

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1157/Del/2020

निर्धारणवर्ष/Assessment Year: 2009-10

Krishan Kumar HIG-1, A-42, Swarn Jayanti Nagar, Ram Ghat Road, Aligarh, Uttar Pradesh.	<u>बनाम</u> Vs.	Income Tax Officer Ward-3(2), Bulandshahr, Uttar Pradesh.
PAN No. ACVPK6982E		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by	None
राजस्वकीओरसे /Revenue by	Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	04.12.2024
उद्घोषणाकीतारीख/ Pronouncement on	13.12.2024

आदेश /ORDER

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Ghaziabad dated 13.05.2019 for the AY 2009-10. The assessee has raised the following grounds: -

1. *"That the assessment order passed by the Ld. Income Tax Officer, Ward 3(2), Bulandshahr u/s 144 is erroneous, bad- in - law, untenable and against the facts of the case. Hence the additions made by the Ld. Income Tax Officer, Ward 3(2), Bulandshahr in the income of the appellant should be deleted in full.*
2. *That the payment for purchase of property was made by the firm M/s. D.K. Cold Storage & General Mills. ,*

Bulandshahr. The appellant is partner in this firm. He had not made any payment for purchase of property in his individual status. In view of this the addition of Rs.12,79,600/- as unexplained investment made in the purchase of immovable property cash credit under Income Tax Act, 1961 should be deleted in full.

- 3. That in the case of the appellant earlier the assessment u/s 143(3) of the Income Tax Act had been framed by the Ld. Income Tax Officer, Ward - 2 , Bulandshahr on 28.12.1011 on an income of Rs.3,23,770/- by making addition of Rs. 15,000/- being amount of addition made out of unverifiable expenses . The issue of purchase of property was duly considered. Hence the assessment order passed under section 144 of the Income tax Act, 1961 for same assessment year should be declared in null and void in the eye of law.*
 - 4. That the notice under section 148 and under section 142(1) of the income tax act were not properly served upon the assessee , hence the proceedings under section 148 , 142(1) and section 144 of the Income Tax Act, 1961 are invalid in the eye of law . Hence the assessment order passed under section 144 of the Income tax Act. 1961 should be declared as invalid in the eye of law.*
 - 5. That the assessment order passed and addition made is arbitrary, illegal, contrary to the letter and spirit of section 144 of the Act.*
 - 6. That the appellant humbly request to stay the demand pending till disposal of appeal.*
 - 7. That the appellant craves to reserve the right to add, amend, modify, substitute all or any grounds of appeal before the appeal is finally heard, disposed off.”*
2. When the appeal is called for hearing on 04.12.2024 none appeared on behalf of the assessee nor any adjournment was

moved. Perusal of the record shows that this appeal was disposed off *ex parte* by the Bench by order dated 31.03.2022 as none appeared on behalf of the assessee and also since the notices sent by the Registry through RPAD to the assessee were returned unserved. Subsequently the appeal of the assessee was recalled by the Tribunal by order dated 07.05.2024 and the appeal was listed thereafter for hearing on 14.08.2024. On 14.08.2024 the Authorized Representative (AR) vide letter dated 08.08.2024 which was furnished on 13.08.2024 by speed post requested for time and the appeal was thus adjourned to 04.12.2024. When the matter was called for hearing on 14.12.2024 none appeared on behalf of the assessee nor any adjournment was moved. Therefore, this appeal is disposed off on hearing the Ld. DR.

3. Ld. DR submits that on the basis of AIR Information it was noticed that the assessee had purchased immovable property for sale consideration of Rs.55,00,000/- in which assessee's share is Rs.12,79,600/- and the case of the assessee was reopened after recording the reasons u/s 147 of the Act. Ld. DR submits that notice u/s 148 of the Act was issued to file return of income however, there was no compliance to the said notice by the assessee and no return was filed. Ld. DR submits that notice u/s

142(1) of the Act was also issued and there was no compliance. Due to non compliance from the assessee side the Assessing Officer (AO) completed the assessment u/s 144 r.w.s. 147 of the Act determining the income of the assessee at Rs.12,79,600/-. On appeal the Ld.CIT(Appeals) dismissed the appeal filed by the assessee sustaining the reopening as well as the addition made by the AO.

4. I have heard the Ld. DR and perused the order of the Ld.CIT(Appeals) as well as the assessment order. The Ld.CIT(Appeals) considered in detail the issue of reopening as well as the addition on merits based on the evidences on record and the written submissions filed by the assessee and concluded as under:

“5.1 Ground nos. 1 and 2: The appellant has challenged the addition of Rs. 12,79,600/- being unexplained investment contending that payment for the said property has been made by M/s D. K. Cold Storage and General Mills, Bulandshahr and no payment has been made by the appellant himself. It is noted that appellant has changed stand as in the grounds of appeal it was argued that the issue of immovable property has been examined by the then AO while passing the order u/s 143(3) dt. 28.12.2011, wherein no mention of the said immovable property or appellant being partner in M/s D. K. Cold Storage and General Mills was given. During appellant proceedings he was required to furnish copy of purchase deed of the land to verify the appellant's contention of mode of payment as according to the appellant property was purchased by M/s D. K. Cold Storage and General Mills. The copy of building account in the books of M/s D. K. Cold Storage and General Mills is scanned as under:

5.1.1 The said copy does not have name of the appellant and appellant's failure to furnish copy of purchase deed, failed to substantiate appellant's claim. Keeping in view above facts it is noted that appellant has been changing stand and no evidence to substantiate the source of investment has been given by the appellant during appellate proceedings. Thus, these grounds of appeal are dismissed.

5.2 Ground nos. 3 and 4: The appellant has challenged the proceedings contending that in the appellant's case assessment u/s 143(3) was completed on 28.12.2011 by making an addition of Rs.15,000/- out of unverifiable expenses. According to the appellant the purchase -of the property was duly considered during assessment proceedings and appellant enclosed copy of the said order. The order enclosed failed to substantiate the fact that purchase of property has been considered by the AO while completing the assessment thus, factually it is not verifiable. However, examination of the facts reveals that appellant has purchased a property worth Rs.55,00,000/- wherein share of the appellant was Rs.12,79,600/- as per AIR information. The AO issued notice u/s 148 and appellant failed to challenge the notice u/s 148 by substantiating the fact that assessment has already been completed after examining the purchase of immovable property by him. It is observed that appellant failed to appear before AO resulting in the addition of Rs.12,79,600/- being unexplained investment. The appellant has also challenged the proceedings contending that no notice u/s 148 and 142(1) and u/s 144/147 has been served upon appellant. However, no evidence to substantiate the fact has been given by him and it is also noted that the address of the appellant as per Form 35 is same as address given in the assessment order. Keeping in view above facts it is held that there is no aberration in the action of the AO in completing the assessment u/s 144/147. Thus, these grounds of appeal are dismissed.”

5. None of the above findings of the Ld.CIT(Appeals) were rebutted with evidences by the assessee before me. Thus, I do not

find any infirmity in the order passed by the Ld.CIT(Appeals) and the same is sustained. Grounds raised by the assessee are rejected.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 13/12/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 13/12/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi