

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकरअपील सं. / ITA No.565/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2013-14)
&
2. आयकरअपील सं. / ITA No.566/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2013-14)
&
3. आयकरअपील सं. / ITA No. 567/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
4. आयकरअपील सं. / ITA No. 568/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
5. आयकरअपील सं. / ITA No. 569/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
6. आयकरअपील सं. / ITA No. 570/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
7. आयकरअपील सं. / ITA No. 571/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

Shri Bhagirath Pakharia 124, Nanak Ganj, Sipri Bazar, Jhansi (UP)	बनाम/ Vs.	Income-tax Officer, Ward 2(3)(1), Jhansi.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AMDPP-6709-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Prarthana Jalan, CA – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Shailender Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	21-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	23-04-2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee have common issues. First, we take up appeal ITA No. 565/Agr/2024 for Assessment Year (AY) 2013-14 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), NFAC, Delhi [CIT(A)] on 25-10-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 147 r.w.s. 144 of the Act on 23-03-2022. The Ld. AR advanced arguments and assailed the reassessment jurisdiction on the ground that reasons recorded to reopen the case of the assessee were defective. For the same, Ld. AR had drawn our attention to the reasons recorded by Ld. AO as extracted in the assessment order. The Ld. Sr. DR controverted the arguments of Ld. AR. Having heard rival submission and upon perusal of case records, our adjudication would be as under.

2. It could be seen that the assessee admitted income of Rs.5.60 Lacs in its return of income as filed on 31-03-2014. Based on investigation report, the case of the assessee was reopened and notice u/s 148 was issued on 30-03-2021 which is beyond 4 years from the end of the relevant assessment year. The assessee did not file the return of income. The reasons as recorded by Ld. AO have been extracted in the assessment order. The para 3 and 4 of the reasons read as under: -

3. The undersigned has gone through above information and also looking to the fact of the case that the assessee has sold of immovable property of Rs.9411000/- and purchased of immovable property in which the difference of Rs.33000/- calculated and the same treated as income from other sources during the F.Y.2012-13 relevant to A.Y. 2013-14 as per verification report. After the perusal of verification reports, it is quite clear that assessee shall be liable to be taxed on income from capital gain amounting to Rs.9411000/- as per section 50C of the I.T. Act and for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50000/-, the stamp duty value of such property as exceeds such consideration is liable for taxation an amounting to Rs.33000/- as per u/s 56(2)(vii)(b)

of the Income Tax Act, 1961. Also, the source of investment for purchase of immovable property needs to be verified. Therefore, the same should be taxable in the hand of the assessee as provisions of the I.T. Act, 1961 and reopening of case u/s 147 of IT, Act, 2961 is necessary at this stage.

4. In view of the facts, I have reason to believe that the income chargeable to tax to the extent of Rs.9411000/- has escaped assessment in the hands of the assessee within the meaning of section 147 of the I.T. Act, 1961 as verified from DDIT / ADIT (inv.) Jhansi.

The reopening is, apparently, on the basis of investigation reports dated 05-03-2020 and 16-01-2020 as extracted in the assessment order. On the basis of the same, Ld. AO observed that the assessee sold the properties for Rs.38.16 Lacs as against the stamp duty value of Rs.94.11 Lacs. It was not clear as to whether the properties were kept as capital asset or stock in trade. Finally, Ld. AO added the amount of Rs.94.11 Lacs as undisclosed income / money u/s 69A and framed the assessment.

3. During first appeal, the assessee disputed the valuation and stated that Ld. AO invoked the provisions of Sec.50C without reference to valuation officer. However, Ld. CIT(A) rejected legal grounds and confirmed the assessment against which the assessee is in further appeal before us.

4. From the facts, it clearly emerges that the assessee has filed return of income on 31-03-2014. The case has been reopened beyond 4 years. Upon perusal of reasons recorded, it could be ascertained that the case has been reopened primarily to invoke the provisions of Sec.50C as well as the provisions of Sec. 56(2)(vii)(b) against the assessee since sale consideration was Rs.38.16 Lacs as against its stamp duty value of Rs.94.11 Lacs. However, no such addition has been made by Ld. AO in the assessment order. The whole sale consideration of Rs.94.11 Lacs has been added u/s 69A which is not the basis of reopening the case of

the assessee. Apparently, the reopening is at the behest of investigation report without there being any independent application of mind by Ld. AO. The reasons recorded are clearly defective and the ultimately no addition has been made in the hands of the assessee on reasons which form the very basis of reopening. This being so, we would hold that Ld. AO lacked reassessment jurisdiction for this year. Accordingly, the assessment stand quashed. Similar view has been taken by us in assessee's quantum appeal for AY 2015-16, ITA No.60/Agr/2024 order dated 17-02-2025 as under: -

5. We now adjudicate on the merits of the case wherein learned lower authorities have set into motion section 148/147 proceedings against the assessee for the reason of computing capital gains by invoking section 50C of the Act, but ended up making section 69A unexplained money addition only which is not sustainable in light of CIT Vs. Mohmed Juned Dadani [(2013) 258 CTR 268 (Guj.), Ranbaxy Laboratories Ltd. vs. Union of India (2011) 336 ITR 136 (Del.) and CIT vs. Jet Airways (India) Ltd. (2011) 331 ITR 236 (Bom.)]. We, thus quash the impugned reopening on this first and foremost legal issue which renders all other pleadings as academic. Ordered accordingly.

6. This assessee's appeal is allowed.

Taking the same view, we quash impugned assessment for the same very reasons. Delving into other grounds has been rendered mere academic in nature. The assessee succeeds in its appeal. The consequential penalty forms part of subject matter of ITA No.566/Agr/2024. Since assessment has been quashed, the consequential penalty would not survive. This appeal also succeeds.

5. It is admitted position that the facts in quantum appeal as well as penalty appeal for AY 2014-15, ITA Nos.567 & 568/Agr/2024 are quite identical. Therefore, our adjudication as for AY 2013-14 shall *mutatis mutandis* apply to both these appeals.

6. The assessee has been levied penalty u/s 271(1)(c) for AY 2015-16 which shall not survive we have quashed assessment for this year vide ITA No.60/Agr/2024 order dated 17-02-2025. ITA No.569/Agr/2024 stand allowed.

7. The facts of reopening in quantum appeal for AY 2017-18, ITA No.570/Agr/2024 are quite identical. The case was reopened to invoke the provisions of Sec.50C but ultimately, the addition has been made u/s 69A. For the same very reasons, the assessment for this year stand quashed. The assessee succeeds in this appeal.

8. In AY 2018-19, ITA No.571/Agr/2024, an assessment was framed after making addition under the head Capital Gains for Rs.112.99 Lacs by invoking the provisions of Sec.50C. Against the same, Ld. AO levied penalty u/s 270A for Rs.13.38 Lacs vide order dated 28-02-2024 which stood confirmed by Ld. CIT(A) in order dated 25-10-2024. The Ld. AR stated that the issue is of valuation only and the assessee has already filed rectification application u/s 154 against the assessment order which is pending. The same would have material bearing on the penalty appeal. Considering the same, we restore the issue of impugned penalty back to the file of Ld. AO for fresh consideration in the light of outcome of rectification application as preferred by the assessee u/s 154. This appeal stand allowed for statistical purposes.

9. The appeals listed at serial nos. 1 to 6 stand allowed. The appeal listed at serial no.7 stand allowed for statistical purposes.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Dated: 23-04-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA