



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.310/LKW/2023
Assessment Year: 2013-14

Smt. Vimla Tripathi 119/12 B-1, Darshanpurwa Kanpur	v.	The Income Tax Officer Ward 1(2)(1) Kanpur
TAN/PAN:AEVPT9734K		
(Appellant)		(Respondent)

Appellant by:	Shri Swaran Singh, C.A.		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	02	12	2024
Date of pronouncement:	31	12	2024

ORDER

This appeal has been preferred by the Assessee against the order dated 11.08.2023, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2013-14.

2. The brief facts of the case are that the assessee filed her return of income for the year under consideration on 01.01.2014, declaring a total income of Rs.1,93,140/-. As per information available with the Income Tax Department, the Assessing Officer (AO) noticed that the assessee, along with Shri Siddha Kumar Tripathi, had purchased an agricultural land admeasuring 0.6200 hectare on 01.08.2012 for a consideration of Rs.12,00,000/-. The AO further noticed that the Market Value of

the property for the stamp duty purpose, had been taken at Rs.71,30,000/- . The AO reopened the assessment under section 147 of the Income Tax Act, 1961 (hereinafter called “the Act”) by issuing notice under section 148 of the Act. Since there was no compliance to the notice issued under section 148 of the Act from the assessee, he issued notice under section 142(1) of the Act along with questionnaire. The assessee furnished her reply vide letter dated 23.02.2022, giving the details/mode of payment of Rs.12,00,000/-, copy of Saving Bank Account No.65001154286 of the assessee with State Bank of Patiala (Now SBI), Kaushalpuri and Saving Bank Account No.731910110003247 of Shri Siddha Kumar Tripathi with Bank of India, Banthar, Unnao and also Joint account with PNB, Pandu Nagar, Kanpur and copy of Sale Deed. The AO noticed that the difference between the Fair Market Value and the consideration paid by the assessee for purchase of the aforesaid agricultural land was Rs.59,30,000/- (Rs.71,30,000 – Rs.12,00,000). Since the property was purchased by the assessee jointly with Shri Siddha Kumar Tripathi, half the amount of difference, i.e. Rs.29,65,00/- (Rs.59,30,000/2) was treated as deemed income of the assessee from other sources and added the same to the total income of the assessee under section 56(2)(vii)(b)(ii) of the Act.

3. Aggrieved by the order passed by the AO, the Assessee preferred an appeal before NFAC. However, the appeal before the NFAC came to be dismissed.

4. Now, the Assessee has approached this Tribunal challenging the impugned order of the NFAC by raising the following grounds of appeal:

1. *That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the addition of Rs.29,65,000/- arbitrarily made by the Ld. A.O. in the income of the appellant on account of allegedly treated the difference in actual consideration and Fair Market Value for Stamp duty (1/2 of 71.30 Lacs less 12.00 Lacs) u/s 56(2)(vii)(b)(ii) as Section was applicable from 01.04.2014 and transaction was made much before on 01.08.2012, therefore the addition made is unsustainable in law and deserves to be deleted.*
2. *That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the arbitrary addition of Rs.29,65,000/- arbitrarily made by the Ld. A.O. in the income of the appellant on account of the difference in actual consideration and Fair Market Value for Stamp duty (1/2 of 71.30 Lacs less 12.00 Lacs) u/s 56(2)(vii)(b)(ii) ignoring the fact that this section is applicable only to capital assets but not to agricultural land as it is not capital asset, therefore the said addition*

of Rs.29,65,000/- is unsustainable in law and liable to be deleted.

- 3. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in applying the Provisions of Section 56(2)(vii)(b) of the Income Tax Act, 1961 applicable to Assessment Year 2013-14 ignoring the fact that appellant had paid consideration of Rs.6.00 lacs for purchase of agricultural land and it is not a case of purchase of property "WITHOUT CONSIDERATION", therefore the impugned assessment order is unsustainable in law and the addition of Rs.29,65,000/- is liable to be deleted.*
- 4. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the addition of Rs.29,65,000/- made by the Ld. A.O. in the impugned Assessment Order ignoring the fact that the case was reopened under section 147 of the Income Tax Act, 1961 by the Ld. A.O. on the ground unexplained investment, however, the addition was made under section 56(2)(vii)(b)(ii), therefore the impugned Assessment Order is void ab-initio and liable to be quashed and the said addition of Rs.29,65,000/- is liable to be deleted.*
- 5. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining that closing the reply window of the Portal by the Ld. A.O. much before the time allowed thereby preventing appellant to make its submissions thereby making whole proceedings bad and vicious in eye*

of Law and contrary to the principles of natural justice and equity.

- 6. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the addition of Rs.29,65,000/- arbitrarily made by the Ld. A.O. in the income of the appellant is without appreciating and considering the correct facts of the case, therefore the addition made by the Ld. A.O. is unsustainable in law and liable to be deleted.*
- 7. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the impugned Assessment Order ignoring the fact that vague reasons have been recorded by the Ld. A.O. which have no live link with the reasons recorded therefore the assumption of jurisdiction by the Ld. A.O. in initiating the proceedings under section 147 of the Income Tax Act, 1961 for the A.Y. 2013-14 is unsustainable in law and consequently the impugned assessment order is void ab-initio and liable to be quashed.*
- 8. That the Notice issued under section 148 of the Income Tax act, 1961 for the Assessment Year 2013-14 is illegal, therefore the proceedings initiated under section 147 of the Income Tax Act, 1961 is unsustainable in law and liable to be dropped and the impugned Assessment Order is liable to be quashed.*
- 9. That the Notice issued under section 143(2) of the Income Tax act, 1961 for the Assessment Year 2013-14 is illegal,*

therefore the impugned Assessment Order is unsustainable in law and liable to be quashed.

10. That the Assessment Order passed by the Ld. A.O. is without Jurisdiction and therefore liable to be quashed.

11. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining that the assessment which was completed without following the Guidelines of the CBDT Circular and provisions of Income Tax Act, 1961, therefore the impugned order passed is unsustainable in law and liable to be quashed and also the addition made by the Ld. A.O. is illegal and liable to be deleted.

12. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the impugned Assessment Order ignoring the fact that the approval in terms of section 151 of the Income Tax Act, 1961 was granted mechanically by the higher authorities of the Income Tax Department as per law, therefore the notice issued under section 148 of the Income Tax Act, 1961 dated 31.03.2021 for the Assessment Year under consideration and the impugned assessment order are void ab-initio, illegal and liable to be quashed.

13. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining that the purported approval under section 151 of the Income Tax Act, 1961 has been granted mechanically, which is non-est in law, therefore the Notice issued under section 148 of the Income Tax act,

1961 and impugned assessment order are void ab-initio and liable to be quashed.

14. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining that the impugned Assessment Order has been passed by the non-jurisdictional A.O., therefore the impugned assessment order is void ab-initio and liable to be quashed.

15. That the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in law and on facts in sustaining the addition of Rs.29,65,000/- arbitrarily made by the Ld. A.O. on account of allegedly treated the difference in actual consideration and Fair Market Value for Stamp duty without bringing any cogent material on record therefore the aforesaid addition is unsustainable in law and liable to be deleted.

16. That the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in law and on facts in sustaining the arbitrary addition of Rs.29,65,000/- made by the Ld. A.O. in the income of the appellant ignoring the fact that the said addition is much too high and excessive and deserves to be deleted.

17. That the Arbitrary addition of Rs.29,65,000/- made by the Ld. A.O. in the income of the appellant is contrary to the principles of natural justice, therefore the order of Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi in sustaining the addition made by the Ld. A.O. is also unsustainable in law and deserves to be deleted.

18. That any other relief or reliefs as your honour may deem fit in the facts and circumstances of the case be granted.

5. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that the Ld. First Appellate Authority had erred in sustaining the addition of Rs.29,65,000/-, which was made by the AO in terms of section 56(2)(vii)(b)(ii) of the Act, as this section was introduced w.e.f. 01.04.2014 only, whereas the assessee had entered into the transaction on 01.08.2012 and, thus, the AO could not have legally invoked the provisions of this section. It was also submitted that although this contention was raised before the Ld. First Appellate Authority, he dismissed the same by observing that since the transaction has been entered into without consideration, the provisions of this Section could be invoked. The Ld. A.R. submitted that this observation of the Ld. First Appellate Authority was incorrect, because Section 56(2)(vii)(b) of the Act only covers cases of immovable property, without any consideration and the same was applicable only on capital assets, but not on agricultural land, which was not a capital asset (as in the assessee's case). It was submitted that it is also to be noted that the assessee had paid a consideration of Rs.6 lakhs for the purchase of agricultural land and, therefore, it could not be said that there was no consideration involved at all.

The Ld. A.R. relied on a plethora of judgments of Co-ordinate Benches of the Tribunal as well as Hon'ble High Courts which have been placed in the paper book and relying on the same, he argued that the addition made deserves to be deleted.

6. In response, the Ld. Sr. D.R. supported the orders of both the lower authorities and placed heavy reliance on the order of the Ld. First Appellate Authority and submitted that the addition had rightly been sustained by the Ld. First Appellate Authority.

7. I have heard both the parties and have also perused the material placed on record. It is undisputed that the impugned transaction was carried out on 01.08.2012 i.e. in financial year 2012-13. Thus, in such circumstances, the provisions prior to the amendment would squarely apply and, therefore, the AO could not have legally brought this transaction within the ambit of tax. Moreover, the observation of the Ld. First Appellate Authority, that the transaction was without consideration, is also incorrect, inasmuch as, it is undisputed that the assessee had parted with a sum of Rs.6 lakhs towards consideration. I, therefore, find merit in the issue raised on behalf of the assessee and, accordingly, I set aside the order of the Ld. First Appellate Authority and direct the AO to delete the impugned.

8. Since the other grounds raised in the grounds of appeal were not pressed, the same are dismissed as not pressed.

9. In the final result, the appeal of the assessee partly stands allowed.

Order pronounced in the open Court on 31/12/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:31/12/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar