR and computation of income for the Assessment Year 2011-12, copy of sale deed in respect of the above said immovable property, situated in village-Chatarpura, Tehsil-Sanganer, Jaipur and copies of certain bank statements for the period under consideration, were submitted.

Assessing Officer rejects the claim

The Assessing Officer rejected the abovesaid version put forth by the assessee on two points:

Firstly, on the point of area of land which was subject matter of sale transaction;

Secondly, on the point of sale consideration agreed to be paid and actually paid.

The Assessing Officer appears to have expressed dis-satisfaction about the claim of the assessee that the transaction pertained to sale of 1/4th portion only, and not 1/2 portion, as per entry found to have been recorded in one of the Registers impounded from the office of Notary Public.

The Assessing Officer also expressed dis-satisfaction about the claim of the assessee on the point of total sale consideration, which according to the assessee was Rs. 23,00,000/-, but in the view of the Assessing Officer, it was Rs. 45,00,000/-. This conclusion came to be arrived at while observing that out of the total sale consideration, the sale deed was got executed only for Rs. 23,00,000/-whereas a sum of Rs. 22,00,000/-was kept aside at the time of execution of the sale deed.

In this way, the Assessing Officer observed that a sum of Rs. 22 lacs was paid from undisclosed source.

Controversy about the area of the land sold and purchased and the sale consideration agreed to be paid and actually paid

10. As noticed above, in her reply dated 10.12.2018, the assessee submitted that only $\frac{1}{4}$ portion of the above said property was purchased by her vide registered document executed on 15th July, 2010.

As regards sale consideration, she claimed that Shri Ghasi Lal and Smt. Gulli Devi, were the vendors and that only a sum of Rs. 23,00,000/- was so paid. In this way, she tried to explain that even if initially the agreement was for the half portion of the land, and for Rs. 45,00,000/-, ultimately, deal was struck for sale and purchase of only $\frac{1}{4}$ th portion and that too for a sum of Rs. 23,00,000/-.

No doubt, the assessee did not produce before the authorities below, copy of agreement initially stated to have been entered into between the assessee and Sh. Ghasi Lal and Smt. Gulli, the fact as discovered from the entry recorded in one of the registers seized from the office of Notary Public.

It is significant to note that as per copy of the registered sale deed dated 15.7.2010 produced by the assessee, only $\frac{1}{4}$ th portion of the whole land was purchased by the assessee.

In case of any transaction of sale and purchase of agricultural land, land record is maintained. Participation of any Patwari, Kanungo or Patwari from the concerned Tehsil, in the enquiry during assessment proceedings

would have been helpful in unearthing any collusion between the parties as regards the area of land actually sold and purchased.

No record appears to have been collected from the office of Sub Registrar to rule out possibility of execution of any separate set of documents in respect of purchase of another 1/4th portion of the land by the assessee.

Sh. Ghasi Lal and Smt. Gulli were not joined in the enquiry to enquire from them if any separate set of documents in respect of purchase of another 1/4th portion of the land by the assessee came to be executed. Their statements could have thrown light about hidden facts, if any, about the transaction pertaining to the immovable property.

In the face of registered sale deed, made available to the Assessing Officer, and simply because original agreement to sell was not produced by the assessee, we do not find any material to disbelieve the claim of the assessee that actually only 1/4th portion of the agricultural land, as specified in the sale deed, was the subject matter of the transaction of sale, and that the total sale consideration agreed between the parties was to the tune of Rs. 23,00,000/-.

Also because there is no mention in the sale deed regarding modification of the previous agreement, no adverse inference could be

drawn against the assessee, the reason being that it depends upon the skill knowledge, wisdom and expertise of the deed writer who drafts a conveyance or deed.

By no stretch of imagination, it can be said that ½ portion of the entire agricultural land was the subject matter of transaction of sale or that the total sale consideration agreed between the parties was to the tune of Rs. 45,00,000/-.

The findings recorded by the authorities below on these issues appear to have been recorded on the basis of conjectures and surmises. Therefore, said findings deserve to be set aside.

Failure to explain source of payment of Rs. 30 lacs

11. In this regard, in the assessment order, the Assessing Officer observed that the assessee had failed to explain the source of cash payment of Rs. 8,00,000/-. Said observation was made on going through the return of income filed by the assessee for the Assessment Year 2011-12, which revealed that she had shown her total income of Rs. 1,85,000/- only. Accordingly, Assessing Officer treated the said amount of Rs. 8 lacs as unexplained investments.

As per the assessment order, on 11.12.2018, AR of the assessee submitted to Assessing Officer her following version:

“(i)”Assessee has made the agreement for purchase of agriculture land measuring & share out of Khasra No.3 0.21 hqter, Khasra No. 12 0.75 hater and Khasra No.15 0.84 hater on consideration of Rs.45,00,000/-. From Ghasi Lal, Gulli Devi and their family members.

(ii)Due to family dispute, only Ghasi Ram and Gulli Devi agreed to sale their $\frac{1}{4}$ portion out of above mentioned portion measuring 1.80 hqter. Since the agreement was made for purchase of % portion out of 1.80 hater agriculture

(iii)land on consideration of RS.45,00,000/- but deal could not be matured and assessee have to buy only $\frac{1}{4}$ portion out of 1.8 hqter agriculture land on consideration of Rs.23,00,000/-. We have already submitted the copy of registry for your kind perusal and needful.

(iv) Since the agreement sale to purchased was made notarized for purchase of $\frac{1}{2}$ share in 1.80 hqter agriculture land but could not be matured because of family dispute of sellers and registry made of % portion of 1.8 hater and agreement to sale become obsolete registry made of purchase of property.”

In view of her statement dt. 11.12.2018, Assessing Officer directed the assessee to produce, copy of agreement for purchase of half share of agreement land, from Sh. Ghasi and Smt. Anju, for a sum of Rs. 23,00,000/-, but, the assessee could not produce any such agreement. She pleaded that the same was not traceable.

Due to non production of any such agreement for purchase of half portion in the whole immovable property, Assessing Officer was of the view that even though the agreement to produce was made for Rs. 45,00,000/-, sale deed was executed only for Rs. 23,00,000/- thereby keeping payment

of Rs. 22,00,000/- aside. Accordingly, the Assessing Officer was also of the view that source of payment of Rs. 22,00,000/- also remained undisclosed.

In this way, the Assessing Officer made total addition of Rs. 30,00,000/- to the income of the assessee.

Observations by the CIT(A), NFAC

12. When the matter came up before Id. CIT(A) , it was observed that there was no material to suggest that the agreement initially arrived at for Rs. 45,00,000/- was revised or cancelled.

13. As discussed above, the findings recorded by the authorities below about the area of land sold i.e. $\frac{1}{2}$ portion of the land and the sale consideration being Rs. 45 lacs have been set aside.

It stands proved that the sale consideration of the $\frac{1}{4}$ th portion of the land purchased by the assessee was agreed to be Rs. 23 lacs only, and not Rs. 45 lacs.

Consequently, the findings recorded by the authorities below that source of payment of Rs. 22 lacs remained undisclosed, are also hereby set aside.

No dispute regarding source of payment of Rs. 15 lacs

14. As is available from copy of registered sale deed dated 15th July, 2010, the assessee purchased only $\frac{1}{4}$ of the total immovable property for total sale consideration of Rs. 23,00,000/-.

In order to explain source of Rs. 15 lacs from the said sale consideration, the appellant has placed on record a copy of agreement dated 5.02.2009 entered into between the assessee and the buyers-Sh. Narayan Dhupar and his wife Smt. Anju Dhupar, whereby the assessee sold her agriculture land to the said purchasers for a sum of Rs. 40,00,000/-.

As regards said payment of balance amount of Rs. 15,00,000/-, in the sale deed it finds mentioned that the vendors had received the entire sale consideration from the buyer-assessee.

So, there is nothing in the assessment order to suggest that the Assessing Officer was not satisfied about the source of said payment of Rs. 15 lacs by way of cheques.

Source of payment of Rs. 8 lacs

15. As regards payment of Rs. 8,00,000/-, in cash, for purchase of said immovable properties, the authorities below observed that the assessee had failed to establish her plea raised in the appeal that said payment was made from the her savings, she having not produced copy of statement of bank account depicting any such withdrawal.

16. It may be mentioned here that during pendency of this appeal, Id. AR of the assessee submitted a paper book consisting of 41 pages.

On going through the Index of the Paper Book, when the Bench pointed out to Id. AR of the assessee that no certificate had been appended thereto as to which of the documents mentioned therein was or were not before the authorities below. In other words, there was no certificate as to which document has been presented by the assessee before this appellate tribunal for the first time.

Thereupon, Id. AR of the assessee, appellant has appended certificate to the Index certifying that copies of income tax return (Page no. 18 to 41 of the paper book) were not submitted by the assessee before the Assessing Officer or CIT(A).

At the same time, Id. AR of the assessee has made an oral request for taking said copies of ITR on record.

The assessee has placed on record copy of agreement between her and Sh. Narayan Dhupar and Smt. Anju with regard to sale of land by the assessee to said two persons on 5.2.2009 for a sum of Rs. 40 lacs.

As per this document, out of total sale consideration, she received in cash a sum of Rs. 8,00,000/- on 5.2.2009 itself.

Assessing Officer observed in the assessment order that there was no entry in the statement of bank account of Sh. Narayan Dhupar, depicting withdrawal of said amount of Rs. 8 lacs during a period of two months prior to the execution of the agreement to sell. But, he nowhere specified as to which agreement to sell he was referring to while recording said observation.

Even otherwise, there is nothing on record to suggest that the assessee ever claimed that source of cash payment of Rs. 8 lacs made by her to Sh. Ghasi Lal and Smt. Gulli, was any amount received from Sh. Narayan Dhupar to whom she had sold her land on 5.2.2009.

Therefore, the above observation that there was no entry in the bank statement of Sh. Narayan Dhupar regarding withdrawal of said amount, was of no relevance at all, and could not have been made the basis of addition of Rs. 8 lacs.

17. Claim of the assessee was that she had paid Rs. 8 lacs to Sh. Ghasi Lal and Smt. Gulli from her savings. Assessing Officer disbelieved this version by observing that a person having a mere income of Rs. 1,85,000/- as declared by her in his ITR, could not have so much savings.

It is true that even before the CIT(A), the assessee did not furnish any evidence like copy of statement of her bank account, to support her claim regarding savings of Rs. 8 lacs.

But, as noticed above, Ld. AR of the appellant has submitted that the assessee could not produce, before authorities below certain documents like copy of statement of bank account and copies of ITRs pertaining to previous years to prove that she had sufficient amount by way of cash in hand, in order to explain the source of cash to the tune of Rs. 8,00,000/- paid by her on 15.07.2010 to Sh. Ghasi Lal and Smt. Gulli Devi, and that in case she is offered another opportunity to produce relevant evidence, she would establish source of said cash.

18. Therefore, on this point, we find that the matter needs a relook of Assessing Officer, for decision afresh.

19. It is true that the appellant had the opportunity to produce entire evidence before the authorities below in order to prove her savings of Rs. 8 lacs to explain the same as source of cash payment to Sh. Ghasi Lal and Smt. Gulli , but she did not produce any such document, now sought to be produced before the Assessing Officer.

In the interest of justice, and the peculiar facts and circumstances, we deem it to be a fit case where the appellant deserves to be granted another

opportunity to produce before the Assessing Officer copies of statements of her bank account, and copies of ITRs of previous years, in proof of her savings of Rs. 8 lacs to explain the same as source of cash payment to Sh. Ghasi Lal and Smt. Gulli.

Since production of said evidence is material and relevant, in the interest of justice, but the assessee did not produce the same before the authorities below, we deem it a fit case to burden her with costs. Accordingly, she is directed to deposit Rs.5,000/-in Prime Minister's National Relief Fund and produce the receipt before the Assessing Officer.

Conclusion

20. In view of above discussions, we deem it fit a case to remand the matter to Assessing Officer for decision afresh on the issue of explaining of source of cash payment of Rs. 8 lacs on 15. 7.2010 towards the sale consideration for purchase of the immovable property, after providing reasonable opportunity to the assessee to produce entire evidence.

Result

21. As a result, this appeal is partly allowed in the manner indicated above.

As regards the issue of explaining of source of cash payment of Rs. 8 lacs on 15. 7.2010 towards the sale consideration for purchase of the

immovable property, the matter is remanded to the Assessing Officer for decision afresh on this issue, after providing reasonable opportunity of being heard to the assessee.

Before commencement of proceedings on remand, the assessee to produce before the Assessing Officer, receipt in proof of deposit of amount of the costs imposed.

Assessing Officer shall be at liberty to join any other concerned person in the inquiry for verification of any relevant facts.

Order pronounced in the open court on 18/09/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/09/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Soni Devi, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward -2(2), 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. 969/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar