

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 1137/JP/2024  
निर्धारण वर्ष / Assessment Years : 2011-12

Shahnaz Khan 356 Bairwa Basti, Pushkar Road Kotda, Ajmer	बनाम Vs.	Income Tax Officer Ward 6(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ALXPK 5128 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Saurav Harsh, Adv.  
राजस्व की ओर से / Revenue by : Sh. Gautam Singh Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 10/10/2024  
उदघोषणा की तारीख / Date of Pronouncement: 14/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is filed by the above named assessee because the assessee was dissatisfied with the order of National Faceless Appeal Centre, Delhi dated 26/06/2024 [here in after 'NFAC/CIT(A)'] for assessment year 2011-12. The said order of the Id. CIT(A) arise as against the order dated 20.12.2018 passed under section 144 r.w.s 147 of the Income Tax Act, [ for short Act ] by ITO, Ward-6(3), Jaipur [ for short AO].

2. At the outset of hearing, the Bench observed that there is delay of 09 days in filing of the present appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay with following prayers:

“Application for condonation of delay u/s 253(5) of the I.T. Act, 1961 read with section 5 of Limitation Act in filing of appeal

Hon'ble Sir,

The humble assessee appellant respectfully prays for the condonation of delay in the filling of Appeal for the following reason:

1. That the Id. CIT (Appeals)-NFAC passed the impugned order on 26.06.2024 which was served upon the email of the counsel of assessee on 26.06.2024 and the same was subsequently intimated to the assessee appellant by her counsel.
2. The assessee appellant is a lady lives in a remote village in Ajmer and she do not aware about nitty gritty of Income-tax law.
3. That subsequently, after receiving the order she had approached to her local counsel and immediately on the basis of the opinion of her local counsel, the appeal documents was sent to counsel in Jaipur for filling appeal.
4. That due to some miscommunication with the Jaipur Counsel the appeal got time barred and the assessee has filed this appeal before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur on 04.09.2024 with slight delay of 10 days.
5. An Affidavit duly sworn in this regard is also enclosed herewith.

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay was not intentional and lack of understanding of the income tax proceedings. The delay may kindly be condoned.”

3. During the course of hearing, the Id. DR did not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

4. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 09 days has merit and we concur with the submission of the assessee supported by an affidavit filed. Thus the delay of 09 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. In this appeal, the assessee has raised following grounds: -

*"1. That in law and in the facts and in circumstances of the case, the Id. Assessing Officer grossly erred in issuing notice u/s 148 of the Income-tax Act, 1961 which is issued without jurisdiction, without any reason to believe and the entire proceedings of reassessment deserves to be quashed.*

*1.1 That in law and in the facts and in circumstances of the case, the Id. Assessing Officer grossly erred in sending notices on Jaipur address and ignoring the fact that the assessee appellant is a resident of Ajmer and in registered sale deed her Ajmer address is showing but the assessing officer was not bother to send the notices on correct address available to him. Hence the reassessment proceedings become illegal and void ad initio.*

*2. That on the law and in the facts and in the circumstances of the case the learned lower authorities grossly erred in invoking section 50C of the I.T. Act, 1961 while making an addition of Rs. 9,89,309/- and ignoring the facts that there is disputes with regards to the property and Fair Market Value of appellant property*

*is lesser than the DLC value.*

*3. The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.”*

6. Succinctly, the fact as culled out from the records is that in this case, an information was received from sub registrar that the assessee has sold an immovable property for sale consideration of Rs.7,50,000/-, value of which was adopted at Rs.9,89,309/- by the stamp duty authority. But the assessee has not filed original return for A.Y.2011-12. Therefore, a notice u/s 148 was issued on 23.03.2018 after recording reasons and taking approval from the Pr. CIT-II, Jaipur. Notice u/s 142(1)/questionnaire and its enclosure issued on 08.06.2018 and duly served upon the assessee through speed post. In response to notice u/s 142(1), none attended. Thereafter one more opportunity was provided by issuing show cause notice for completion of assessment proceedings u/s 144 of the IT, Act, 1961 vide dated 12.07.2018 and 17.09.2018 fixing the hearing on 23.07.2018 and 03.10.2018, which were served through speed post. However no compliance was made. Then final opportunity was provided vide final show cause notice dated 30.10.2018 fixing the hearing on 05.11.2018 and served through speed post. In response to final show cause notice dated 30.10.2018 Sh. Rafique Khan, brother of the assessee

attended on 06.11.2018 and made request for adjournment. On request copy of notice u/s 148 dated 23.03.2018 and show cause notice dated 30.10.2018 and its enclosures were served upon him and asked to submit evidence/ explanation with supporting evidences. On request, the hearing was finally adjourned to 13.11.2018 and subsequently on 16.11.2018. On 16.11.2018, Sh. Rafiq Khan, brother of the assessee attended and filed submission/objection against the reopening of the case of the assessee u/s 147 for A.Y 2011-12. The objection was disposed off vide letter dated 29.11.2018 and asked assessee to file submission on merits with supporting evidences. In response to this show cause none attended on behalf of the assessee. In this situation, Id. AO completed the assessment ex-parte u/s 144 on merits, on the basis of material available on record.

7. As per per information/CIB/ITS data for the F.Y 2010-11, the assessee sold immovable property amounting to Rs. 7,50,000/- (DLC Value Rs. 9,89,309/-) on 22/09/2010, vide registered sale deed to Jenab (purchaser) and accordingly Income was determined as under:-

Sale Consideration (50C value)	Rs. 9,89,309/-
Cost of acquisition	Rs. Nil
Short term capital gain	Rs. 9,89,309/-

8. Aggrieved from the order of Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4. CIT(A)'s Decision:

The appellant given written submissions, statement of facts and grounds of appeal have been carefully perused.

4.1. Ground No. 1:

4.1.1. Ground No.1 relates to the legality and validity of the Notice u/s. 148 of the Act. During the appeal proceedings, the appellant has contested that the notice u/s. 148 of the Act dated 23.03.2018 for the AY 2011-12 was served on 06.11.2018, which is barred by limitation on 31.03.2018 as the period of 6 years had expired on 31.03.2018 itself. The time limit for issue of notice u/s.148 of the Act is governed by section 149 of the Act. For ready reference, section 149 of the Act, as it stood before being Amended by Finance Act, 2012, is reproduced as under:

*“Time limit for notice.*

*149. (1) No notice under section 148 shall be issued for the relevant assessment year, -*

*(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*

*(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.*

4.1.2. As per law settled by a catena of judgments, Section 149 mandates time limit only for 'issue of notice' and 'service of notice' within the limitation period is not mandatory for conferment of jurisdiction on the Assessing Officer. In the appellant case, the AO was in possession of information received from the Sub-registrar that the appellant assessee had sold an immovable property during Financial Year 2010- 11 for sale consideration of Rs.7,50,000/- and Stamp Duty Valuation of Rs.9,89,309/- but had not filed her original return of income for AY 2011-12. The notice u/s 148 has been issued on 23.03.2018 after recording reasons and with prior approval of the Pr.CIT-II, Jaipur as mandated by section 151 of the Act. The appellant has not disputed the date of issue of notice u/s. 148. Therefore, the

notice u/s. 148 of the Act has been issued well within the time limit prescribed as per section 149 of the Act.

4.1.3. It is seen from the Assessment Order that during the assessment proceedings, the appellant assessee, vide letter dated 16.11.2018, had filed objection against the reopening of the case. The objections were disposed off by the AO vide letter dated 29.11.2018 duly following the procedure laid down by the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd vs Income Tax Officer And Ors. The appellant has also contested that the notice u/s.148 dated 23.03.2018 for AY 2011-12 has been addressed at E12, Gandhi Nagar, Jaipur 302015 whereas the appellant assessee is resident of 45E/264, Kotda, Pushkar Road, Ajmer. This issue has already been addressed by the AO while disposing off the objections. The AO has already noted that in the sale deed registered with Sub- Registrar-2, Jaipur, the appellant assessee had mentioned the address as E-12, Gandhi Nagar, Jaipur. Further, the notice u/s 148 of the Act was also served on her brother and he also appeared before the AO on behalf of the appellant assessee and raised the objections for initiation of reopening of assessment proceedings which are duly disposed off by the AO before completion of assessment proceedings.

4.1.4. In view of the above discussion, this ground raised by the appellant is devoid of merits and is dismissed.

4.2. Ground No. 2:

4.2.1. The next ground raised by the appellant relates to invoking of provisions of section 50C of the Act. As per information available with the AO, the appellant assessee had sold immovable property for a sale consideration of Rs.7,50,000/- on 22.09.2010 vide registered sale deed. The AO called for certified copies of the sale deeds u/s. 133(6) of the Act. The AO noticed that the value of the property adopted by the stamp duty authority was at Rs 9,89,309/- Accordingly, the AO invoked the provisions of section 50C and the full value of the consideration received was deemed to be Rs.9,89,309/-OME

4.2.2. The appellant has contested that the property in question was a subject of various legal disputes. The appellant has also furnished a copy of one of the cases filed with regards to the disputed property. However, it is noticed that the appellant is not a party in the said case. Further, relying on that case, the appellant submitted that the buyers are acquiring many properties on that locality including the applicant's property, hence, the market value of applicant's property is lesser than the value determined by the stamp valuation authority. This contention is not acceptable for the reason that the appellant has to prove that her property is having legal dispute but not relying on someone else property dispute and the submission of the appellant is more of general in nature. Since, the Guideline Value for calculation of Stamp Duty is more that the sale consideration and the appellant could not furnish any evidence specific to her property that the value

adopted by the stamp valuation authority is more than the market value, the provisions of section 50C are applicable in this case. Therefore, this ground raised by the appellant is dismissed.

#### 4.3. Ground No. 3:

The next ground raised by the appellant is regarding the allowability of purchase cost of the immovable property which was sold and Capital Gain was computed by the AO. The AO, in the Assessment Order, has stated that in the absence of submissions by the assessee, the cost of the property could not be determined and therefore the same was treated as NIL. During the appeal proceedings, the appellant has claimed that the appellant had purchased the property in question vide registered sale deed on 21.01.2008 for which a sum of Rs.6,21,000/- was paid to the seller and on which Rs.53,330/- was paid towards stamp duty and registration charges and further amount of Rs. 11,000/- was incurred towards legal fees. The appellant has also submitted a copy of the registered deed dated 21.01.2008 for purchase of property wherein the sale consideration has been mentioned as Rs.6,21,000/-, The AO is directed to re-compute the Short-Term Capital Gain after considering the cost of acquisition of Rs.6,21,000/-. Further, the AO is directed to verify the genuineness of expenses of Rs.53,330/- towards stamp duty and registration charges, Rs. 11,000/- towards legal fees and if found correct, the same is to be allowed while computing the Short-Term Capital Gain. This ground of the appellant is partly allowed.

#### 4.4. Ground No. 4:

Ground No. 4 is general in nature and does not require separate discussion.

4.5. In the result the appeal is partly allowed.”

9. As the appeal of the assessee was considered only on part by the Id. CIT(A), assessee preferred present appeal on the grounds as stated hereinabove. Apropos to the grounds so raised the Id. AR of the assessee relied upon the written submission filed before Id. CIT(A) and also relied upon the following documents;

S. No.	Particulars	Page No.
1.	Copy of written submission dated 14.05.2024 filed before Id. CIT(A) NFAC	01-28
2.	Copy of notice dated 23.03.2018 issued u/s 148 of the Act	29-29

3.	Copy of noticed dated 08.06.2013 and 30.10.2018	30-31
4.	Copy of Objection dated 15.11.2018 with regards to Jurisdiction	32-35
5.	Copy of PAN of the Assessee	36-36
6.	Copy of Purchase Deed dated 21.01.2008	37-40
7.	Copy of Sale deed dated 22.09.2010	41-54
8.	Copy of Cases filed with regards to the Disputed Property.	55-64

As is evident from the order of the Id. CIT(A) that the assessee got substantial relief and for the sustained addition on account of capital gain the assessee is in appeal before us.

10. Before us during the course of hearing the Id. AR of the assessee heavily relied upon the technical ground Nos. 1 and 1.1 raised by the assessee and to support that ground Id. AR of the assessee drawn our attention to the following paper as attached in the paper book filed by the assessee.

Notice under Section 148 of the Income - Tax Act, 1961  
Office of the ITO WD 6(3), JPR

PAN :  
To \*  
SHRI/SMT. SHAHNAZ BANO  
E 12 GANDHI NAGAR  
JAIPUR -302015

Dated : 23/03/2018

Sir/Madam,

Whereas I have reasons to believe that your income chargeable to tax for the assessment year 2011-12 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

2. I, therefore, propose to assess/re-assess the income for the said assessment year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form of your income for the said assessment year.

3. This notice is being issued after obtaining the necessary satisfaction of The Pr. commissioner of Income Tax -II, Jaipur the Central Board of Direct Taxes.

Seal.

(Signature of Officer)  
(समयानंद खन्ना)  
Name : समयानंद अधिकारी  
Designation : आई 6 (3) जापुर

No. ITO/WARD 6(3)/JPR/ 148 /2018-19/ 341 Date: 08.06.2018

PAN-

Smt. Shahnaz Bano  
E- 12 Gandhi Nagar,  
Jaipur-302015

Sir/Madam,

Sub: - Completion of Pending Assessment proceedings for the A.Y. 2011-12---Calling of Information u/s 142(1) of the IT, Act, 1961 -reg-

Please refer to the pending assessment proceeding in your case.

No.ITO/WARD 6(3)/JPR/ 148 /2018-19/ 1109

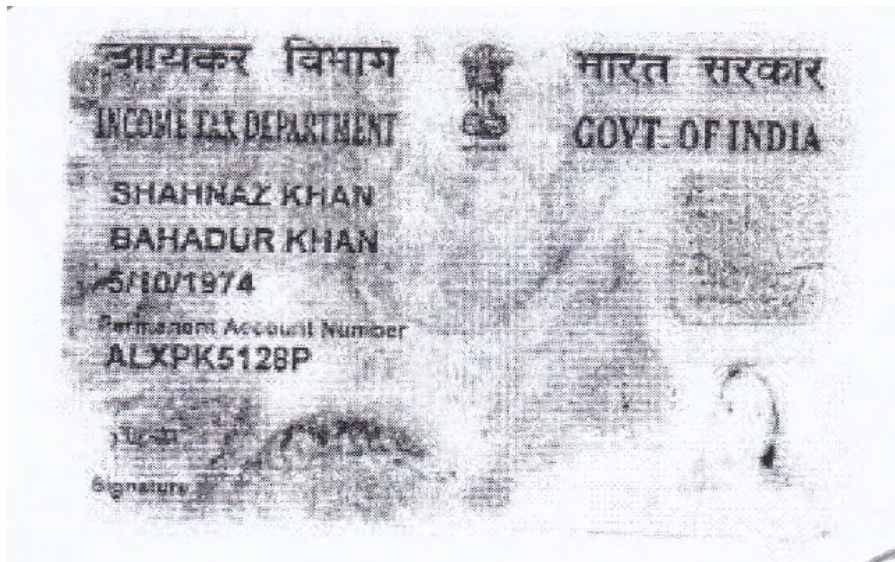
Date: 30.10.2018

PAN- ACSPG2181N

Smt. Shahnaz Bano,  
C/o Sh. Mohd. Rafiq,  
250, Sanjay Nagar A,  
Near Angel Academy,  
Jhotwara, Jaipur.

Sir/Madam,

Sub:- Final Show cause notice for completion of assessment proceedings u/s 144 of the IT, Act, 1961 -A.Y. 2011-12 -reg-



10.1 The Id. AR of the assessee relying on the above screenshot stated that the notices were issued without PAN and even when PAN mentioned, the same is not correct and that of the assessee and therefore, the order of Assessing Officer bad in law is required to be quashed and lack the principles of natural justice from the initiation of the proceeding itself.

11. Per contra, the Id. DR appearing on behalf of the revenue relied upon the order of lower authorities. The Id. DR also submitted that the technical ground raised is raised for the first time and even the assessee participated in the proceedings before the lower authority and therefore, technical ground is not required to be adjudicated. So far as the merits of the issue Id. DR relied upon the orders of the lower authority.

12. We have heard the rival contentions and perused the material placed on record. The ground no. 1 & 1.1 raised by the assessee challenges the jurisdiction. Apropos to the ground we note from the paper book page 29 that the notice issued to the assessee for invoking the proceeding u/s. 148 of the Act does not have any Permanent Account Number (PAN) which is required to be quoted. Not only that the same was served upon the assessee only on 06.11.2018 which is barred by limitation. The Id. DR representing the revenue did not challenge this aspect of the matter and therefore, when it is clear that the notice of initiating the proceeding u/s. 148 is not served upon the assessee within six years the consequent proceeding also not legal and is liable to be quashed. Even other wise the subsequent notice dated 08.06.2018 was also served on 06.11.2018 without quoting PAN number. Thus, when the notice itself is served beyond

the six year the subsequent assessment framed on that illegal notice cannot be sustained.

Based on these observation grounds no. 1 & 1.1 raised by the assessee are allowed. Ground 3 being on merits become educative in nature and ground no. 4 being general in nature does not require any adjudication.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14/10/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/10/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Shahnaz Khan, Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward 6(3), 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. 1137/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar