

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 406/Chd/2024
निर्धारण वर्ष / Assessment Year : 2012-13

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| Rashmi W/o Shri Rajinder Singh, Agdi Patti Rajound, Kaithal, 136027 | बनाम | The ITO Ward-2, Kaithal |
| स्थायी लेखा सं. / PAN NO: BQDPR6261A | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारित की ओर से/ Assessee by : Shri Pulkit Saini, Advocate
राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 11/09/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 06/12/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/ NFAC Delhi dt. 15/02/2024 pertaining to Assessment Year 2012-13.

2. In the present appeal, the assessee has raised the following grounds of appeal:

"1. That the Ld. CIT (Appeals) erred on facts and in law in dismissing the appeal against the impugned assessment order u/s 147 r.w.s 143(3), determining the income of assessee at Rs. 28,57,035/-.

2. That the Ld. CIT(A) has erred in law and on facts in upholding the assessment order, passed without assuming jurisdiction as per law and in violation of mandatory conditions of section 147 to 151 of the Income Tax Act, 1961 and judicial precedents on the issue of notice u/s 148.

3. That the Ld. CIT (Appeals) has erred in law and on facts in not appreciating the documentary evidences produced by the assessee while sustaining the addition u/s 69 of the Act.

4. That the Ld. CIT (Appeals) has erred in law and on facts in confirming the addition of Rs. 28,26,875/- without appreciating that the assessment has been made in a mechanical manner based on surmises and conjectures.

5. *That the Ld. CIT(A) has erred in law and on facts in confirming the addition without appreciating that the Id. AO failed to carry out any verification or enquiry into the material placed before him.*

6. *That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in charging interest u/s 234A and 234B of the Income Tax Act, 1961.*

7. *That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing."*

3. Briefly the facts of the case are that the assessment in this case was completed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 dt. 11/11/2019. As per the AO, the assessee has deposited cash amounting to Rs. 30,00,000/- in her bank account maintained with HDFC Bank and basis the said information, reasons were recorded and notice under section 148 dt. 27/03/2019 was served on the assessee. In response to the notice, the assessee filed her return of income on 06/09/2019 declaring total income of Rs. 30,160/-. Thereafter notice under section 143(2) and 142(1) were issued and after calling for necessary information/documentation, the AO brought to tax a sum of Rs. 28,26,875/ under Section 69 of the Act partly accepting the contention of the assessee that she has received gift from her husband amounting to Rs. 10,73,125/- as against Rs. 30,00,000/- claimed by the assessee and for the reason that the assessee could not explain the source of remaining cash deposit in her bank account.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said findings of the AO. Against the said findings and the order of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that AO initiated the assessment proceedings basis AIR information that Rs. 30,00,000/- was deposited in the bank account of the assessee. It was submitted that it is a settled legal position that reasons to believe must be based on independent application of mind demonstrating the link between the material available with the AO and

the formation of belief that income has escaped assessment. It was submitted that in the instant case, the AO while recording the reasons came to the conclusion merely based on suspicion that cash deposited in the bank account reflects income escaping assessment without making any inquiry or effort to find out the nature of receipt in the hands of the assessee. It was submitted that the assessment of the husband of the assessee for the same assessment year has been carried out by the same AO, however no effort has been made to find out whether the deposits were in the nature of income in the hands of the assessee before issuance of the notice under section 148 of the Act. It was accordingly submitted that the AO had no tangible material in his possession that the income has escaped assessment and the reopening has been made purely based on reasons to suspect rather than reasons to belief and which cannot be sustained in the eyes of law. It was accordingly submitted that the notice under section 148 therefore deserves to be set aside.

6. On the merits of the addition so made by the AO under section 69 of the Act, it was submitted that the facts of the case are that the assessee is a housewife belonging to the rural agricultural background and she has no source of income other than bank interest and minor agricultural receipt. During the relevant financial year, the husband of the assessee Shri Rajinder Singh, sold his rural agricultural land measuring 5 Acres 5 Kanels 14 Marla outside the municipal committee limits for a consideration of Rs. 1,33,54,000/- in cash @ 22,95,000/- per acre vide notarised agreement to sell dt. 10/02/2011 followed by sale deed no. 78 dt. 03/05/2011. It was submitted that as against the consideration mentioned in the agreement to sell, the sale deed was registered at the consideration of Rs. 40,73,125/- which was at sole discretion of the buyer of the land and her husband had no control over the same. It was submitted that out of the aforesaid sale consideration of Rs. 1,33,54,000/- received by the husband of the

assessee, Rs. 39,00,000/- was deposited by him in the bank account of the assessee by way of gift.

7. It was submitted that funds so received by the husband of the assessee were deposited in her bank account by way of gift which is outside the taxing provision. The assessee being a housewife is neither engaged in any employment nor any business. There was no source of income in her hands. The husband of the assessee whose case was held under assessment before the same AO appeared personally and confirmed that he was the owner of the agriculture land that was sold and owner of the sale proceeds/funds and out of sale proceeds so received, he has given the funds as gift to the assessee and also submitted a notarised copy of the affidavit dt. 18/09/2019 confirming that he made a gift of Rs. 39,00,000/- in cash to his wife Smt. Rashmi out of the sale proceeds of the Agricultural land. Further copy of the agreement to sell dt. 10/02/2011 as well as the copy of register of the Notary Public who has recorded transaction vide Sr. No. 90 dt. 10/02/2011 was submitted. Besides that, the affidavits of the witness to the registered sale deed namely Kehal Singh Nambardar Rajound and Tajpal S/o Thath Singh R/o Rajound who have confirmed the land was sold by the husband of the assessee for consideration of Rs. 1,33,54,000/- was submitted. It was submitted that the explanation so furnished and all the evidences placed on record were not properly appreciated by the AO as well as the Id CIT(A) and addition so made under Section 69 of the Act has been sustained. It was submitted that in light of aforesaid submissions and documentation placed on record, appropriate relief be provided to the assessee by directing the deletion of addition so made and sustained by the Id CIT(A).

8. In her submissions, the Id DR submitted that the AO had tangible material in his possession in the form of information that cash of Rs 30 lacs has been

deposited in the bank account of the assessee and basis the same, he has recorded the reasons that the income has escaped assessment. It was submitted that the Id AR has not disputed the quantum of cash so deposited and the bank account in the name of the assessee where the cash was found deposited. It was accordingly submitted that there is clearly a nexus between the material and formation of belief that the income has escaped assessment and the contentions so raised by the Id AR cannot be accepted.

9. On merits, it was submitted that it is not in dispute that it is the same AO who has done the assessment in the hands of the husband of the assessee as well. It was submitted that the AO has already allowed the benefit of cash deposit in the bank account of the husband of the assessee while completing the assessment in case of assessee's husband and therefore, he has rightly sustained the addition in the hands of the assessee in absence of necessary explanation explaining the source of such deposits. Further, reliance was placed on the findings of the lower authorities.

10. We have heard the rival contentions and perused the material available on record. In the instant case, the reasons were recorded on the basis of information that Rs 30 lacs in cash has been found deposited in the bank account of the assessee and income has escaped assessment in the hands of the assessee. Thereafter, during the assessment proceedings, basis bank statement obtained from the bank, it was found that there was another cash deposit of Rs 9 lacs and thus, total cash found deposited in the bank account of the assessee was to the tune of Rs 39 lacs and the assessee explained that she had received the said amount by way of gift from her husband. The AO accepted the explanation of the assessee that the amount has been received by her by way of gift from her husband, however, the quantum of gift so received was restricted to Rs. 10,73,125/- and after allowing credit for such

amount, the AO brought to tax remaining sum of Rs. 28,26,875/- as unexplained income under Section 69 of the Act in the hands of the assessee.

11. If we look at the provisions of Section 69, it talks about the assessee having made investments which are not recorded in the books of account, if any maintained by her for any source of income and the assessee offers no explanation about the nature and source of such investment. In the instant case, what has been found were cash deposits in the bank account of the assessee and as such, no investment has been found by the AO, therefore, the question of invocation of provisions of section 69 doesn't arise in the instant case.

12. Even if we were to ignore the fact that the AO has wrongly invoked section 69 and section 69A should have been invoked, section 69A *inter alia* provides that where in any financial year, the assessee is found to be the owner of any money and such money is not recorded in the books of account, if any, maintained by her for any source of income and the assessee offers no explanation about the nature and source of such money, in that case only, the money so found may be deemed to be income of the assessee for such financial year. Therefore, there has to be a finding by the AO that the assessee is the owner of cash so found deposited in her bank account and for the purposes, there has to be necessary examination/verification which is required to be carried out. No doubt, the money has been found deposited in her bank account and the initial onus is on the assessee to explain the nature and source of such deposit. But once she has explained that the amount has been received by her by way of gift from her husband from sale proceeds of agricultural land and the amount has been deposited by her husband on the same date when the sale deed was executed and the said explanation is corroborated by way of gift deed executed by her husband, the personal

appearance of her husband before the AO, evidence in support of sale of agriculture land by her husband and source of such gifts by way of agreement to sell and registered sale deed, we find that the initial onus cast on the assessee has been duly discharged and the real owner of the money is clearly not the assessee but the husband of the assessee and on this count as well, the addition cannot be made in the hands of the assessee.

13. Notwithstanding the invocation of specific deeming provisions, the factum of gift of money from the donor (assessee husband) to the donee (assessee) has not been disputed by the AO which is duly supported by both written and oral evidence in form of gift deed and confirmation by the donor who physically appeared before the AO and confirmed the making of gift of money to donee. The gift of money has flown in the bank account of the assessee by way of deposit by husband of the assessee in two tranches – Rs 30 lacs on 03/05/2011 and Rs 9 lacs on 09/05/2011 and in such circumstances, we are unable to sustain the findings of the AO in effectively breaking up these two tranches of flow of money and restricting to Rs. 10,73,125/- more so where the creditworthiness and source of funds in the hands of the donor has been duly demonstrated, being the sale proceeds of agriculture land, a factum which has been separately verified and accepted in the assessment proceedings undertaken in hands of the donor.

14. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case, the addition so made by the AO is hereby deleted and the AO is directed to grant necessary relief to the assessee.

15. Ground challenging the legality of the proceedings u/s 147 has thus become academic and the same is dismissed as infructuous.

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

Order pronounced in the open Court on 06/12/2024.

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar