

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

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

आयकर अपील सं./ITA No. 802/JPR/2023
निर्धारण वर्ष / Assessment Year : 2018-19

Kavita Samtani, 082 Sindhu Nagar, Opposite Pani Ki Tanki, Bhilwara	ब्लाम Vs.	The DCIT, Central Circle, Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: DBDPS 4032 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya, Adv.
Sh. Hemang Gargieya, Adv.
राजस्व की ओर से / Revenue by: MS. Alka Gautam, CIT

सुनवाई की तारीख / Date of Hearing : 21/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 23/10/2024

आदेश / ORDER

PER: Narinder Kumar, JUDICIAL MEMBER,

The above captioned appeal has been filed by Smt. Kavita Samtani while challenging order passed by Id. CIT(Appeal), relating to Assessment Year 2018-19.

2. Vide impugned order, Id. CIT(Appeal) has upheld assessment order passed in respect of above said assessment year.

3. As per assessment order dated 31.12.2019 in respect of Assessment Year 2018-19, total income of the assessee has been

assessed at Rs. 7,34,890/- by making addition of Rs. 2,40,000/-, due to undisclosed investments u/s 69 of the Act, as the assessee was found to have suppressed sale value u/s 50C of the Income Tax Act, 1961 [hereinafter referred to as "Act"].

4. As per case of the department, search and seizure action, under section 132 of the Act, was carried out on 29.3.2018 at the residential and business premises of husband of the assessee and his family members, including the assessee, which led to discovery of various incriminating documents/loose papers. Certain documents were seized.

5. As regards one of the documents numbered as Exhibit-01, page No. 1 to 10, Assessing Officer observed in the assessment order as under;

"As regards document number AS, Exhibit-1, Page No. 1 to 10, though the assessee has shown a long term capital gain income on sale of building on 11.07.2017 for a consideration of Rs. 21 lac in her computation of income for A.Y. 2018-19 but she has not fully disclosed the sale value as per DLC rates applied by the Sub- registrar, Bhilwara. According to the registration document, the Sub- registrar has registered the value of house number G-250/7,8, Vaibhav Nagar, Bhilwara at Rs. 23,40,000/- and not Rs. 21 lac as shown in her working in the computation for A.Y. 2018-19. Thereby, the assessee has suppressed the sale value u/s 50C by Rs. 2,40,000/- and the same is deemed as her income for A.Y. 2018-19 and added to her total income.

Further, the undersigned records his satisfaction that the assessee has concealed her income particulars within the purview of provisions of Sec. 271AAB(1A) for A. Y. 2013-14. Notice u/s 271AAB (1A) r.w.s. 274 is being issued."

6. When the assessment order was challenged by the assessee, by way of appeal, Id. CIT(Appeal) dismissed the appeal.

7. In the assessment order, Assessing Officer has observed as under:-

“6. During the course of search at her residence at 29, Sindhu Nagar, Bhilwara and business premise of her husband Shri Deepak Samtani, seized loose papers as Annexure AS, Exhibit-1, Page No. 1 to 10, Annexure AS, Exhibit-2, Page No. 25 to 28 and Annexure AS, Exhibit-6, Page No. 12 to 13.

In reply to the same for Exhibit-6, Page No. 12 to 13, it was stated that it is ledger of M/s Mohan Broker Agency relevant to A.Y. 2017-18 which is a concern of her husband and she is not related with the same. But the relevant documents reflects that in the said papers her account is reflected in the ledger of M/s Mohan Broker Agency. However, since there is no transaction pertaining to this year in these documents, no issue of any addition does arise.

As regards document number AS, Exhibit-1, Page No. 1 to 10, though the assessee has shown a long term capital gain income on sale of building on 11.07.2017 for a consideration of Rs. 21 lac in her computation of income for A.Y. 2018-19 but she has not fully disclosed the sale value as per DLC rates applied by the Sub- registrar, Bhilwara. According to the registration document, the Sub- registrar has registered the value of house number G-250/7,8, Vaibhav Nagar, Bhilwara at Rs. 23,40,000/- and not Rs. 21 lac as shown in her working in the computation for A.Y. 2018-19. Thereby, the assessee has suppressed the sale value u/s 50C by Rs. 2,40,000/- and the same is deemed as her income for A.Y. 2018-19 and added to her total income.

Further, the undersigned records his satisfaction that the assessee has concealed her income particulars within the purview of provisions of Sec. 271AAB(1A) for A. Y. 2013-14. Notice u/s 271AAB (1A) r.w.s. 274 is being issued.

As regards the document Annexure AS, Exhibit-2, Page No. 25 to 28 duplicate copy of Page No. 21 to 24 of this Exhibit), is purchase document already discussed in the body of order for A.Y 2017-18 and necessary additions have been made in that case of the assessee. “

8. As noticed above, the appeal filed by the assessee against the said assessment order came to be dismissed by Id. CIT(Appeal), thereby upholding the assessment.

9. Hence, this appeal. Arguments heard. File perused.

10. As noticed above, it was in the course of search and seizure action carried out in respect of Sh. Deepak Samtani husband of the assessee-appellant and his family members, including the assessee, that certain documents/loose papers were recovered and the same included a sale deed in respect of immovable property situated in Bhaiva Nagar, Bhilwara.

As per said sale deed, sale consideration of the said immovable property was Rs. 21,00,000/-.

Admittedly, it is the assessee who had sold said property on 11th July, 2017. As claimed by the assessee, she had declared in the ITR, long term capital gain (LTCG) income on said sale, on the sale consideration of Rs. 21,00,000/-. Copy of ITR filed on 23.08.2018 also reveals this fact.

As is available from the assessment order, Assessing Officer observed that the assessee had not fully disclosed total sale value when calculated as per DLC rate applied by Sub-Registrar, Bhilwara.

Assessing Officer was of the view that the assessee had suppressed sale value to the tune of Rs. 2,40,000/- u/s 50C of the Act. Accordingly, said amount of Rs. 2,40,000/- was added to her total income.

11. The contention raised on behalf of the appellant is that the sale deed was registered on 19th July, 2017 and the assessee having already declared LTCG of Rs. 74,893/- in the Assessment Year 2017-18, said sale deed could not be considered as incriminating material for the purpose of making addition u/s 50C of the Act.

Ld. AR for the appellant has submitted that this is a case of only a difference in the amount due to value estimated in view of deeming fiction as per provisions of section 50C of the Act, and as such the impugned order deserves to be set aside.

In support of his contention, Ld AR for the appellant simply referred to in the written submission decision in **Sri S. R. Ravishankar, Bangalore vs. PCIT**, in ITA No. 1013/Bang/2019.

In Sri S. R. Ravishankar's case (supra), return of income filed by the assessee therein, declaring LTCG had been accepted by Assessing Officer u/s 143(3), but subsequently, when there was search and seizure action operation in respect of the assessee, she filed return of income u/s 153A of the Act, once again declaring LTCG on sale of land, and the said return of

income was also accepted by Assessing Officer, but Id. PCIT held the order passed by Assessing Officer, to be erroneous and prejudicial to the interest of revenue.

While exercising powers u/s 263 therein, Id. PCIT observed that value of the property for the purpose of stamp duty and valuation was Rs. 36,90,000/- whereas, in the sale deed, only a sum of Rs. 45,00,000/- was recorded as the sale consideration.

In the given facts and circumstances of that case, Hon'ble Bench of ITAT observed that Assessing Officer could not have disturbed carry forward of capital loss while framing assessment u/s 153A of the Act, when no material whatsoever was found during search and seizure operation, and that provisions of section 263 could not be invoked to revise said order.

12. The facts of the above-cited case are different from the facts of present case, and as such said decision does not come to the aid of the appellant.

Herein, admittedly, the Sub Registrar had registered transaction of sale of said house, at a value of Rs. 23,40,000/- and not at Rs. 21,00,000/-. Accordingly, Learned CIT(A) has upheld the reasoning recorded by the Assessing Officer for making of addition of Rs. 2,40,000/-, and also upheld the assessment having regard to the fact that the value of stamp duty being

Rs.23,40,000/-was more than 110% of the sale value, and the provisions of section 50C of the Act.

In the given facts and circumstances, and having regard to the documentary evidence, there is merit in the contention of learned DR for the Revenue that the assessee-appellant did not disclose the full sale value as per DLC rates applied in respect of the immovable property.

13. Learned AR for the appellant has contended that from the table available at the last page of the assessment order, it appears that the addition has been made due to undisclosed investment, and while resorting to the provisions of section 69 of the Act, but, this is a case falling within the ambit of section 50C of the Act.

Reference has been made to para 5.2.2 of the impugned order by Learned CIT(A), wherein it stands observed that the Assessing Officer was not correct in applying provisions of section 69 of the Act and charging the income to tax under section 115BBE, and that Learned CIT(A) then went on to confirm the addition under section 50C. The contention is that Learned CIT(A) could not resort to this procedure adopted by him, and as such the impugned order deserves to be set aside.

14. Admittedly, Learned CIT(A) observed in the impugned order, and rightly so, that the Assessing Officer was not correct in applying provisions of section 69 of the Act and charging the income to tax under section 115BBE, and as such he went on to confirm the addition under section 50C.

From the portion of the above-cited decision extracted in para 4.3.1 of the Written submission II, it transpires that Learned Tribunal found merit in the contention raised on behalf of the assessee that there is no power conferred on Learned CIT(Appeals) to assess a particular item under different provision of the Act, when the Assessing Officer had done without giving a specific notice to the assessee regarding such action.

In this regard, suffice it to mention that in para 6 of the impugned assessment, Assessing Officer clearly observed that the assessee had suppressed the sale value under section 50C to the tune of Rs.2,40,000/- and accordingly added the same to her total income. Furthermore, in the table available in para 8 of the impugned assessment, under the sentence pertaining to Addition of Rs.2,40,000/-, the Assessing Officer specified that the addition was being made in view of the above discussion. It appears to be a typographical mistake when section 69 of the Act has been typed in place of section 50C of the Act.

In support of this contention, learned AR has relied on a portion of decision dated 18.4.2022 in **M/s Toffee Agricultural Farms v. ITO**, ITA No.4903/DEL/2109, extracted in para 4.3.1 of the written statement-II. Full text of the judgment has not been provided.

In para 4.3.2 only reference to the title of the case Smt. Sekar Jayalakshmi v. IOT, ITA No.20/Chny/2021 decided on 21.12.2022 has been made. No text of the judgment has been made available.

In para 4.4 reference has been made to the provisions of section 254(1) of the Act and a portion of decision in Smt. Sarika Jain v. CIT, (2017) 249 Taxman 625 (Allahabad) has been reproduced, to submit that even this Appellate Tribunal has no power to change the provisions, as has been done by CIT(A). However, full text of the judgment has not been made available.

As is available from extract of para 16 of said decision reproduced in para 4.4 the written submissions therein subject matter of dispute before the Appellate Tribunal in appeal was only with regard to the addition of alleged amount of the gift received by the appellant-assessee as his personal income under section 68 of the Act and not whether such an addition could be made under section 69A of the Act, and as such it was held that Tribunal was not competent to make said addition under section

69A of the Act, and accordingly entire order of the Tribunal stood vitiated in law.

We have given sufficient opportunity of being heard, to both the parties, deem it to be a fit case to pass orders while resorting to the appropriate provisions.

Therefore, there is no merit in the contention raised on behalf of the appellant so far as addition made u/s 50C is concerned.

Additional Grounds

15. First additional ground raised on behalf of the assessee-appellant is that the impugned assessment order is a nullity as no DIN Number was generated as regards the assessment order, as prescribed by CBDT in its instructions issued to the Income Tax Authorities, which they are required to follow, but were not followed, and as such, impugned assessment order deserves to be set aside.

16. In support of this contention, Id. AR has referred to in the written submissions to the following decisions:-

- Smt. Smrutishuda Nayak vs. UOI (2021) 323 CTR 617 (Ori.)
- CIT vs. Kabul Chawla (2015) 281 CTR (Del)45
- CIT vs. Chetan Das Lachman Das (2012) 254 CTR (Del) 392
- Hau /steek (India) vs. Asstt. CIT (2013) 259 CTR (Raj.) 281.

- Chintels India Ltd. vs. DY. CIT (2017) 297 CTR (Del) 574
- Bharati Vidyapeeth Medical Foundation vs. ACIT, ITA No. 959-967/PN/10 dated 28.04.2021.
- CIT vs. Kabul Chawla (2015) (2016) 380 ITR 573 (Del)
- Jai Steel (India) vs. Asstt. CIT (2013) 259 CTR (raj) 281.
- PCIT Abhisar Builders (2023) 332 CTR (SC) 385.

17. On the other hand, Ld. DR for the Revenue has submitted that the matter as regards impact of non mentioning of DIN number, as per instructions issued by CBDT is pending adjudication before the Hon'ble Supreme Court, and as such, there is no merit in the contention on behalf of the assessee-appellant.

18. The said instructions were issued vide Circular No. 19/2019 dated 14.08.2019.

19. As regards the decisions cited, it may also be mentioned that Ld. AR has not provided full text of any of the above said decisions. Only certain portions of some of the decisions have been extracted in the written submissions.

As regards, three decisions mentioned in para 2.5 of the written submissions, what to say of providing of Full text thereof, even no portion

or relevant paragraph thereof has been reproduced or extracted in the written submissions.

20. Admittedly, the point in issue is sub judice before Hon'ble Supreme Court of India after a decision by Hon'ble Delhi High Court in the case of **CIT vs. Brandix mauritious holding limited**, ITA No. 163/2023, decided on 20.03.2023.

21. Record reveals that while challenging the impugned assessment order before Learned CIT(A), no such ground/objection on behalf of the assessee-appellant was raised.

Even though this is a legal ground and can be raised before the Appellate Tribunal, it was for the assessee-appellant to prove to the satisfaction of this Tribunal if any prejudice has been caused to the assessee-appellant due to non mentioning of DIN number.

Instructions issued by Central Board of Direct Taxes are meant for compliance by the Income Tax Authorities. When the instructions were issued that such communications without DIN number shall be treated as 'non-est', and shall be deemed to have never been issued, same can safely be said to have been issued to ensure, and lay emphasis on, their compliance by the Income tax authorities, without fail.

It is not the allegation of the appellant that no assessment proceedings were conducted by the Assessing Officer or that the impugned assessment order is a made up or forged and fabricated document.

In absence of any such plea or material to suggest that any prejudice was caused to the assessee-appellant, we do not find any merit in the contention raised on behalf of the assessee-appellant that because of non mentioning of DIN number. in the impugned assessment order, the same deserves to be set aside.

Impugned assessment order not digitally signed-its impact

22. Another additional ground raised by Ld. AR for the appellant is that the impugned assessment order has been manually signed, and since same has not been digitally signed as required u/s 282 A of the Act and as per Instruction No. 6 dated 03.10.2017 issued by CBDT, the impugned assessment order deserves to be set aside.

23. In support of this contention Ld. AR of the assessee-appellant relied on following decisions:-

- Aravali Trading Co. Vs. ITO 8 DTR 199 (Raj.)
- Labhchand Bohra vs. ITO (2008) 8 DTR 44 (Raj.)

- Kanhaialal Jangid vs. ACIT (2008) 8 DTR 38 (Raj.)
- CIT vs. Jai Kumar Bakliwal (2014) 101 DTR 377 (Raj.)
- CIT vs. Shree Barkha Synthetics 182 CTR 175 (Raj.)
- CIT vs. Orissa Credit Corp. Ltd. 159 ITR 78 (SC).
- Sarogi Credit Corp. Vs. CIT 103 ITR 344 (Patna.
- ACIT vs. India Tyre House 72 TTJ 316 (Gau)
- CIT vs. Heeralal Chaganlal 257 ITR 281 (Raj).
- CIT vs. Ajay Kumar Sharma 259 ITR 240 (Raj.).
- Jhalani Timbers vs. CIT (1997) 223 ITR 11 (Gau)

24. On the other hand, Ld. DR for the Revenue has submitted that no such ground was raised in the appeal before Learned CIT(A), and that the impugned assessment order, even if manually signed by the Assessing Officer, cannot be discarded from being taken into consideration.

25. It may be mentioned here that full text of the abovesaid decisions cited by Ld. AR of the appellant has not been provided. Only portions from the said decisions have been incorporated in the written submissions.

26. Copy of the assessment order made part of the appeal filed by the assessee-appellant is a photocopy of the copy supplied to the assessee. It purports to bear signatures of DCIT, Central Circle, Ajmer-Assessing

Officer. The original assessment order is stated to be forming part of the original record pertaining to assessment proceedings. Exact copy of the said original order has not been made available. In absence thereof, it is difficult to say if this is a case of any violation of the provisions of section 282A of the Act.

In the written submissions reference has been made to instruction NO.6 dt. 3.10.2017, requiring the Income tax authorities to digitally sign the assessment order, demand notice and computation sheet etc.

Instruction No.1/18 dated 12.2.2018 issued by Central Board of Direct Taxes has also been relied on in the written submissions to submit that all departmental orders/notices/communications issued to the assessee through 'e-proceedings' are to be digitally signed by the Assessing Officer.

As already noticed above, instructions issued by Central Board of Direct Taxes are meant for compliance by the Income Tax Authorities. Same can safely be said to have been issued to ensure compliance and lay emphasis on their compliance by the Income tax authorities, without fail.

It is not the allegation of the appellant that no assessment proceedings were conducted by the Assessing Officer or that the impugned assessment order is a made up or forged and fabricated document.

Ld. AR for the appellant has not been able to satisfy if any prejudice was caused to the assessee-appellant for want of digital signatures on the impugned assessment order. Accordingly, we do not find any merit in the contention raised on behalf of the appellant.

Prior approval u/s 153D of the Act, whether the same was granted mechanically?

27. Ld. AR for the appellant has contended that the impugned assessment order is nullity, being without jurisdiction, in as-much-as no prior approval, as mandated by section 153D of the Act, was obtained.

At the same time, it has been contended that no approval u/s 153D of the Act was obtained from the specified authorities.

Furthermore, it has even been contended that if the said approval was obtained, same was accorded mechanically without application of mind.

Accordingly, Ld. AR for the appellant has urged that the impugned assessment order deserves to be set aside.

28. On the other hand, Ld. DR for the Department has referred to the approval dated 31.12.2019 accorded by Additional Commissioner of

Income Tax, Central Range, Udaipur and contended that the same having been accorded in accordance with law, there is no merit in the contention raised by Id. AR for the appellant.

29. Significant to note that after having raised abovesaid inconsistent grounds as regards the approval, in the common paper book-II dated 29.08.2024 presented on behalf of the assessee-appellant on 17.09.2024, the very first document made available at page No. 23 (as assigned by the Ld. AR for the appellant), is the copy of approval u/s 153D of the Act, accorded by Additional Commissioner of Income Tax, Central Range, Udaipur, vide its letter dated 31.12.2019.

The impugned assessment order is dated 30.12.2019.

It is available from the abovesaid letter dated 31.12.2019 that on receipt of letter dated 30.12.2019 from the office of DCIT, Central Circle, forwarding therewith draft assessment orders, mentioned therein, for approval u/s 153D of the Act, Additional Commissioner of Income Tax went through the contents of draft assessment orders and accorded approval u/s 153D of the Act.

30. In view of the said document submitted by the appellant, there is no merit in the contention raised on behalf of the assessee-appellant.

31. No other argument has been advanced before this Appellate Tribunal.

Result

32. In view of the above discussion, this appeal deserves to be dismissed. Same is hereby dismissed.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 23/10/2024.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 23/10/2024

*Santosh

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

1. The Appellant- Kavita Samtani, Bhilwara
2. प्रत्यर्था / The Respondent- DCIT, Central Circle, Ajmer
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. 802/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar